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(HANSARD)

Tuesday, October 24, 2017

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Tuesday, October 24, 2017

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

Prayers.

[*Translation*]

CORPORAL NATHAN CIRILLO AND WARRANT OFFICER PATRICE VINCENT

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, I would like to take a moment to mark the third anniversary of the tragic attack of October 22, 2014, that cost Corporal Nathan Cirillo his life.

[*English*]

Only two days earlier, Warrant Officer Patrice Vincent was also killed in a terrorist attack.

[*Translation*]

Though time goes on, colleagues, we must never forget this tragedy.

[*English*]

And we must never let these cowardly acts change who we are as Canadians.

I now invite all honourable senators to rise for a moment of silence in memory of Corporal Cirillo and Warrant Officer Vincent.

(*Honourable senators then stood in silent tribute.*)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Her Excellency Laura Boldrini, President of the Chamber of Deputies of the Italian Republic, accompanied by an Italian delegation.

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

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Donald Neil Plett: Honourable senators, pursuant to rule 13-3(1) of the *Rules of the Senate* and further to written notice given earlier this day, I rise to give oral notice that I shall raise a question of privilege this day, October 24, 2017, with respect to a senator's written letter which called upon the House of Commons to interfere with the Senate as an independent chamber.

Not only does the letter contain comments that are blatantly false, but as my honourable colleagues know, among the parliamentary privileges guaranteed to all parliamentarians is freedom from obstruction and interference in the performance of their parliamentary functions.

On Thursday, October 19, 2017, Senator Lankin wrote a public letter to the Leader of the Opposition in the House of Commons encouraging the leader to interfere in the proceedings of the Senate and thereby impeding the ability of senators to carry out their functions independently.

Inciting a member of the House of Commons to whip members of this independent chamber represents a grave and serious breach of the guaranteed privilege of freedom from obstruction and interference in the performance of our parliamentary functions.

Should there be a ruling that the actions of the senator constitute a prima facie breach of privilege, I am prepared to move the appropriate motion. Thank you.

AUTISM AWARENESS MONTH

Hon. Nancy Hartling: Honourable senators, I rise today in recognition of Autism Awareness Month, which spans the month of October. Over the last few weeks, some of our colleagues spoke to this issue in our chamber. We need to remain mindful so that we can offer support to these Canadian families. Statistics reveal that 1 in 68 children are currently diagnosed with this disorder and its frequency has increased 100 per cent over the last 10 years.

This is currently the fastest growing and most commonly diagnosed neurological disorder in Canada. On a positive note, early intervention is the key and with the right support, children affected will flourish and their families will be supported.

According to the Autism Speaks Canada website, autism and autism spectrum disorder (ASD) are general terms for complex disorders of the brain development. These can be identified by people having difficulties with social interactions, verbal and non-verbal communication, and repetitive behaviours, all in

varying degrees. They include, among others, autistic disorder, which is sometimes referred to as classic autism, Rett syndrome and Asperger syndrome.

It is fitting that the first person to speak on this issue on October 3 was Senator Munson. I say fitting because Senator Munson is a strong advocate for individuals with autism or ASD. In July we visited Open Sky together.

Open Sky is a charitable housing cooperative in Sackville, New Brunswick, that provides help to adults with intellectual or social disabilities such as autism spectrum disorders. For some, this help might come in the form of skills development and job training. For others, it could be counselling, helping them connect with others, or even accommodations. This program treats all of its participants with respect and supports them to become more independent by helping them set and work towards achieving their own personal goals. Bravo Open Sky!

I will always remember the young people we met at Open Sky who felt so empowered through this program, whether cooking, tending the animals and honeybees, or harvesting the gardens. These skills are so needed in society. This is a model program in my province of New Brunswick. Much more is needed like this from coast to coast as services and programs are still lacking.

October Autism Awareness Month is very important. It is essential that we continue to discuss this so that this issue stays front of mind for all of us. We must continue to voice our support for accessible services across the country for those affected as well as their families. Thank you.

[*Translation*]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of His Excellency Ivo Bischofberger, President of the Council of States of the Swiss Confederation.

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

Hon. Senators: Hear, hear!

• (1410)

ORGAN DONATION

Hon. Jean-Guy Dagenais: Dear colleagues, last Friday in Sherbrooke, I attended the annual ceremony to honour organ donors. I have been attending this event for several years now, at the invitation of my friend, former police officer Richard Tremblay, the founder of the Canadian Organ and Tissue Donors Association, or CODA.

This year's ceremony was once again very emotional and it gave me the opportunity to see and spend a few minutes talking with people who are alive today because of an organ donor and others who personally made a donation to save a loved one. There was also a mother who attended the ceremony with the recipients of the organs of her two children who died of disease at the ages of 5 and 8.

No one can remain indifferent after hearing the stories that are told at this ceremony, which is the only one of its kind in North America. The event took place at the Saint-Michel Basilica—Cathedral in Sherbrooke, and the Lieutenant-Governor of Quebec, Michel Doyon, was in attendance.

CODA has been around for 24 years. Last year, some 225 people donated organs and helped save lives in Quebec. I do not know whether you can imagine all of the logistics that come into play when a heart, liver or lungs are harvested for donation. Once the organs are harvested, they have to be transported.

Over the years, CODA has recruited a real army of volunteer police officers across Quebec and they are the ones responsible for transporting these organs. Organs from a single donor often have to be urgently transported to two or three different hospitals, and time is always of the essence. Last year, those teams covered no less than 45,000 kilometres in specially equipped vehicles. In 2016, 550 transplants were made possible thanks to organ donation.

One of our most renowned heart transplant surgeons, who is based at the Centre hospitalier universitaire de Sherbrooke, told me that, back in the day, when taxis handled transportation, many organs were lost because taxi drivers are not allowed to exceed the speed limit to reach their destination faster.

That is what led to the creation of the team of a hundred or so police officers, whom I salute today. They all attended the medal ceremony in dress uniform, which shows how truly dedicated they are to this cause.

I am telling you all this because some people are still waffling. Despite all of the public awareness campaigns, only 40 per cent of Quebeckers preauthorize the harvesting of their organs if they die. Twenty per cent of the time, when potential donors die, families refuse to authorize the procedure.

In light of those statistics, it is clear to me that we do not talk about organ donation enough. Have you yourself signed the forms that would enable you to save a life? If not, I urge you to do so.

[*English*]

BEAVERBROOK ART GALLERY
KINGSTON PORTRAIT PRIZE

Hon. Patricia Bovey: Honourable senators, over the past week, I had the distinct honour to be part of two special events in Canada's arts community. I rise to applaud all of those involved — the artists, the boards, the staff and the volunteers.

The first was the opening of the new pavilion at the Beaverbrook Art Gallery in Fredericton. Designed by MacKay-Lyons Sweetapple Architects, this much-needed addition housed an excellent opening installation of their unique collection of Canadian, Maritime and British art.

Also presented was an important solo exhibition of Canadian photographic artist Thaddeus Holownia, as well as a strong local private collection of contemporary art. The indigenous exhibition included major works by First Nations and Metis artists from across Canada, including the northwest coast of B.C., Bob Boyer, late of Saskatchewan, and several young local Aboriginal artists.

The opening event was a community-wide celebration, engaging donors, artists, families, and citizens of all generations. With this addition, their newly announced director, Tom Smart, is well poised to take the gallery onto the international stage, particularly given the strength of their British art.

Beaverbrook's legacy gift, including their spectacular Dali and the significant Graham Sutherland works, recently toured Canada and the U.S. The Beaverbrook Art Gallery owns Canada's only work by world-renowned 20th-century painter Lucien Freud, who, this weekend, was honoured in a special exhibition in Dublin.

The second event took place in Gananoque, the exhibition of this year's Kingston Portrait Prize. This prize is one of the pillars for Canada's potential national portrait gallery. The work was strong, showing the multi-dimensions of portraiture. Speaking on the eve of the exhibition's tour, I was pleased to show several works that hang on Parliament Hill. Volunteers founded and run this biennial exhibition. I herald their dedication, knowledge and commitment.

Yesterday, the People's Choice winners were announced: Leslie Watts for *The Bookseller* and Keita Morimoto for *Aristocrats*. They are insightful, well-executed works. The competition was stiff, and I congratulate the winners.

Saskatoon's new Remai Modern Art Gallery also opened to critical acclaim, and C2, the new joint home of the Manitoba Crafts Museum and Library and Manitoba Craft Council opens this weekend, injecting new energy into Winnipeg's vibrant art scene.

As we continue our work in this chamber, I know each of these milestone events will play an increasingly important role in Canada's profile at home and abroad.

[*Translation*]

In closing, I would like to express my admiration and offer my congratulations to everyone who contributed to each of these undertakings. The whole country benefits from your countless hours of community service. Thanks a million to you all. Your work is truly appreciated.

UNITED NATIONS DAY

Hon. Marilou McPhedran: Honourable senators, I rise today to mark United Nations Day.

[*English*]

October 24 has been celebrated as United Nations Day since 1948, the same year in which the UN adopted the most widely translated instrument in the world, the Universal Declaration of Human Rights.

October 24 marks the anniversary of the entry into force also of the United Nations Charter of 1945, the founding document for global governance as we know it today.

[*Translation*]

I also want to point out the fact that the United Nations Security Council will be having an open debate this Friday.

[*English*]

This Friday's open debate in the Security Council is an annual event that enables civil society organizations to address the United Nations Security Council directly on issues relevant to women, peace and security.

In particular, let us salute this year's Nobel Peace Laureate, ICAN, the International Campaign to Abolish Nuclear Weapons, for the success of 122 countries adopting the nuclear ban treaty in July of this year, in the UN headquarters in New York, where, sadly, Canada was not even in the room.

May I also salute Canadian civil society leadership of ICAN, including Senator Mobina Jaffer, who chaired the ICAN board for a number of years, and Ms. Ray Acheson, who has worked diligently for years to bring this treaty to its adoption by the UN. We may want to keep in mind that 122 countries accepted the nuclear ban treaty, making up about two thirds of the entire UN membership. Canada needs at least 128 countries in order to secure its bid for a seat on the Security Council in 2019.

The United Nations represents global cooperation in the face of critical issues such as climate change, gender inequality, violent extremism and systemic oppression.

Although we are fortunate to live in Canada, where the Charter of Rights and Freedoms is embedded in our Constitution, our peoples are not all beneficiaries or all able to fully live their rights. Therefore, on UN Day, I invite my colleagues and Canadians to reflect on what more we can do in our communities, in our Parliament and in our nation to uphold peace and human rights of all peoples in a truly inclusive democracy.

[*Translation*]

ROUTINE PROCEEDINGS

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2017

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-60, An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain Acts and provisions that have expired, lapsed or otherwise ceased to have effect.

(Bill read first time.)

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

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

• (1420)

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MEETING OF THE STANDING COMMITTEE OF PARLIAMENTARIANS OF THE ARCTIC REGION, MAY 15-18, 2017— REPORT TABLED

Hon. Ghislain Maltais: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-Europe Parliamentary Association respecting its participation at the meeting of the Standing Committee of Parliamentarians of the Arctic Region, held in Kangerlussuaq and Sisimiut, Greenland, Denmark, from May 15 to 18, 2017.

[*English*]

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE IMPACT AND UTILIZATION OF CANADIAN CULTURE AND ARTS IN CANADIAN FOREIGN POLICY AND DIPLOMACY

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Foreign Affairs and International Trade be authorized to examine and report on the impact and utilization of Canadian culture and arts in Canadian foreign policy and diplomacy, and other related matters; and
>
> That the committee submit its final report no later than March 31, 2018, and that it retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Richard Neufeld: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

> That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to meet on Tuesday, October 24, 2017, at 5 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Ghislain Maltais: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

> That the Standing Senate Committee on Agriculture and Forestry have the power to meet on Tuesday, October 24, 2017, at 5 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

The Hon. the Speaker: Pursuant to the motion adopted in this chamber Thursday, October 19, 2017, Question Period will take place at 3:30 p.m.

ORDERS OF THE DAY

PRECLEARANCE BILL, 2016

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Black, seconded by the Honourable Senator Mitchell, for the second reading of Bill C-23, An Act respecting the preclearance of persons and goods in Canada and the United States.

Hon. Serge Joyal: Honourable senators, I would like to speak to Bill C-23, An Act respecting the preclearance of persons and goods in Canada and the United States.

I would like to underline how much I appreciated the speeches made by Senator Jaffer and Senator Pratte on this bill, because I am convinced this bill breaches the law and the Charter of Rights and Freedoms.

This is a very serious issue because, as you know, one of the key roles of our institution is to look carefully into a bill to make sure it is totally in sync with the law of Canada and the Charter of Rights and Freedoms. I will try in my plain words to explain to you why I came to that conclusion and what I suggest as an approach by the committee to try to remedy those breaches.

First, let's put ourselves back into the context of this bill. This bill is the pre-clearance act. In other words, it is a bill whose objective is to facilitate transborder crossing.

We've had a Preclearance Act before. It was adopted in 1999. We were very attentive to be sure that that act respected the rights of Canadians and the law of Canada, and, of course, we do amend those laws regularly. But there are two specific aspects of this bill which I think need thorough consideration and amendment.

What is pre-clearance? I quote from the Canadian Bar Association's brief to the committee in the other place:

> Preclearance is, essentially, to allow a Canadian on Canadian soil to be examined by an American officer but always in full respect of the Canadian law and the Canadian Charter of Rights.

What I want you to keep in mind is that the passenger, the traveller, is on Canadian soil. I read the Canadian Bar Association quote on this very important point:

> This approach recognizes that the traveller is on Canadian soil and entitled to minimal restrictions on freedom of movement.

It's not because you passed a sign, as you do through the airport. I'm looking at my friend Senator Smith. When he travels to play golf in Florida, he will see the Statue of Liberty and the Star-Spangled Banner. When we pass that line in the airport, we are still on Canadian soil. We are not submitted yet to the American law.

This is very important. Keep that in mind. A Canadian on preclearance is on Canadian soil and is totally protected by Canadian law and the Canadian Constitution, the Canadian Charter of Rights and Freedoms.

But when you read Bill C-23, there is something there that is absolutely mind-boggling. I refer you to the report of the Privacy Commissioner, which was published on September 22. The Privacy Commissioner did something quite unusual. In the last year, from January 2016 to January 2017, he went through 552 individuals who were referred by the Canadian Border Service Agency to the American intelligence agencies as being target risks.

• (1430)

So what do we do? We, as Canadians, through the Canada Border Services Agency and the 60,000 travellers who are processed each day through the border, through our intelligence service, we identify, through algorithms — which are a criss-crossing of information — to come to profile somebody. We Canadians process those travellers through that system of gathering information, and of the individuals being identified as national security scenarios, we identify 552 individuals who are seen as target risks.

As a country, what do we do with that information — on you, on me, on anyone? We send that information to the Americans.

When the American pre-clearance officer looks at you, he has on his computer, which you don't see, your evaluation as a security risk. If you happen to be one of those 552 individuals, what does he do? You're a target risk for the security of the U.S.A.

What does he do then? He goes through the process, of course, of questioning you and uses all the powers listed in Bill C-23.

That's your government passing to a foreign government — in that case, the United States — information on you. What is that information on you? I will read from the report of the Privacy Commissioner. The information that is provided to the United States officer includes the following:

> . . . detailed personal information, including medical information about the target and the target's relatives and associates. For example, in one case, we found a detailed description of an individual's struggle with post-traumatic stress disorder and the medications being taken for that

> condition in notes made by the BSO. In addition, the names and phone numbers of third parties found in the targets' phone contact lists or wallets were recorded in some of the files that we reviewed.
>
> . . . [as well as] printouts of entire social media pages including lists of associates, postings, and photos of targets as well as their spouses, children and/or friends had been added to NTC files.

Do you want me to repeat? All that information is gathered on a single Canadian evaluated to be a target risk and passed to the American officer without having been checked as to whether that information is in sync with the Privacy Act. There are a lot of recommendations in that report of the Privacy Commissioner that are totally in breach of the Privacy Act. That's during the whole year that the Privacy Commissioner went through an examination of all those files of the 95 that he picked up among the 522 files that were deemed by the CBSA as being a national target risk.

This is very serious, because if a Canadian decides to withdraw from the pre-clearance — don't forget, you are still on Canadian soil, and on Canadian soil, if you refuse to continue the travel procedure, you have decided to withdraw. Keep in mind that in the other place, they are amending the Criminal Code to make possession of cannabis legal. You are on Canadian soil; you have some grams of cannabis on you, and you finally realize that you should not be trying to cross because you have cannabis that's illegal in the United States.

What happens? The American pre-clearance officer has the power to detain you. He has the power to detain you on Canadian soil and to submit you to the additional procedure that is listed in subclause 22(4) of the bill.

But as a Canadian, you have rights. When an officer wants to detain you, there's a procedure when you are detained. What is this procedure? It's section 10 of the Charter:

> 10. Everyone has the right on arrest or detention
>
> (*a*) to be informed promptly of the reasons therefor;
>
> (*b*) to retain and instruct counsel without delay and to be informed of that right; and
>
> (*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

The Supreme Court has interpreted that section time and time again. But the American officer has totally free rein not only to detain you but also to seize your car in the parking lot of the airport — as a Canadian. And no police officer in any province, be it a municipal, provincial or RCMP officer, has the right to seize your car without a court warrant.

But not the American pre-clearance officer. Not only can he seize your car, but also he can seize your computer, and he is not compelled to give you back the computer once the procedure is over. He can decide to confiscate your computer with all the information that you might have put on your computer that might be helpful and needed to carry on your business, interests or whatever.

So there is no doubt in my mind, honourable senators, that this section of the bill is in violation of the Charter of Rights and Freedoms. We have to apply to the search of a Canadian on Canadian soil exactly the same kinds of protections that a Canadian enjoys under the Charter of Rights, be that person, for instance, in a municipal, RCMP or provincial police station. There's no change at all. The government and Parliament have no authority to reduce the protection you enjoy under the law of Canada, under the Privacy Act or under the Charter of Rights.

This bill, honourable senators, needs a strong vetting, and I think the members of the committee who will have to study this bill should have a clear chart in front of them — *un tableau*. What are your rights when you are in a police station on Canadian soil, and what are your rights as this bill defines and limits them when you decide to go to pre-clearance?

And when you decide to go to pre-clearance, don't fool yourself; this bill is not only about airports but about train stations and ports — the major access points to the United States. When the Canadian government signed the agreement with the United States, it was with the proviso that we would adjust our search procedure to the one of the United States, not the other way around, because the protection that Canadians enjoy under Canadian law is much broader than the one that the Americans enjoy under Canadian law.

I will illustrate that with a statement made by the head of the American government last summer. I don't know if that has been catching your attention — what the President of the United States said about how to treat somebody who is detained by the police forces. I want to quote from a statement made on July 27, last summer. What did the President of the United States say about how our police should behave when they detain somebody? I quote:

• (1440)

> "And when you see these thugs being thrown into the back of a paddy wagon," he said, "you just see 'em thrown in, rough.
>
> "I said, 'Please don't be too nice.' Like when you guys put somebody in the car and you're protecting the head. You know? The way you put the hand over [the head], like 'Don't hit their head' and they've just killed somebody, 'Don't hit their head.'
>
> "I said, 'You can take the hand away,' OK?"

In other words, when you are in the hands of a pre-clearance officer or an officer, you're certainly not protected the way we're protected in Canada. When the same government at the beginning of its term said "extreme vetting" of Muslims, well, if you happen to be a Canadian Muslim and you are on pre-clearance because you're flying — may I have another five minutes?

The Hon. the Speaker: Agreed?

Hon. Senators: Agreed.

Senator Joyal: So you are a Canadian Muslim and you're on Canadian soil on pre-clearance. Well, the President of the United States of America has already said to the persons who act as pre-clearance officers, "extreme vetting." Do you want me to describe what extreme vetting is? I think everyone of us is a grown-up adult able to understand what "extreme vetting" means.

Do you want me to describe what it is to be rough with a person who is detained, who has done nothing wrong, by the way? The person is on Canadian soil and sees his goods confiscated with very little chance to get back his computer or cellphone or any other documents the person may have to carry on business in the United States.

Do you want me to tell you what your recourse is now if you are a Canadian? We all know we have recourse as a Canadian against any police officer who might have acted illegally or in breach of the Charter of Rights and Freedoms. I don't need to give you examples. I will just quote one decision of the Supreme Court of Canada, because it is key to understand the scope of Bill C-23. This decision involves the City of Vancouver, so our friend Senator Campbell will certainly remember that one, *Vancouver (City) v. Ward*.

Mr. Ward happened to be a person who was arrested when Prime Minister Chrétien was in Vancouver because Mr. Ward was suspected of having a tart and that he would throw the tart at the face of the Prime Minister. It happens that Mr. Ward's clothing corresponded to the description that the Vancouver police had of the suspect. They arrested him and strip-searched him. Do you want to understand what a strip search is? Don't forget, there are 552 Canadians who are targets, susceptible to extreme vetting and rough treatment, with all the information about the person that the Canadian government has transferred through the Border Services Agency to the American pre-clearance officer.

Extreme search, honourable senators, is the most intrusive and degrading search that anyone could be submitted to. In that decision — I'm looking at our colleague Senator Sinclair — for the first time, the Supreme Court of Canada unanimously granted damages to Mr. Ward for having been strip-searched with no real reasons. Why was it the first time? Because the court must focus on the breach of Charter rights as an independent wrong worthy of compensation in its own right. In other words, as a Canadian, not only are you entitled to your rights to be protected against unreasonable searches or unreasonable detention, but if you are the object of such a decision, you have a claim to get compensation from the government — not from the police officer who has searched you, because the bill prevented that. Bill C-23 prevents you from suing the pre-clearance officer who would have conducted that unreasonable strip search. Besides the civil action, you would have to get damages. The Supreme Court ruled in 2010 that you have a right to sue the government — in that case the City of Vancouver, or the Canadian government if it would be an RCMP officer — to get compensation for the mere fact that the state has allowed that officer to carry out the search.

With this bill, you would have to sue the United States of America. I'm looking at Senator Ogilvie. Who among Canadians would be entitled to sue the United States of America, which would claim the immunity act? What does the immunity act contain as a protection regarding the United States of America: everything but for three exceptions. The first one is if they have killed you; the second one is if they have physically damaged you; and the third one, is if you have — I'm sorry. My time is — I conclude with this. I know you want to know the third one. I'll quote it from the brief of the Quebec bar. I'm not inventing these things, honourable senators. I went through this totally. I know His Honour is becoming impatient, and rightly so.

If you die, if you have physical damages or damages to the goods and that happened in Canada.

The three exceptions are if you die, if you have physical damages, or damages to the goods and that happened in Canada. You won't be able to sue the Government of the United States of America. However, as a Canadian, if the same thing happens to you, you would be entitled to compensation under a decision of the Supreme Court of Canada.

Honourable senators, the committee that will be charged to study that bill has to have clearly in mind what your rights are in Canada and what your rights are in the pre-clearance territory.

Hon. Elaine McCoy: Would the senator entertain a question, please?

An Hon. Senator: He doesn't have time.

Senator McCoy: Would the Senate entertain an extension of the honourable senator's time so he could entertain a question?

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

Some Hon. Senators: Agreed.

An Hon. Senator: No.

The Hon. the Speaker: I'm sorry, Senator McCoy. I heard a "no." Sorry; the time has expired.

(On motion of Senator Omidvar, for Senator Moncion, debate adjourned.)

CANADA BUSINESS CORPORATIONS ACT
CANADA COOPERATIVES ACT
CANADA NOT-FOR-PROFIT CORPORATIONS ACT
COMPETITION ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wetston, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill C-25, An Act to

amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act.

Hon. Pamela Wallin: Honourable senators, it was former First Lady Michelle Obama who once said:

> When you've worked hard and done well, and you've walked through the doorway of opportunity, you don't slam it shut behind you. You reach back and give other folks the same chances that helped you succeed.

That has been my experience in business and on corporate boards, and it is what brings me to join this debate on Bill C-25. The bill is well-intentioned: improve corporate transparency, increase shareholder democracy, reduce the regulatory burden, and increase women's participation and overall diversity on boards and in senior management.

Women hold only 14 per cent of all seats on Canadian boards, according to a new study by the Canadian Securities Administrators. That's up 3 per cent from 2015.

Big business did a bit better. Companies with a market cap over $10 billion had 24 per cent of their board seats held by women, again up 3 per cent from 2015.

More encouraging, 61 per cent of Canadian companies have at least one female board member, up from 49 per cent just three years ago.

So the situation is improving, and it will keep improving because it makes the bottom line better.

As my colleague Senator Wetston and others have pointed out, there have been several major studies, by the IMF, McKinsey & Company and the Peterson Institute, which show a clear correlation between improved corporate financial performance and the presence of women in senior positions.

• (1450)

Men and women alike agree that attributes which are often considered female are crucial to decision making in today's often chaotic economic environment. These are attributes such as non-linear thinking and multi-tasking and sensitivity to corporate culture issues.

A friend and mentor, Maureen Kempston Darkes — the former President of GM Canada — believes women do indeed bring a different perspective to the boardroom and the executive suite. She said:

> We might ask different kinds of questions. Things in our realm of experience might be different than what men have experienced. We might have a different perspective on organizational leadership in the HR area; we might have some different experiences to share with the board and senior management on financial management.

Maureen, who is now retired from GM, sits on the boards of several blue-chip companies — CNR, Enbridge, Brookfield Asset Management — and she too believes change is happening. She said:

> . . . we will see more women come onto boards because we're seeing them going into more senior positions so their expertise will be sought by boards. Boards are ageing and so there will be more opportunity to bring women [in] . . . .

The question is, how do we foster this change? Should the government be involved? The government has decided it will be, and has chosen the so-called "comply or explain" model, which is the approach that has been adopted by many provincial securities regulators, as well as the TSX, London's FTSE, and in Australia as well.

Under this model, companies will be required to disclose annually to shareholders their diversity policies, including the representation of women on corporate boards and in senior management. If they don't, they must explain why such policies are not in place. This is intended, I think, to be more carrot than stick. It allows shareholders to hold leadership accountable for how they promote diversity in their ranks. If there is little improvement, the government has already said it's prepared to review the legislation in five years and enact tougher measures.

It's interesting to note that in the U.K. and Australia, where "comply or explain" rules are in place, significant change is occurring. But what we don't know is if this is the result of government policy or changing demographic realities in the world of work or some combination of them both. So is a legalistic approach necessary given the changes we are seeing in Canadian society and broader?

Women are now more than 60 per cent of all university graduates. They make up a majority of law school graduates. Women are starting small businesses at twice the rate of men, and their incomes are rising faster. As we see more women taking executive positions and joining boards, they will bring along other women. Perhaps that wasn't always true, but it seems increasingly the case. As someone once said, "behind every successful woman is a tribe of other successful women who have her back." And that too was my experience in the business world.

To reiterate, the power of changing demographics and broader diversity is being driven by many factors, including Canada's immigration policy and education system. Anyone who checks the full-page *ROB* ads every spring, with the list and photos of the newly minted MBA grads from Canada's top business schools, can see the full diversity of Canada on display. Given their diverse backgrounds, these MBA grads will help Canadian businesses gain access to markets around the world.

Maureen also believes broader diversity in the boardroom is a very good business practice. She said:

> What you're trying to do is to get the broadest perspective on oversight, insight and foresight into the company and into its decisions. Broader diversity helps in that dialogue.

So the trend towards diversity in Canada's boardrooms is inexorable, with or without government policy. That is why I hope the regulations and guidance, though not fully explained in this bill, will lean toward the persuasive rather than the prescriptive.

The bill does not actually define diversity. We should ensure that the committee looks at this issue. Minister Bains told his house colleagues last week that the government does not intend to define diversity because they do not want a narrow lens on the issue. But if we have expectations of compliance, then what is the bar that companies are being asked to meet?

I am pleased as well that the government has eschewed mandated quotas. Nowhere is there a better example of the law of unintended consequences than when government tries to legislate change, particularly in areas where it lacks expertise. Rules imposing candidates in key decision-making capacities without intimate knowledge of the business imperatives or without regard to people's expertise, independence or interests will surely lead to bad decisions, or worse. It might actually create internal resentments that will blow back on women everywhere, the very people the government thought it was helping.

But the core issue for me is this: Quotas contradict the principle of equality of opportunity for all. Women can and should succeed based on merit and competence, as should men. Access is opening up because, as was mentioned, there is a business case: The bottom line benefits when women are present at all levels, and men are aging out.

My reluctance to embrace the concept of quotas comes from the limits it places on women. It constrains the potential effectiveness and success of a woman who may be the right person, for a lot of other reasons than her gender — her brains, her experience or her ability — but who now might be categorized as a gender hire.

Are you being hired or promoted because you are there to represent women, and not men; or not the shareholders, unless they are women? Does a quota become a ceiling rather than a floor?

Women can compete based on merit. Then their successes are their own. Yes, mandated quotas would no doubt increase the number of women on corporate boards much faster, but in a study of businesses in Nordic countries, *The Nordic Gender Equality Paradox*, a country where a 40 per cent female board quota already exists, shows that women improve corporate performance when they bring experience and expertise to the board. But if they are selected to fill a quota without requisite experience, the benefits simply aren't there.

So the evidence shows that quotas have a neutral or often negative result both for women's advancement and company performance, two areas that are supposed to benefit.

In Norway, there was no significant change in the gender wage gap, no greater enrollment of women in business programs, and little evidence of widespread change in women's decisions around marriage and reproduction. More troubling still is that when quotas became mandatory for all companies in 2006, of the 500 companies affected, about 100 made difficult but legal changes in corporate structure to circumvent the new legislation.

Share prices dropped after the quota legislation was announced, and the authors of one study concluded the quota led to younger and less experienced boards, which led to, they alleged, increases in leverage and acquisitions and a deterioration in operating performance.

In the U.S., some $8 billion a year has been spent on diversity issues with little success — the diversity money pit, as the authors of a new book call it. Barbara Annis and Richard Nesbitt, in *Results at the Top: Using Gender Intelligence to Create Breakthrough Growth*, say that what does work is leadership accountability, gender coaching, male sponsorship and board-led succession planning. We've been training men for so long to ignore gender and now we tell them to highlight it. Confusion is inevitable, as is fear, that the wrong joke or gesture could provoke liability issues in claims.

The point is, let's encourage rather than compel companies to find the best people to sit on boards, and in today's Canada there is an incredibly diverse range of talent and expertise available. The Institute of Corporate Directors and the Canadian Board Diversity Council, and groups such as Catalyst, have created lists or registries of several thousand Canadians who are "board-ready" with requisite skills, qualifications and training. As more women and minorities become executives and directors, they will bring more women and minorities into the boardroom.

I want to touch briefly on the other proposed amendments to Canada's financial framework laws. Electing directors individually, rather than part of a slate, and requiring a majority vote for uncontested director elections, which is widely used by publicly traded companies, make sense.

I'm concerned about the proposal for annual director elections for publicly traded companies. One-year mandates for directors could lead to a high turnover or a lack of continuity and expertise, but it is becoming the industry standard and a requirement for listing on many exchanges, so the bill is headed that way.

With all this said, there is every good reason to want and encourage diversity in Canada's boardrooms, and no good reason not to. As more women move into the C-suites and the boardrooms, we will see our country truly reflected in those roles. Thank you.

(On motion of Senator Carignan, debate adjourned.)

• (1500)

NATIONAL ANTHEM ACT

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Lankin, P.C., seconded by the Honourable Senator Petitclerc, for the third reading of Bill C-210, An Act to amend the National Anthem Act (gender).
>
> And on the motion in amendment of the Honourable Senator Beyak, seconded by the Honourable Senator Dagenais:
>
> That Bill C-210 be not now read a third time, but that it be amended, on page 1, by adding the following after line 6:
>
> "2 **This Act comes into force on the later of July 1, 2017 and the day on which it receives royal assent.**".
>
> And on the subamendment of the Honourable Senator Plett, seconded by the Honourable Senator Wells:
>
> That the motion in amendment moved by the Honourable Senator Beyak be amended by replacing the words "**the later of July 1, 2017 and the day on which it receives royal assent**" with the words "**November 1, 2017**".

Hon. Grant Mitchell: Honourable senators, I unequivocally support Bill C-210's provision to include women in the lyrics of Canada's national anthem. I have to say that I am quite surprised by the opposition to this initiative.

Much of this opposition hinges on an argument that goes like this: First, "in all thy sons command" recognizes the sacrifice of Canadian military personnel, who it is logically implied must all have been men. Second, it somehow follows that to change this phrase to "in all of us command" would somehow be a betrayal of these men.

I want to make it very clear that I believe strongly in recognizing the sacrifices of our military — and I mean it. I am the son and the grandson of soldiers. My grandfather, Stanley Warn, fought in the First World War. He was severely wounded, was decorated for bravery and, after a year in a British hospital, returned home without most of one foot, without part of the other and with numerous bullet and shrapnel scars. My father, Bill Mitchell, was wounded and decorated in the Second World War. I have a picture in my office of him receiving the Military Cross for bravery from Field Marshall Montgomery personally, the commander of all Allied forces in Europe. My father also served in Korea and as a Canadian soldier on the International Control Commission in Vietnam during that war. He was, as one of his colleagues once said to me, a soldier's soldier.

There is no doubt that the courage and sacrifice of these two men — and so many others like them — should be honoured and recognized. But I know fundamentally that neither of these men risked their lives for personal recognition in the anthem or anywhere else. They risked their lives — and both very nearly lost them — to defend a priceless set of Canadian values: justice, fairness, rule of law, equality. I could go on. They stood against the most horrific kind of evil to do so. To both of them, these were values worth fighting for and, if necessary, worth dying for.

Yet, at the root of the resistance to changing the anthem is this idea that, in doing so, we would somehow be dishonouring them and men like them. But in fact, entirely to the contrary; neither my father nor my grandfather fought to preserve some clearly dated wording that neglects to reflect equality for all Canadians, including women. Their commitment to fairness, justice and equality was visceral. How could it be, they would ask in today's social context, that the anthem, which is such a significant representation of who we are, would explicitly exclude mention of women?

Believe me, changing these words to include women is not a betrayal; it is entirely consistent with what my father and grandfather fought for.

But since we agree that the anthem should recognize those who sacrifice in war, why is it that men's sacrifice would somehow trump women's? While far fewer women than men have specifically fought in wars for Canada, there's absolutely no doubt that women have certainly sacrificed and significantly in those wars. What about Captain Nicola Goddard, who died in battle in Afghanistan? What about the women who were also overseas in the Canadian Forces, like my mother-in-law, Lieutenant Evelyn Byles, who was in the Canadian Army medical corps in Britain during the Second World War, and my grandmother, Alice Warn, who was a nurse in Britain during the First World War?

What about all the women who worked farms, businesses, factories — every feature of our society and our economy — during the war efforts when their husbands, sons and brothers left to fight? They did so not only because their male relatives were away at war but also out of their own sense of duty and patriotism. They have been equal partners in Canada's war efforts.

What about the sacrifices that women have made when husbands, sons and brothers left for war, not knowing whether they would ever see them again? What about their sacrifice when they didn't? My wife's grandmother and great grandmother, from Portage La Prairie, experienced that sacrifice when their brother and son, Alex Wright, was killed at Vimy.

What about my mother, Mabs Mitchell, and women like her? My mother was engaged to my father in 1943 when he left for Europe, the second time he did so, in the Second World War. He wanted to get into the fight faster than Canada was going to so he volunteered for the Canloan Officers program set up to loan Canadian officers to the British Army because it had lost so many of its own officers. This was therefore by definition an extremely high-risk undertaking. Imagine what her life, at 23 or 24 years old, was like wondering most waking moments where he was and what danger he was facing. What about her sacrifice when my father later went to Korea for a year and a half while she was in Montreal with two children under five? What about seeing him go to Vietnam as a Canadian soldier to serve on the International Control Commission for a year in the midst of that

vicious war, albeit not as a combatant but certainly shot at nonetheless? At that time she had three children all old enough to know they might never see their father ever again. I wonder if she deserves at least a vote in this Senate.

So, have women made wartime sacrifices as worthy of recognition in the national anthem as wartime sacrifices of men? My life experience says absolutely yes! There is surely no fair way to draw such a distinction.

My father, my grandfather and my wife's great uncle did not fight these wars because they wanted personal recognition — they fought for something way bigger than that. Failing to recognize their sisters, mothers, granddaughters and wives in something as essential to who we are as the anthem is the real betrayal.

It should be noted that, of course, even under the new wording, men will still be recognized because, of course, they will be a pretty significant part of the "in all of us."

And yet, almost a year and a half after the Senate received it, we face the continuing struggle to get this bill to a vote, a simple vote — another thing for which countless Canadian women and men have made great wartime sacrifices.

Some senators who have repeatedly delayed this vote are saying that this tactic is some kind of higher democratic ideal. I agree that delay as a tactic has some legitimate purpose in our system, to a point. Proper delay can give the public a chance to catch on to an issue, for public awareness to emerge in something that might initially have been missed. Senator Pratte's work, for example, to raise awareness of the conflict inherent in Bill C-29 between federal and provincial jurisdiction is a classic demonstration of how some delay is useful. But it did not take a year and a half to raise or ignite concern about that issue. It took about three or four days.

Almost a year and a half after the Senate received Bill C-210, delay has become obstruction. The military that we all want to honour did not fight for that; I absolutely guarantee it. They fought for values and they fought for votes. Surely, to truly honour them, we should call the question. Just let us vote.

Your Honour, after the next speech, I'd like to call the question.

• (1510)

Hon. Yuen Pau Woo: Honourable senators, a great deal has been said on Bill C-210. All of the speeches in this chamber have been delivered variously with passion, erudition and sometimes also with humour. But all of the speeches have been delivered in prose, so I want to deliver my speech in verse.

I know that there's a point of privilege on the floor, so I want to dedicate this ditty to Senators Lankin and Pratte in the spirit of comity and reconciliation.

Whether Yea or Nay
We must seize the day
Our national anthem though finely wrought
Needs a sober second thought
Don't let prevarication
Stop deliberation
True patriot love does now command
A vote on "sons" or "us" demand
Enough procrastination
Let's call the question
On guard for thee
Glorious and free
Honourable Senators
We O Canada

Some Hon. Senators: Hear, hear!

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

Hon. Senators: Question.

The Hon. the Speaker: In subamendment it was moved by the Honourable Senator Plett, seconded by the Honourable Senator Wells, that the motion in amendment moved by the Honourable Senator Beyak be amended by replacing the words "the later of July 1, 2017 and the day on which it receives Royal Assent " with the words "November 1, 2017."

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 of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed 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: Do we have an agreement on time?

Senator Plett: Tomorrow.

The Hon. the Speaker: The deferred vote will be tomorrow.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

Hon. Carolyn Stewart Olsen: I rise today to speak at second reading of Bill S-206, which has no short title but has become known to us as "the spanking bill."

As I understand it, Bill S-206 would seek to eliminate section 43 from the Criminal Code. This action would be in line with recommendations from the United Nations Committee on the Rights of the Child and Canada's Truth and Reconciliation Commission.

The substance of section 43 allows for reasonable force to be applied by a schoolteacher or parent doing so for corrective purposes. This bill seems fairly straightforward. No one defends the striking of children. It is no longer socially acceptable for parents to hit children in the way that they would have done in previous generations.

No doubt the Truth and Reconciliation Commission's recommendations come from a recognition of the cruel way some indigenous children were treated by their teachers and government-appointed guardians.

As with many of the matters we deliberate in this chamber, the devil is indeed in the details. I have been approached by teachers from New Brunswick, the province I represent, who have deep misgivings over the unintended consequences of Bill S-206.

As the Department of Justice noted in a 2016 briefing note:

> There are times when parents, caregivers, and teachers may have to use force to control a child and keep the child, or other children, safe. . . .
>
> Without section 43, parents, caregivers, and teachers could face criminal charges . . . .

Before that, the Library of Parliament's Law and Government Division noted:

> Because section 265 of the Criminal Code prohibits the non-consensual application of force and section 279 prohibits forcible confinement of another person without lawful authority, some have expressed concern that the abolition of the defence in section 43 would criminalize parental conduct short of what is usually considered corporal punishment, such as restraining an uncooperative child in a car seat . . . .

It is an unfortunate reality of the schoolyard environment that teachers must sometimes restrain children. With our increasingly litigious culture, teachers have become vulnerable to legal actions for activities which would be understood to be a normal part of a teacher's job.

The Alberta Teachers Association noted in a 2013 update that:

> . . . an increasing number of teachers are being charged with assault in Alberta. Sometimes these allegations are exaggerated or maliciously brought by students or parents to advance a hidden agenda.

Or as the Queen's Council Brian Vail has noted:

> I can assure you that section 43 is still necessary. . . . I have had to defend teachers on assault charges for the most minor physical contacts . . . .

Teachers charged with assault have the same legal defences as any other Canadians would — self-defence or defence of others — but section 43 provides them with an additional level of protection that gives teachers the peace of mind that they will not be hounded for attempting to look after those in their care.

Section 43 has not existed in a legal void. It is not an unchanging monolith. It is clear that while the language behind section 43 is rooted in the 19th century, the actual interpretation and thus the implementation has evolved over time.

Section 43 was first codified into law in 1892. It was established with a strong foundation in English common law which, at the time, also allowed husbands to beat their wives and employers to beat their servants.

As S.D. Greene noted in *Criminal Law Quarterly*:

> By the time of codification of the criminal law in 1892, the right to use corporal punishment against wives and servants was no longer legally justified.

In a similar spirit, the final report of the Truth and Reconciliation Commission noted the often brutal punishments meted out to indigenous youth. In one example:

> . . . . the principal of the Shubenacadie School . . . had the suspects thrashed with a seven-thonged strap and then placed on bread-and-water diets.

This incident was said to have occurred in 1934. It is clear that behaviour of this sort would not be tolerated in 2017.

The Supreme Court, in its 2004 ruling on the matter, noted that, fundamentally, section 43 no longer protects teachers who employ corporal punishment. The ruling is very explicit. It states:

> Teachers may reasonably apply force to remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment. Coupled with the requirement that the conduct be corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality . . . .

Defending section 43 as it currently exists is not a matter of excusing corporal punishment, which we all may agree is outmoded, inappropriate and almost unheard of in this day and age. The important matter before us is preserving the necessary legal protection for teachers and for parents as well.

To make it clear, the Canadian Teachers Federation explicitly opposes corporal punishment. They said as much when they appeared before the Senate Human Rights Committee in 2007, which was considering an identical bill. The teachers' problems with Bill S-206 are not that they want the freedom to hurt their students but that they want to be sure they will not be prosecuted for trying to do their jobs.

At committee, they noted there are at least 11 conceivable scenarios where a teacher could be criminally charged if section 43 is removed. The list is as follows: separating a bully from his victim; guiding young children in play situations, for example, moving a child by the shoulders to line up; directing students to cease misbehaving and return to the school lineup; removing disruptive students who refuse to leave the class or the school; removing a violent student from a school bus; taking a misbehaving student to the principal's office; guiding students to their seats when they refuse to sit; taking a primary school student to a bus when they are on a field trip and refuse to leave; restraining an angry or violent student; getting a disruptive student's attention while they are being verbally disciplined; restraining a special-needs student or getting them to a so-called quiet room.

• (1520)

Teachers shape the next generation of our youth. As senators, as provincial representatives, we are constitutionally aligned with protecting our education system, and it is thus our responsibility to ensure teachers have every available aid.

I cannot bring myself to support the principle and scope of the bill as it stands before us. The complete deletion of clause 43 is not the way to deal with the actual issue, which is corporal punishment.

There is significant public support for legislative action against corporal punishment, and I'm fully supportive of such efforts, provided they do not needlessly endanger those we trust with our children.

I urge senators to exercise their discretion to amend the bill so we do not unintentionally endanger our hard-working teachers. Thank you.

(On motion of Senator Martin, for Senator Andreychuk, debate adjourned.)

NATIONAL MATERNITY ASSISTANCE PROGRAM STRATEGY BILL

SECOND READING—ORDER RESET

On Other Business, Commons Public Bills, Second Reading, Order No. 2, by the Honourable Joseph A. Day:

Second reading of Bill C-243, An Act respecting the development of a national maternity assistance program strategy.

Hon. Joseph A. Day (Leader of the Senate Liberals): Colleagues, I notice that this item is at the fifteenth day. This is a bill from the House of Commons, and we're still trying to line up a sponsor for the bill. I would ask for your indulgence in resetting the clock on this matter.

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

Hon. Senators: Agreed.

(Order reset.)

[*Translation*]

GENDER EQUALITY WEEK BILL

SECOND READING—ORDER RESET

The Hon. Dennis Dawson moved second reading of Bill C-309, An Act to establish Gender Equality Week.

He said: Honourable senators, I know that I will be interrupted by question period, but I will continue my speech afterward.

[*English*]

Why another gender equality day or month? Because when I met with the sponsor of this bill, Sven Spengemann from Mississauga—Lakeshore. I walked down to the other chamber where I was 40 years ago, and I reminded him of a few things.

When I went there 40 years ago, there were three women from Quebec in the House of Commons. There were seven women in total in the House of Commons. We have come a long way, but I also had to tell him that at that time there were not enough women in the House of Commons. They didn't have a washroom until 15 years later to accommodate the women of the House of Commons.

Yes, I have to admit we have come a long way, but we still have a long way to go. Between the time I accepted a meeting with the sponsor to talk about this bill, we have had the Weinstein affair in the United States. In Quebec we now have the Rozon affair and the Salvail affair. The issue of how women are treated, yes, we have evolved and come a long way, but everybody knows that we still have a long way to go.

[*Translation*]

It is both disappointing and refreshing to see that, even in 2017, we still feel the need to legislate an official gender equality week. It's disappointing because gender equality should be a given by now, and nobody should feel the need to promote and protect it by passing a gender equality week bill. It should be deeply ingrained in our way of life and our behaviour as individuals and as a society.

It's refreshing because this bill is a reality check. It forces us to acknowledge that, despite all the progress and advances of the last few years, gender equality — and women's equality in particular — is not recognized, observed, and practiced by everyone everywhere.

That is why a week dedicated to gender equality would serve as a reminder to do better and to recognize the many contributions Canadian women have made and continue to make to the growth, development, character, and identity of Canada, as articulated in the bill's preamble.

Many steps have been taken in this journey — not yet fully completed, as I mentioned earlier — towards gender equality in Canada. Obtaining the right to vote at the provincial and federal levels certainly marked a pivotal point in the evolution of women's political strength in Canada, as women gradually began exercising their political clout. However, it was a long and bumpy road.

An article was published in 2016.

[*English*]

Historica Canada reminds us that a hundred years ago this year:

> Federal authorities first granted a limited female franchise in 1917. In 1918, this was expanded to include most women. However, Asian women and men were left out and were not included until after the Second World War. Indigenous women and men living on reserves — and most everywhere else as well — were viewed as wards of the Crown under the Indian Act, and were excluded from the vote across Canada, except in rare cases, until 1960.

1960 is not that long ago.

[*Translation*]

In the 1980s, the issue of gender equality refocused on the labour market and recognized the principle of giving women equal pay for equal work. That makes good sense, we might say, but it was just the beginning given the blatant unfairness of women's wages, of which there are still cases today.

Not long after, this became an important issue in many leadership contests in which I participated. During the 1984 election campaign, the concept was fine tuned to include the concept of the "value" of the work, and hence the expression "equal pay for work of equal value".

This step forward would ensure not only that the same tasks performed by men and women would receive the same salary, but also that the value of jobs is considered in order to give women fairer compensation. Now, 30 years later, this problem is far from being resolved. Quite often women continue to earn less than men, not just for the same work, but for work of equal value done by men. Having a week dedicated to gender equality would serve as a much-needed reminder that the gender pay gap still exists and needs to be bridged.

I urge my colleagues to read the bill's preamble carefully. They will find it highly instructive, as it highlights numerous areas and issues where progress is still needed in order to fix gender inequality. Some progress has been made, but there is still a lot of work to be done. Here are a few examples: lack of awareness about the many significant and substantive contributions that Canadian women have made to the growth, development, character and identity of Canada; the need to address the social and economic challenges faced by women —

The Hon. the Speaker: I am sorry to interrupt you, Senator Dawson.

[*English*]

After Question Period, you will have the balance of your time.

QUESTION PERIOD

BUSINESS OF THE SENATE

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, appeared before honourable senators during Question Period.

The Hon. the Speaker: Honourable senators, for Question Period today we have the Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada.

On behalf of all senators, welcome, minister.

• (1530)

MINISTRY OF JUSTICE

INDIAN ACT—ELIMINATION OF SEX-BASED DISCRIMINATION

Hon. Larry W. Smith (Leader of the Opposition): Welcome, minister. My question for you today concerns Bill S-3, An Act to amend the Indian Act, (elimination of sex-based inequities in registration).

The bill is currently at a standstill here in this chamber. Your colleague, Senator Harder, has not been able to move the message received from the House of Commons in June, which rejected the Senate's amendment to eliminate all sex-based discrimination in the act.

Minister, in April 2010, when you were the Regional Chief for the B.C. Assembly of First Nations, you told a committee of the other place:

> I believe it would be the position of any responsible person to eradicate discrimination wherever and whenever possible in today's age.

With those words in mind, minister, do you agree with your cabinet colleague Minister Bennett's rejection of the Senate's amendment to Bill S-3?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, senator, for the question with respect to Bill S-3. I am committed to working very collaboratively with both of my colleagues, Minister Philpott and Minister Bennett, to address all remaining discrimination that exists in the Indian Act. Further, I'm very familiar with my speech in 2010 wherein I spoke to the elimination of all discrimination.

I know that Ministers Bennett and Philpott have a substantive plan. I know that we have an extension until December. There is a phased approach to ensure we do everything we can to eliminate that and recognize some of the challenges that exist in that regard, but that is not to undermine the commitment we have to ensure there is equality and that all inequities in the Indian Act are removed.

Senator Smith: Minister, will your government meet the December 22 deadline set by the Quebec Court of Appeal with respect to Bill S-3?

Ms. Wilson-Raybould: Thank you for the follow-up. We are entirely committed to meeting the deadline. Again, I will continue to work with Minister Bennett and Minister Philpott as well to make sure we meet the deadline, and to ensure we have a comprehensive plan to ensure we address all the inequities in the Indian Act.

MANDATORY MINIMUM PENALTIES

Hon. Paul E. McIntyre: Minister, welcome back to the Senate. My question for you today concerns Bill C-46. I note that during the committee's study of this bill in the other place, the members of your government did not support an amendment which would have required a mandatory sentence of five years for impaired driving causing death.

Minister, when you were here in Senate Question Period last December, you stated:

> . . . our government supports mandatory minimum penalties in the most serious of offences — murder and high treason . . . .

Minister, is that still the case? If so, how do you square that position with the rejection of an amendment that would provide a mandatory minimum for impaired driving causing death, a most serious offence to say the least?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, senator, for the really important question. I'm incredibly proud of Bill C-46, which seeks to put in place one of the most serious impaired driving provisions and laws throughout the world. In terms of mandatory minimum penalties, as I said to this honourable place some months ago, I believe that mandatory minimum penalties are appropriate for the most serious of crimes. That has not changed.

In terms of impaired driving, it is the biggest killer right now on our roads and inflicts harm to individuals who are impacted by drivers who choose to get behind the wheel of their cars after consuming alcohol and drugs. We have done extensive amounts of research and looked at the evidence in terms of mandatory minimum penalties with respect to the suggestion that the honourable senator makes.

MMPs in this respect are not a deterrent. What is a deterrent and what is contained in Bill C-46 is mandatory alcohol screening. This is a significant deterrent and has been proven in other jurisdictions. Mothers Against Drunk Driving has said the exact same thing in terms of mandatory minimum penalties not acting as a deterrent, but they wholly embrace the deterrence that mandatory alcohol screening brings, so that's where we're focusing our time and attention.

QUEBEC—BILL 62

Hon. Serge Joyal: Welcome, minister. Last week on October 18, the National Assembly in Quebec adopted Bill 62: An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies. This is the title of the act.

The next day, the Prime Minister stated that the federal government will take its responsibility will take its responsibility and defend the rights of Canadians wherever they are.

My question is twofold. Has the Prime Minister asked you to study the bill to conclude how that bill is in breach of the Charter? Second, are you ready to recommend to the Prime Minister that the executive council refers the constitutionality of Bill 62 to the Supreme Court for adjudication, avoiding placing the burden on a targeted Canadian to fight his or her way through the court for many years with a cost that will be astronomical?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you to the honourable senator. With respect to Bill 62, that was recently passed in the National Assembly in Quebec. I have had the opportunity to speak with many members. I have had the opportunity to speak with the Prime Minister. I will at this time echo the Prime Minister's comments with respect to Bill 62 in that it is not for any government to say what an individual man or woman should wear and that we, as a government, under the leadership of the Prime Minister, will ensure that the Charter of Rights and Freedoms and our Constitution are upheld in all matters. The diversity that exists in Canada is our greatest strength.

Through conversations with members and certainly through conversations with the Prime Minister and in his words, we will continue to monitor the law in Quebec, its application and potential realities as it proceeds through the process, through the development of guidelines, through the development of regulations. But the Government of Canada will always defend an individual's rights, as articulated in the Charter of Rights and Freedoms.

[*Translation*]

PUBLIC PROSECUTION SERVICE

Hon. Raymonde Saint-Germain: Madam Minister, as you know, some provinces, including Quebec, have to investigate corruption allegations, sometimes involving government employees and even elected officials. To carry out these investigations, officials need evidence that may be located outside our borders, for example, when investigating money laundering or identifying real property illegally purchased using public money. At present, Canada's prosecution services, at both the provincial and federal levels, must submit their requests for assistance from other prosecuting agencies around the world through the International Assistance Group within your department, which represents the central authority. In an effort to ensure the independence of prosecuting agencies and in order to minimize the risk of political interference in the request process, which usually happens during the investigation phase, would it not be advisable to return the central authority under the purview of the Public Prosecution Service of Canada? That is an independent, credible prosecuting agency with legal guarantees that limit the possibility of interference. I have learned your department's central authority offers direct intervention on behalf of Canadian diplomats, even though these diplomats act under the authority and policies of the executive branch. Would it not be better, then, to leave it to independent prosecution agencies to directly share the information and evidence they need to complete their investigations in order to ensure justice that not only is impartial, but also appears impartial?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: I thank the honourable senator for her question. I will say with respect to the question that this falls under the mandate of another minister. That's not to say that I will not follow up and pass along the honourable senator's question to the Minister of Finance. By all means, I certainly work with him and will look forward to the opportunity to have further conversations.

• (1540)

INDIAN ACT—ELIMINATION OF SEX-BASED DISCRIMINATION

Hon. Marilou McPhedran: Madam Minister, the Senate's amendment to Bill S-3 would have granted the same status to all registered Indians born prior to April 17, 1985, the day the new Indian Act rules, at that time, created the discrimination found by the courts in the *McIvor* and *Descheneaux* cases. We have heard the explanations of the government for stripping the equality amendments adopted with no dissenting voice by the Senate. More consultation is needed. Bill S-3 is Charter-compliant. The numbers would be overwhelming. Frankly, none of these explanations for continuing sex discrimination are acceptable in 2017.

When you were the regional chief from B.C. for the Assembly of First Nations, you gave testimony to the Standing Committee on Aboriginal Affairs and Northern Development in April 2010, and, in one of your recommendations, you urged the committee to make sure, to assure itself:

> . . . that the amendments are being made to address all gender discrimination issues in the Indian Act and not just those applied in the case of Sharon McIvor.

Minister, I was in the gallery on National Aboriginal Day, and I watched all of you stand and strip the equality amendment and reduce the title of the bill, in other words, do exactly what the Harper government had done that you were addressing in April of 2010. Here are my questions:

Why is the Government of Canada ignoring the many findings of Canadian judges, as well as from United Nations treaty bodies and experts and the Inter-American Commission on Human Rights, urging Canada — much as you did, minister, in 2010 — to cure, once and for all, this damaging discrimination linked to missing and murdered indigenous women? Where is the government's legal analysis on Charter compliance in Bill S-3? Without this crucial information, provided to us with adequate time to be carefully considered, how can senators be expected to respond thoroughly and responsibly to the messages from the House of Commons on Bill S-3?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you to the honourable senator for the question again on Bill S-3. I, without question, stand behind all of the presentations I've made that are reflected in Hansard. I believe it is incumbent upon us to remove all discrimination that exists in the Indian Act. I have been working very closely with my colleagues Ministers Bennett and Philpott, particularly Minister Bennett, to ensure that we have a plan to achieve that end.

I want to acknowledge the work of the honourable senator, as well as the work of all the senators in this house that are considering, in great detail, Bill S-3, proposing amendments.

We're committed to meeting, as I said earlier, our deadline of December. I believe, certainly as the Minister of Justice but also as a proud indigenous woman, that there is a lot of work that we need to do. This is not to take away from the ultimate goal and objective of removing all of the gender discrimination or discrimination writ large within the Indian Act, but we need to ensure that we do the appropriate consultations for us as a government. But there are challenges. I speak with some authority on this, having been on council within my own community. There are challenges with respect to individual Indian Act bands in terms of the realities that the removal of the discrimination will impart on individual communities. That's not to say that that's an excuse not to do it. We have to do it, and we're committed to doing it in the phased approach that Minister Bennett has spoken to.

But, again, I'm more than happy to speak with each individual senator on this. I certainly know that Minister Bennett would as well. I look forward to further conversations to assist this honourable place with what we can share in terms of analysis of the Government of Canada.

[*Translation*]

SUPREME COURT—JUDICIAL NOMINATIONS

Hon. Claude Carignan: Madam Minister, I want to begin by thanking you for your support and for the work your office did on Bill S-231 on protecting journalistic sources, which has now become law.

Now for my question: the Chief Justice of the Supreme Court has announced that she will be stepping down on December 15 of this year. Does the government intend to honour tradition and appoint a francophone Chief Justice with a civil law background this time?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question. I certainly would like to acknowledge your considerable amount of effort with respect to 31, which, as you say, has become law. We were very pleased to work in partnership on that.

In terms of Madam Chief Justice McLachlin's retirement coming very quickly on December 15, I have, for the second time as the Minister of Justice, the incredible honour of assisting the Prime Minister in appointing another justice to the Supreme Court of Canada and also assisting the Prime Minister in selecting the next Chief Justice, which is entirely within his prerogative and domain.

We were able to launch the process to search for applicants for the next Supreme Court justice appointment. We launched that in the middle of July. The Prime Minister and I both independently received yesterday, October 23, the report from the independent advisory board that provided us with a short list of candidates that we will be considering in great detail. Again, I feel incredibly honoured to be able to provide, in due course and with the appropriate amount of investigation and due diligence, the Prime Minister with my recommendation for the next Supreme Court justice.

RECOGNITION OF SELF-GOVERNING FIRST NATIONS

Hon. Dennis Glen Patterson: Welcome, minister. I believe you are well familiar, from your previous life — again, referring to your previous life — with a bill that was first introduced in the Senate of Canada in 2004 as Bill S-16, An Act providing for the Crown's recognition of self-governing First Nations of Canada. That was last on our Order Paper as a bill sponsored by former Senator Gerry St. Germain. As I believe you know, that bill has had the support of the Assembly of First Nations and was drafted by prominent Aboriginal law scholars and indeed an eminent former Supreme Court jurist.

So I'd like to ask: Is this bill on your radar as a step towards reconciliation with First Nations, as a thoughtful and realistic option for willing First Nations to opt to get out of the colonial oppression of the Indian Act? And will your government support the bill if it's reintroduced and recommended by this chamber?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you to the honourable senator for the question and, again, a reference to my previous life. I always question whether or not there was a previous life. But I'm very happy to be here and to reflect on the incredible amount of work that is, in my capacity as regional chief, empowered by the extraordinary leadership of indigenous peoples across this country. We were able to put forward substantive solutions to enable indigenous communities to decolonize, in this case, to move beyond the Indian Act. As the Prime Minister recently said at the United Nations General Assembly, and as I've stated in many speeches, we are committed to ensuring that we operationalize the United Nations Declaration on the Rights of Indigenous Peoples, which includes, in Articles 3 and 4, the right of self-determination and self-government, embracing a rights-recognition approach, which we have by releasing 10 principles around the recognition of rights and the relationship between our government and indigenous peoples.

• (1550)

If this honourable house felt compelled to bring forward a piece of legislation that supported indigenous self-determination, including the right of self-government, I would be very pleased to work with the honourable senators on that.

I know that one of the greatest opportunities we have as a government, working in partnership with indigenous peoples, if that is again what they want to do, it's entirely appropriate to look substantively and concretely at a mechanism to enable indigenous communities to move beyond the Indian Act. That is what Bill S-212 did, and I credit Senator St. Germain for bringing it forward. It built on the work of the late Senator Walter Twinn and others to ensure that indigenous peoples can move beyond the Indian Act and not have to go to court to render the Indian Act of no force and effect, or ultra vires, or to negotiate for what seems years and years and years — but that there is a mechanism that doesn't exist right now in this country to enable indigenous communities to become self-governing.

AWARENESS OF SEXUAL ASSAULT TRAINING FOR JUDGES

Hon. Joseph A. Day (Leader of the Senate Liberals): Minister, good afternoon. My question relates to Bill C-337, An Act to amend the Judges Act and the Criminal Code (sexual assault). This bill was passed unanimously in the House of Commons. From my reading of the bill, before a practising lawyer can be appointed as a judge or even considered for appointment as a judge, she or he must have completed a course in sexual assault law. That's fine for lawyers living in the big cities, like Vancouver, Toronto or Montreal, but I'm concerned about those practising law in the smaller rural communities, such as northern British Columbia or northern New Brunswick, my home province.

Does your department have a plan in place, and have you set aside resources, so that lawyers who are practising in areas where it would be much more difficult for them to take these courses will have access to those courses and therefore be considered for appointment as a judge?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the important questions. I was very pleased to be able to receive from the Committee on the Status of Women recommendations on amendments to Bill C-337 that spoke to judicial training, as you mentioned. The amendments brought forward were around broadening the training in terms of the broader social context to ensure that judges have the necessary training to recognize the differences among the people who present themselves in front of them.

So I was pleased that there was all-party support for this important private member's bill.

I believe there should be — and, senator, you raise an important question — to ensure there is equal access to the necessary training in order to be in compliance with what this bill articulates. I would welcome feedback from the honourable senators, as well as debate and discussion. I'm always open to potential amendments, but I know this bill will benefit from your deliberations.

In terms of what the Department of Justice has done beyond this bill, we have engaged in discussions with the federal Commissioner for Federal Judicial Affairs in terms of supporting the training of judges. We have had the opportunity to provide resources to the National Judicial Institute to support training for judges. As well, there's consideration through the commissioner for the opportunity to provide online training to judges if it's not possible for an expert to live in every single community, or to find an expert that can provide the necessary training.

There are legitimate questions, and we would certainly welcome the feedback from the honourable senators with respect to the private member's bill, Bill C-337.

Senator Day: Just to clarify, the concern I have is practising lawyers who are not judges. You have a lot of training programs for judges once they've been appointed, and I think that's absolutely wonderful; we should be doing that. But you're not going to be able to consider for appointment lawyers who are practising in rural areas who haven't had the opportunity to take these sensitivity courses beforehand.

Ms. Wilson-Raybould: Thank you, senator, for the clarification. I think I misheard your question. I recognize that for lawyers who potentially want to become judges, this might be an obstacle for them putting their names forward. That definitely needs to be addressed, and again, we would benefit from further discussions with you.

Please recognize I have spoken about this with my officials, and it came up through the course of the discussions at committee, but we'll continue to ensure that everybody has the opportunity to put their name forward to potentially sit as a Superior Court justice.

REVIEW OF INDIGENOUS LAWS AND POLICIES

Hon. Daniel Christmas: Welcome, minister. As you know, we're on a collective journey toward reconciliation and the forging of a true nation-to-nation relationship between Canada and indigenous peoples. As you very well know, the road to this reality is not easy at all. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples, the review of laws and policies, the introduction of the 10 guiding principles for our relationship — some progress has been made on all these fronts, but much more work remains to be done.

In light of this, my question for you, minister, is simple: What can we senators do to help you in this regard? I think you will agree that we have the opportunity to measurably move the stakes and begin to move into a season of reconciliation, healing and progress on myriad fronts.

I'd like to hear your thoughts on how, together, we can do just that.

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question. It's an incredibly important question, and I appreciate the reflections on what the government has done to this point to ensure that we're embracing a nation-to-nation relationship with indigenous peoples. We will ensure that we operationalize our unwavering commitment to the United Nations Declaration on the Rights of Indigenous Peoples, as well as the Truth and Reconciliation Commission report calls to action.

As the honourable senator said, this is hard work, and it's going to require all of us. What can honourable senators do to assist in this undertaking, which I believe and the Prime Minister has stated will be the lasting legacy of this government, which will set the stage for the next 150 years as we seek to decolonize our laws, policies and operational practices? Speak out. Let's have this conversation. Let's ensure that all honourable members in this house and in the other place are seized with this vitally important issue that will ensure that indigenous peoples finally see their face in the mirror of our Constitution.

This is the challenge we have, but this is the fundamental opportunity. I would say to all Canadians watching that they have a role to play in this, as well, not only to understand the current day-to-day realities that exist in many of our indigenous communities around the lack of potable water, housing, education and others. We must ensure that we work really hard to close those gaps and have conversations around how that abominable reality exists in a first-world country.

But we must also have conversations about another track, which is the track that the honourable senator across the way was speaking about: How do we ensure, from a foundational level, that we change the discussion from what has been, through previous governments, a denial of rights to a discussion about the recognition of rights and what that means for us as a country? It's going to take all of us to transform the perceptions around indigenous peoples. Let's talk about the success stories that exist in indigenous communities. The more we talk about the success stories, the more we can build on the successes that exist right across this country from coast to coast to coast in Inuit, Metis and First Nations communities.

• (1600)

So let's do this. This is a team effort.

MEDICAL ASSISTANCE IN DYING—ADVANCE DIRECTIVES

Hon. Pamela Wallin: Minister, since last year's passage of Bill C-14, the assisted dying law, more than 1,900 terminally ill Canadians have chosen a dignified end to life. Most of these people were suffering from painful and incurable cancers. But there's another large group of victims who cannot access the provisions of Bill C-14 — those with Alzheimer's and other forms of dementia.

More than half a million Canadians "live with" dementia and there are 25,000 new cases diagnosed each year. They are denied the right, while competent, to sign advance directives to make decisions about how they will die. Polls show strong support for advance directives, even amongst doctors.

I know panels are studying this issue, but when can we expect a decision that will end the issue of discriminatory access, where there are different rules for people depending on whether their disease is cancer or Alzheimer's?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: I'd like to thank the honourable senator for her question with respect to advance directives and to medical assistance in dying, the legislation that we have brought into being, and for citing the statistics.

As I stated to the honourable senator here and outside of this chamber, we are committed to ensuring that we undertake the substantive reviews on individuals suffering from mental illness alone and their potential qualifications for medical assistance in dying, if in fact that's the direction we want to go, as well as looking at access to medical assistance in dying to mature minors and, as the senator says, to advance directives.

These are incredibly important reviews that are under way. We are going to get reports back in 2018. But I say standing here in this honourable house that we have every commitment to ensure this important discussion that was started with the coming into force of medical assistance in dying is a conversation that's going to continue; that we ensure that when we get the report, we embrace it; and that we follow up on conversations both here and in the other place.

From the perspective of myself as a minister working with then Minister of Health Jane Philpott, this is the first opportunity I've had to come into this honourable place since Committee of the Whole to speak to Bill C-14. It was the most difficult thing that I've probably had to do thus far. I believe we found the right balance in terms of protecting personal autonomy and vulnerable individuals in this piece of legislation, but recognize that with more information, with more evidence, more details and more study, down the road certainly we'll consider the reports. We benefit from the ongoing discussion on this important, complex and emotional issue.

LITIGATION MANAGEMENT CABINET COMMITTEE

Hon. Denise Batters: Minister, a year ago the Trudeau government set up the Litigation Management Cabinet Committee . Even though this committee usurped some of your primary duties as Canada's Attorney General, you were relegated to simply being a regular member. This new cabinet committee, chaired by Dominic LeBlanc, is supposed to assist the Trudeau government in settling litigation matters that could become politically messy. Yet, in the last few months, Canadians have been shocked by your government's fumbling of two lawsuits in particular.

First is the infamous $10.5 million secret settlement and apology the Trudeau government gave to confessed terrorist Omar Khadr. This massive settlement amount was agreed to at mediation, a very early stage of legal proceedings. I'd guess that the $10.5 million amount your Liberal government paid to Omar Khadr might be the largest settlement amount ever agreed to at a Canadian mediation session.

Recently, we've learned about the Trudeau government spending $100,000 on legal fees to defend against a $6,000 claim for a young indigenous girl's orthodontics.

Clearly, minister, the Litigation Management Cabinet Committee isn't going tickety-boo. Isn't this just another attempt by the Trudeau PMO to centralize power in the hands of the Prime Minister's closest friends and advisers?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: I appreciate being able to respond to the honourable senator's characterizations with respect to the Litigation Management Committee and the substantive work that I believe the committee does and will continue to do. In fact, I very much appreciate sitting as a member of that committee and having that committee chaired by the honourable minister.

In fact, as the Minister of Justice and the Attorney General of Canada, I asked the Prime Minister on many occasions that the committee be formed in order to ensure that the decisions that I as the Attorney General make around litigation, whatever the matter — if we're talking about national security, if we're talking about childhood claims, the Shiner case as the senator references — that we have the opportunity not only to consider it based on the law and the legal analysis but also to consider it in the cross-government way in terms of the potential financial realities, settlements as well as the political realities.

I believe that the formation of the Cabinet Committee on Litigation Management under the leadership of the Prime Minister was an intelligent, thoughtful and purposeful formation of a committee. We have dealt with many very important matters. The senator references a particular case that has to do with national security. We have the opportunity to engage in debate and discussion, and we have settled a number of matters around national security. All of those settlements are confidential.

I will continue to embrace the opportunity to go before and among my peers to have discussions about the substantive work and decisions that I have to make as the Attorney General. There is no usurping my role as Attorney General. Ultimately, all decisions with respect to litigation and litigation management fall to me, but I do benefit greatly from having a substantive conversation between and amongst me and my colleagues.

DRUG-IMPAIRED DRIVING—MANDATORY MINIMUM PENALTIES

Hon. Kim Pate: Thank you, minister, for joining us in this place. Bill C-46 regarding drug-impaired driving imposes mandatory minimum sentences of imprisonment for some offences. An exception to these mandatory minimums is created in proposed section 320.23, which gives judges discretion to substitute a mandatory minimum punishment for another punishment in cases of individuals who have been sentenced to complete and have completed treatment programs.

This provision appears to acknowledge the importance and effectiveness of responding to issues of drug impairment through the health care system rather than the criminal justice system.

Those most marginalized in our society, particularly indigenous peoples who are currently overrepresented in prisons in Canada, lack resources and face other barriers related to accessing justice that directly affect their ability to make these sorts of cases in court. What steps have been taken to ensure that these individuals will have not only knowledge of and then access to treatment orders, but also that other exceptions to the mandatory minimum sentencing provisions will be provided?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you to the honourable senator for her question. In the context of Bill C-46, but generally speaking in the context of individuals who are marginalized or who find themselves in the criminal justice system by virtue of the fact that they have an addiction or a mental illness or are indigenous — indigenous peoples are sadly overrepresented in the criminal justice system — I'm pleased with the proposals that we have in Bill C-46 to ensure that if an individual does get treatment, the mandatory minimum penalty won't apply. Likewise, there's an opportunity in this legislation to have an interlock device on a car in order for an individual to proceed that way.

In terms of measures and what we have done as a department to advise marginalized individuals about their rights and provide support for access to justice, we have a number of programs in the Department of Justice. One is the Native court workers and counselling program, which supports Native court workers to assist indigenous peoples in the criminal justice system to navigate their way through, to assist them in recognizing their rights and providing access to justice.

• (1610)

We also have an Indigenous Justice Program that provides workers in indigenous communities to support individuals that are navigating their way through the justice system, but also to provide what I firmly believe is the significant opportunity that we have to inject more justice into the justice system, through Indigenous Justice Program supports, or otherwise working with the provinces and territories, to ensure we create more off-ramps for individuals who find themselves in the criminal justice system for reasons other than being inherently criminal. Off-ramps such as restorative justice measures or alternatives such as drug treatment courts, of which we have six in the country right now, supporting more drug treatment courts, more mental health courts and more community-based courts.

There's a tremendous opportunity for us to pursue measures that ensure that the first time individual offenders find themselves in the criminal justice is the last time they find themselves there. There's much that we can do. With the substantive collaborative relationship I have with my colleagues in the provinces and territories, I know we're going to ensure we do everything we can to put programs in place that provide the wraparound services that are necessary for individuals to exit from the justice system.

The Hon. the Speaker: Honourable senators, the time for Question Period has expired. I'm sure all senators will want to join me in thanking Minister Wilson-Raybould for coming to join us again. We look forward to seeing you some time again in the future, minister. Thank you.

Hon. Senators: Hear, hear!

[*Translation*]

ORDERS OF THE DAY

GENDER EQUALITY WEEK BILL

SECOND READING—DEBATE ADJOURNED

On the Order:

> Resuming debate on the motion of the Honourable Senator Dawson, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill C-309, An Act to establish Gender Equality Week.

Hon. Dennis Dawson: The preamble goes on to say the following. Many of the particular experiences and challenges faced by women and enumerated in the bill's preamble are also experienced by individuals of minority gender identity and expression. Poverty and inequality continue to disproportionately affect women, particularly elderly, disabled, transgender and visible minority women, leaving them isolated and vulnerable. Women are more likely than men to be victims of gender-based violence, including sexual assault and intimate partner violence, a phenomenon that disproportionately affects Indigenous women. Women continue to face barriers in pursuing and completing post-secondary education and pursuing careers in the fields of science, technology, engineering and mathematics. However, we must recognize the efforts of Canada's first ministers in bridging that gap. In many areas, such as municipal administrations, there are still too few women involved in politics and too few executive positions in the private sector are held by women.

In the federal public administration, the Government of Canada must continue to monitor the progress, across departments and agencies, of the status of women in Canada. Let's hope that it does so.

Designating the fourth week of September as Gender Equality Week is probably not a magic bullet. However, it never hurts to stimulate thought and action on gender equality issues. We can only applaud this project, which aims to encourage all Canadians, especially men and people who do not identify as female, to do their part during Gender Equality Week, as well as all year long, to make Canadian society more inclusive and strive for full gender equality.

I wholeheartedly support this approach and this bill. Honourable senators, I am counting on your support.

(On motion of Senator Hartling, debate adjourned.)

[*English*]

SENATE MODERNIZATION

SIXTH REPORT OF SPECIAL COMMITTEE—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tannas, seconded by the Honourable Senator Wells, for the adoption of the sixth report (interim) of the Special Senate Committee on Senate Modernization, entitled *Senate Modernization: Moving Forward (Speakership)*, presented in the Senate on October 5, 2016.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable colleagues, this is an important report from the Special Senate Committee on Senate Modernization and with respect to the Speakership of the Senate. I have extensive notes, as you know. I'm not prepared to give my speech today. I'd like to adjourn the debate for the remainder of my time.

(On motion of Senator Mercer, debate adjourned.)

STUDY ON THE EFFECTS OF TRANSITIONING TO A LOW CARBON ECONOMY

FIFTH REPORT OF ENERGY, THE ENVIRONMENT
AND NATURAL RESOURCES COMMITTEE—DEBATE CONCLUDED

On the Order:

> Resuming debate on the consideration of the fifth report (interim) of the Standing Senate Committee on Energy, the Environment and Natural Resources, entitled *Positioning Canada's Electricity Sector in a Carbon Constrained Future*, deposited with the Clerk of the Senate on March 7, 2017.

Hon. Richard Neufeld: Honourable senators, I rise today to speak to the fifth report of your Standing Senate Committee on Energy, the Environment and Natural Resources entitled *Positioning Canada's Electricity Sector in a Carbon Constrained Future*. The report was tabled in the Senate in March.

Before I address some of our findings, I want to provide the chamber with some background information on the committee's current study.

In March 2016, the Senate gave us the authority to examine and report on the effects, challenges, solutions and costs associated with the transition to a lower-carbon economy as required to meet the government's announced greenhouse gas emission reduction targets of 30 per cent below 2005 levels by 2030.

The committee is taking a sector-by-sector approach to this study. We have singled out five sectors of the Canadian economy who together are responsible for more than 80 per cent of all our greenhouse gas emissions. These five sectors are electricity; transportation; oil and gas; emission-intensive, trade-exposed industries; and buildings.

Our plan is to table an interim report on each of these sectors. Each interim report will reflect what we've heard in our hearings and during our fact-finding missions and will list a series of policy-related questions. The study will wrap up with a final report with specific recommendations to the government about how Canada can transition to a lower-carbon economy in a way that is sustainable, efficient, equitable, achievable and affordable.

As of October 23, we've held 53 public hearings in Ottawa and heard from over 150 individual witnesses. We've also had the privilege of travelling to most provinces and meeting with dozens of other witnesses, including government officials, stakeholders and businesses. We held open forums in four different universities with students, faculty and community members.

We also visited some fascinating sites, including the Rio Tinto aluminum smelter in B.C., the carbon capture and storage facility at Boundary Dam in Saskatchewan, the ArcelorMittal Dofasco steel plant in Hamilton, Hydro-Québec's labs, and NB Power's nuclear plant in Saint John.

Our second interim report on the transportation sector was released at the end of June, and we hope to publish our third and fourth interim reports before Christmas.

Naturally, Canada wants to be a leader in addressing climate change and do its part to meet its international obligations. Climate change is real. It's happening, and its effects are being felt in every region of the country.

In an attempt to limit the effects of climate change, the federal government has committed Canadians to reducing our greenhouse gas emissions by 30 per cent from 2005 levels by 2030. This commitment was agreed to at COP21 in Paris in 2015, and reaffirmed in the federal government's pan-Canadian framework on clean growth and climate change in 2016.

Numbers from Environment and Climate Change Canada suggest we need to remove 219 megatonnes of greenhouse gas emissions by 2030 to meet that target.

It's a big job in a short period of time — only 13 years away. Our report describes the challenge as Herculean.

Put it this way: A megatonne of carbon is the equivalent of taking 211,234 passenger vehicles off the road, or electricity used for 133,961 homes for one year.

Consider this: If we eliminated all fossil-fuel-powered vehicles from the roads, rails, waters and skies by 2030, we would only reduce our emissions by 170 megatonnes — falling short of the 219-megatonne target. Needless to say, the challenge is, quite honestly, overwhelming, and I would argue most Canadians don't understand the magnitude of it and how it will actually affect them on a daily basis.

• (1620)

One thing is certain: Canada's greenhouse gas commitment will come with a price. We also know that not doing anything to reduce our carbon footprint will come with a price. I often talk about Fred and Martha, average Canadians who work hard to pay their mortgage or rent, put food on the table and keep the lights on. Reducing greenhouse gas emissions is going to hit them in the pocketbook. One of the questions the committee wants answers to is: How hard?

While some witnesses are optimistic and feel we can meet the government's target, I think it's fair to say that many other witnesses maintain it will be nearly impossible to meet. For example, Mr. Eddy Issacs from the Council of Canadian Academies, an organization created and funded by the federal government, told our committee that we could not meet the government's 2030 greenhouse gas target without totally destroying our economy.

My colleagues on the committee may not share my view, but I also believe Canada won't meet our target. However, I do believe we should do our very best to reduce our emissions, but we need to do it in a way that doesn't break the bank, doesn't hobble the economy and doesn't put Canadians in the poorhouse.

First, I want to remind all honourable senators that we should be very proud of Canada's electricity generation. In 2014, over 80 per cent of Canada's generation was non-emitting thanks to vast hydro, nuclear power and renewables. Many countries around the world would love to have so much clean, non-emitting and reliable electricity generation. To be honest, we don't brag enough about it and, in fact, I hear too much that is negative about it.

I don't like to compare apples and oranges, but Germany pays on average 44 cents a kilowatt hour for electricity for residential use. On average, we pay 12 cents in Canada and our grid is much cleaner and almost four times cheaper. Fred and Martha probably wouldn't like it if their $100 hydro bill jumped to over $400. I can't imagine they'd be too pleased.

We should all remember, when people say we should fashion ourselves after countries in Europe like Germany and Denmark because they seem to have figured it out, let's remember that 55 per cent of Germany's electricity production in 2015 came from fossil fuels, including 44 per cent of that from coal. Denmark still produces lots of electricity from fossil fuels and their average rate is 46 cents per kilowatt hour. In fact, not many countries in Europe enjoy low rates like we do in Canada.

Despite this record, electricity is still responsible for 11 per cent of Canada's overall emissions, or 78 megatons.

One of the key government policies that will help to reduce emissions from the electricity sector is the phase-out of traditional coal-fired plants by 2030. Today, only four provinces have coal in their electricity generation mix: Alberta, Saskatchewan, New Brunswick and Nova Scotia. While I'm not convinced coal will be completely taken out of the mix, shutting down coal plants could help to eliminate some GHGs and it would likely have to be replaced with firm, reliable natural gas.

In New Brunswick, for example, experts told us that electricity prices are predicted to increase by 39 per cent if that province is required to stop burning coal before its plant reaches its life expectancy.

Jeff Erikson of the Global CCS Institute argued that carbon capture and storage was essential for meeting climate change objectives. CCS is considered the only option currently available to significantly reduce direct emissions from many industrial processes and, while expensive, is proving that it can work on a large scale at the Boundary Dam coal plant in Estevan, Saskatchewan, where it is capable of capturing 1.3 million tonnes of CO_2.

While Canada seeks to phase out coal by 2030, the committee heard that approximately 2,000 coal plants are currently under construction or planned around the world. Mr. Campbell of the Coal Association of Canada told the committee that it was impossible to shut down coal plants in Canada without increasing the price of electricity substantially.

For obvious reasons, electricity rate increases were top of mind for many witnesses. There is no need to remind you of what happened in Ontario in recent years. Many businesses, including heavy electricity users, are concerned about rising electricity rates, the implementation of carbon pricing programs and Canada's overall competitiveness. Some of these concerns will be addressed in our upcoming report on emissions-intensive, trade-exposed industries.

For example, many industries are unable to pass the full costs of higher electricity rates to their customers since they trade in a competitive or globally priced market. There's an apprehension that businesses will invest in or relocate to countries that have fewer emission requirements or use cheaper electricity derived from coal-fired plants, thereby negating efforts to reduce global emissions. In doing so, Canada bears the economic cost of lost production, lost investment and lost jobs with no change in global emissions. As I often say, we all share the same atmosphere, so if a company relocates its operations abroad, greenhouse gas emissions are still being emitted. This phenomenon, known as "carbon leakage," does nothing to fight climate change.

I believe there are many innovative technologies out there that can help us to inch closer to our target. Renewables such as solar and wind will play an increasingly more prominent role in our generation mix, but they will always have to be backed up by firm, reliable power. Don Wharton from TransAlta spoke about this need:

> . . . . if you take 100 megawatts of coal out of Alberta's system today and you wanted to replace that with wind, that would be fine; you could build 100 megawatts of wind. But in order to maintain reliability, you would also have to have another 100 megawatts of another baseload or reliable or non-intermittent supply in order to ensure you have a reliable system.

Canadian taxpayers won't accept an unreliable system, and rightfully so. When they flip the switch, they expect their lights to turn on.

In Northern Canada, many communities rely on diesel generators for electricity. It is often the only viable option for electricity for regions that are off-grid. Diesel generation has many environmental disadvantages. It emits GHGs and causes local air and noise pollution. However, it is also relatively low in cost to install and it is dispatchable, scalable, flexible and extremely reliable. While new alternatives are emerging, such as biomass and perhaps even small modular reactors, shifting to these new technologies comes with a cost, a rather steep one for communities in northern areas.

Above and beyond the North, our committee was also told that many current power stations, transmission and distribution systems need to be replaced, refurbished or modernized. The reinvestment costs were estimated by the Conference Board of Canada in 2012 to be nearly $350 billion from 2011 to 2030.

Other witnesses advanced the idea of creating shorter regional initiatives between neighbouring provinces to increase the movement of electricity within our own borders, so a province like Alberta can benefit from B.C.'s clean hydropower, for example, or Saskatchewan could benefit from Manitoba's clean electricity.

Many speculated that the electrification of the economy, including in transportation, buildings and industries, may be the most cost-effective way to achieve deep decarbonization, but it also means substituting natural gas, motor gasoline and other petroleum fuels with electricity, which would require a substantial expansion of clean generation and, obviously, new transmission and distribution projects. Otherwise, it defeats the purpose. This is beyond the $350 billion needed to fix and modernize our current stock.

Don't get me wrong. I don't want to come across as a doom-and-gloom kind of guy. I highlight some of these findings so Canadians realize the extent of the challenge. I certainly agree with and support green initiatives and renewables when they make sense. That is common, economic sense.

Before I wrap up, I want to take a moment to thank the committee members for their ongoing hard work and dedication. We have before us an important mandate, and an ambitious one for sure, but I think we all agree that our study is timely and very appropriate.

Honourable senators, it has been clear from the start that achieving the government's 2030 target will require a rapid shift in how energy is produced and consumed in Canada. Crucial to this transition is how individual Canadians will react and change their behaviours. Governments must play a role, but Canadians also have to be fully committed. This first interim report gives us a snapshot of Canada's electricity reality and possible avenues Canada may want to explore in order to make gains within this sector in meeting our GHG reduction targets.

I hope you will all continue to follow the work of the committee. Thank you.

• (1630)

Hon. Frances Lankin: Would the honourable senator accept a question?

Senator Neufeld: Sure.

Senator Lankin: Thank you very much.

First of all, thank you for the report. I agree it is very timely and very important. I think that for the most part you took great lengths to help us understand the complexity of the issues in all the various sectors that you're going to be issuing interim reports on.

I might just make a quick reference to your comment about electricity prices in Ontario and say it's been a very difficult situation, but the complexity goes back to governments of all stripes that didn't charge the full cost through and had cost overruns on nuclear and a particular government that prepared the dismantling of Ontario Hydro for taking it public.

The Hon. the Speaker *pro tempore*: Excuse me. Senator Neufeld, so you can answer Senator Lankin, do you require five more minutes?

Senator Neufeld: Yes.

Senator Lankin: On that point, part of the issue was also the stranded debt and how that got treated. These things are complex, not just in climate change but also in a range of political decision making over decades, not within the framework of any particular government.

Today I met with a group called Citizens' Climate Lobby, which was on the Hill as part of a lobby day. I think it is the second year they have come. Citizens' Climate Lobby raised an issue with respect to carbon pricing about revenue neutrality. I had not heard this particular position put forward before, and I don't know a lot about it. I don't know if you heard from this particular group, but they look at a variation of what's going on in B.C. in which they think we need to price all of the subsidies that are going on now to carbon producers and take that and the amount of that, end it and rebate it to citizens. So not to provinces but to citizens.

The Hon. the Speaker *pro tempore*: Senator Lankin, is there a question, or are you going to debate?

Senator Lankin: Yes, there is. It is a question.

So Fred and Martha would be in a position of being helped by that rebate, probably to a greater degree than what they're paying. Have you looked at that? Is that something you might consider as one of the proposals around revenue neutrality as it comes forward? As I said, I don't know much about it yet. I'm just beginning to learn.

Senator Neufeld: Thank you for the question. I certainly didn't mean to imply that only one government was responsible for the price increases in Ontario. There were a number of governments. Some of the things that took place that I know about were amazing. As for looking at the carbon neutral, I'm familiar with what we did in British Columbia because I was part of that, and it worked. That was actually charging a carbon tax but giving it back in tax breaks. Many people have recommended that to us.

We're going to get another briefing on carbon tax and cap and trade in the next little while, so we're all a bit more familiar with the things that will take place. We will look at some of those things. Our drive is to try to figure out what it will cost Fred and Martha, because at the end of the day they're the ones that pay the bill. It will get down to them, as we see what took place in Germany. When I say it's 44 cents a kilowatt hour, it wasn't always that way. But with the advent of a lot of renewables in Germany, their price went way up.

So those are all the things we're trying to compare ourselves to. I don't like being told that we should be like Europe. We are different than Europe. You can take Germany and set it in Canada and you might have a hard time driving to it. It's small, with 50-some-million people, and we have, of course, 36 million. Those are all things that we will look at.

I hope you read the following reports that will come because I think they're quite interesting. It gets a little drawn out, obviously, as you can tell by the time frame, but we're trying to do our best to make sure we don't hobble our industries that trade around the world that don't have a choice, and that we don't overcharge Fred and Martha for their energy needs, not just electricity. There are two types of energy.

The Hon. the Speaker *pro tempore*: If no other senator wishes to speak, the order is considered debated.

Hon. Yonah Martin (Deputy Leader of the Opposition): Your Honour, do we not need to adopt the motion?

The Hon. the Speaker *pro tempore*: Senator, do you move it for adoption?

Senator Neufeld: Yes.

The Hon. the Speaker *pro tempore*: Senator, would you like it to be moved for adoption?

Senator Martin: I correct myself. It has been debated, so I'm satisfied.

(Debate concluded.)

PRINCE EDWARD ISLAND LITERACY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Hubley, calling the attention of the Senate to the current state of literacy and literacy programs on Prince Edward Island, including the need for federal support of the PEI Literacy Alliance.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): I note that this is on day 15, and I know that my colleague Senator Cordy did want to speak to it, so I would adjourn it in her name.

(On motion of Senator Mercer, for Senator Cordy, debate adjourned.)

THE SENATE

POLICIES AND MECHANISMS FOR RESPONDING TO HARASSMENT COMPLAINTS AGAINST SENATORS—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator McPhedran, calling the attention of the Senate to the important opportunity we have to review our principles and procedures with a view to ensuring that the Senate has the strongest most effective policies and mechanisms possible to respond to complaints against senators of sexual or other kinds of harassment.

Hon. Kim Pate: I rise today to speak to the inquiry launched by our colleague Senator McPhedran calling attention to our shared responsibility to review our practices and procedures and to ensure that the Senate has the strongest, most effective policies and mechanisms possible to respond to complaints against senators of sexual and/or other forms of harassment.

Senator McPhedran reminded us, when she launched this inquiry, that those who hold positions of public power and privilege must be held to the highest possible standard of trust, including zero tolerance for sexual exploitation.

There have been many discussions and debates this past year, in public, in the media — especially in social media — and in private about how we can best work together to uphold the integrity of the Senate and the public trust that has been placed in this institution. The public outrage that certain cases have rightly generated requires us to learn from these abuses of power and privilege and to ensure that the Senate responds with support to those who have witnessed or experienced harassment and other forms of abuse.

However, gearing our responses to a few highly publicized cases is not sufficient. Not when we know how easy it is for abuses of power and privilege to be denied and perpetrators to act with impunity. There are too many cases of #MeToo — harassment that is never reported and therefore never dealt with, as it never comes to light.

As Senator Bernard reminded us in her speech on this inquiry, Senate employees too often do not report harassment because they do not feel safe in their positions. Indeed, women who spoke to *The Hill Times* about harassment on Parliament Hill this past spring:

> . . . agreed that sexual harassment was something parliamentary staff, particularly young women or members of the LGBTQ [2S] community, simply had to accept as part of the job, or they could risk losing theirs.

• (1640)

[*Translation*]

This reality is quite simply unacceptable.

[*English*]

As the Internal Economy Committee's Advisory Working Group on Human Resources begins its work reviewing the Senate's Workplace Harassment Policy, it is clear that an effective response to sexual and other forms of harassment cannot begin only when a complainant comes forward. We must work to create mechanisms so that those who have experienced harassment are protected from any chance of revictimization and to protect them from the power dynamics that can too easily allow harassment, exploitation and abuse of power and privilege to go unchecked.

[*Translation*]

We must develop fair complaint mechanisms that also respect the privacy of the complainants.

[*English*]

It is clear that we must, more fundamentally, work to create a culture of support in which new employees, particularly young women, are made aware of their rights, as well as the nature of appropriate and professional relationships between employees and employers. A key part of this cultural shift requires us to confront misogynist stereotypes, which operate on a systemic level and which are part of our Parliament's historic legacy. Nancy Peckford, Executive Director of Equal Voice, recently reminded us that the other place and this chamber remain:

> . . . "male-dominated" institutions where, historically, inappropriate behaviour was not only not addressed but was tacitly accepted or seemingly condoned.

The systemic nature of misogyny in our institutions is being acknowledged more fully and frankly than it once was. As the Prime Minister recently recognized:

> Violence against women and girls is prevalent in all facets of life, from the studios of Hollywood to the digital public squares, to our own halls of Parliament.

It should now be clear that harassment is not the work of "a few bad apples" and that the legitimacy of institutions will be enhanced, not weakened, by an approach of accountability and transparency, one that acknowledges systemic biases, misogynist stereotypes and power imbalances, as well as the harm that they may cause, while also encouraging diligent and strenuous work to fight against them.

A key part of this response must be increasing awareness and understanding of the dynamics surrounding harassment. There is much we can learn in this respect from the experiences of Canada's courts. Bill C-337 was drafted in response to a legacy of shameful treatment and failure to do justice for those who had experienced sexual assault and abuse. The principle at the heart of both this bill and the need for a culture shift in the Senate in response to sexual harassment is that those occupying positions of power and privilege in our society must not lose sight of the realities lived by those contending with a history of misogynist behaviour and stereotypes in circumstances where biased and unbalanced environments have been normalized.

The gaps in understanding concerning the gendered nature of sexual and other forms of harassment have been made clear by social justice advocate Julie Lalonde, who has assessed the harassment training offered here at Parliament, particularly in the other place, as failing on many fronts. Although Canada is outperforming most other countries simply by having codes of conduct and training programs regarding harassment in place for legislators, more must be done to address this problem effectively. We must move beyond optional, video-based training and away from messages in the training that emphasize the need for individuals to resolve problems of harassment themselves or set appropriate boundaries in a way that unrealistically and completely ignores the power dynamics. We must acknowledge the dynamics of young women staff dealing with older men, some of whom are their bosses, all of whom start with much more privilege.

Our experience with Bill C-337 has also shown that, when setting ourselves against systemic power imbalances and misogyny, we must be aware of intersectionality, the way in which, for example, the colonial legacy of the justice and political systems compound inequalities to further fail racialized women, particularly indigenous women and women of colour. In the context of the court system, Bill C-337 arose in response to horrific treatment of indigenous women who had experienced sexual assault. Deputy Minister for Status of Women, Gina Wilson, and others, have worked to raise awareness that indigenous peoples and indigenous women are significantly under-represented in upper management positions in the civil service while overrepresented in the lowest salary ranges.

We must keep these realities in mind and pay particular attention to the barriers encountered by indigenous women and all racialized women on Parliament Hill as we review the Senate's Workplace Harassment Policy.

I will close by mentioning that, earlier this month, I had the pleasure, along with other leaders, including Senator McPhedran and the Honourable Landon Pearson, a former senator here, of hosting young women from local high schools at the Senate, at a Women Political Leaders Global Forum Girl2Leader event. The event celebrated girls and was intended to encourage women's involvement in public life. It was inspiring to witness the young women sitting here in these desks, discussing with conviction and confidence the political changes important to them and necessary to make our society more just and fair for women and for all.

I was saddened, however, by how much of our discussion was devoted to the barriers that the young women — leaders all of them — face when fighting to be heard.

The focus of their concerns was on school dress codes that apply to young women and girls alone. Young women are sexualized and tasked to dress in certain ways so as not to distract or make uncomfortable male teachers or students. They rightly express frustration and outrage that they are blamed for the lecherous leering and sometimes far worse behaviour of their peers and persons in positions of authority over them. I was appalled to hear that these young women were even advised how to wear their hair. It is outrageous, and we should all be horrified, that girls and young women are being advised that their ponytails make them targets for attackers.

Worst of all, young women are exposed to the stereotypes and the power dynamics that make harassment possible. They are essentially told that they are responsible for controlling the behaviour that others, usually men, and often men in positions of power, choose to inflict on them. They hear they are at fault when men do not control themselves.

This message has real consequences for women's decisions to report harassment, for women's involvement in politics and for women's safety and well-being.

The young women who met here in the chamber have the courage, the intelligence and the commitment to call out the injustices and inequalities that they are witnessing. But we, honourable senators, have an urgent responsibility to ensure that this is not a burden that young women leaders or our staff, public servants, members of Parliament or senators ever have to shoulder on their own.

Honourable colleagues, I'm sure I'm not alone when I say I do not wish to debate, nor should we still have to debate, these myths and stereotypes. I wish for no more #MeToo for further generations.

As senators, we have a responsibility to carry out our legislative duties to uphold the Charter and guard against inequalities in Canada's laws. We must lead by example. We must review our Workplace Harassment Policy. We must stand together for a culture change and against misogynist, colonial legacies that expose colleagues, employees, volunteers and visitors to the risk of re-victimization and victimization. We must reaffirm our commitment that, for women looking to use their talents, skills and voices to make Canada a better place, the Senate is somewhere to go, not to experience injustice but to prevent it, and that, when we fail, because sometimes we do, that we do everything possible to remedy it.

The Hon. the Speaker: Senator Pate, would you take a question?

Senator Pate: Yes.

Hon. Serge Joyal: Thank you, Senator Pate, for your intervention on this issue. I read the motion, and I find it, unfortunately, too broad and not specific enough, if I can use the same idea and express it in two different ways. There is a policy, as you know, that is the responsibility of Internal Economy to administer, and that policy might be in need of review.

It is the purview of the Internal Economy Committee to monitor or to manage the harassment policy. We at the Conflict of Interest Committee — and I'm looking at the chair across the floor — have been asked to look into a specific case, but, originally, it was not our responsibility.

• (1650)

I wonder if you or the sponsor of the motion would consider an amendment to it to specifically refer the issue to the Internal Economy Committee for review and report. As I say, the motion is of such a general nature that it doesn't carry a specific mandate to a specific authority of the Senate that has the responsibility to mention that.

The Hon. the Speaker: Just to clarify: This is not a motion. There will be no decision on this. This is an inquiry. We can debate the inquiry. If you wish, Senator Joyal, to join the debate at a future time, you may, and express your views on it, but it's not a motion that requires a decision of the Senate.

Hon. Michael Duffy: Would Senator Pate take a question?

Senator Pate: Yes.

Senator Duffy: Senator, thank you for your wide-ranging speech. It's particularly opportune at this time in Canadian and world history that you bring the focus of this lens to this very important issue.

What are your thoughts on the Charter of Rights and Freedoms? Is it possible in this place to have equality and the kind of treatment of staff if the Charter doesn't apply on Parliament Hill?

Senator Pate: I believe the Charter does. There are certainly some issues about human rights codes, but part of our obligation is to uphold the Charter.

(On motion of Senator Hartling, debate adjourned.)

AUTISM FAMILIES IN CRISIS

TENTH ANNIVERSARY OF SENATE REPORT—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Munson, calling the attention of the Senate to the 10th anniversary of its groundbreaking report *Pay Now or Pay Later: Autism Families in Crisis*.

Hon. Nancy Greene Raine: Honourable senators, I'm pleased to rise today and speak on the subject of autism, and to recognize the work that Senator Munson and his colleagues did on the groundbreaking Senate report *Pay Now or Pay Later: Autism Families in Crisis*.

In the 10 years since this report was tabled, there is no doubt that the awareness of autism among many Canadians has improved. However, there is still much to be done to ensure that families have the best options to choose from and that our society continues to lessen the impact on families caring for autistic children and adults.

My first personal encounter with autism was about 20 years ago, when a family from the Vancouver area checked into our condominium hotel at Sun Peaks to take advantage of low off-season rates for an extended stay. They had come to the Kamloops area to find out about the Giant Steps West program that had been established some years earlier. It was one of British Columbia's first programs for autistic children and followed a program that had been developed in Montreal.

Two of the family's children suffered from autism, and my first impression was that they were out of control and that the parents were not properly dealing with their behaviour. I'm pretty sure this is many people's first impression when encountering autistic children. Since then I've learned that autism is very complex, and also unfortunately that programs to assist families are still few and far between. I salute all the people working with the various organizations that make up the Canadian Autism Spectrum Disorder Alliance as they work together not only to increase public awareness of autism but also to build a strategy and road map to a better future.

Honourable senators, following my introduction to autism and with my "antennas up," some years later I read a very interesting book on the latest brain research, including a very interesting chapter on Dr. Michael Merzenich, one of the foremost researchers on brain plasticity. His research led to the development of a series of brain plasticity-based computer programs disguised as children's games. The Fast ForWord program allows therapists to work with children to make lasting changes in cognition and perception. In some cases, people who have had a lifetime of cognitive difficulty have gotten results after only 30 to 60 hours of training. But what caught my eye was to read that the program had also helped a number of autistic children.

That was some years ago. Today, I have learned that the Fast ForWord program is recognized as one of the best tools for cognitive learning. The beautiful thing about the program is that it not only helps people with reading comprehension and other typical "school" skills, but it can also change the way in which autistic children deal with the world around them — in other words, in their day-to-day social interactions.

I contacted the Scientific Learning company in Oakland, California, to find out how the program is delivered and, through them, was given contacts of several certified providers in British Columbia. All three people I spoke to were very supportive of the Fast ForWord program and its helpfulness when working with autistic children. There is a lot of information available online and many testimonials to support the use of the program. I must clarify, however, that this is not a computer program that you can just purchase; it's a tool that needs to be used in conjunction with professional speech and language therapists to achieve its full potential.

Having learned more about Fast ForWord, I then visited the Chris Rose Therapy Centre for Autism in Kamloops, a wonderful facility that grew out of the early Giant Steps West program that I'd first heard about 20 years ago. I was surprised to learn that they didn't know about Fast ForWord, but they were very interested in finding out about it.

Next I called some folks I know who have worked for years planning and fundraising for the Pacific Autism Family Network and who have long recognized the need for a better approach to assisting families dealing with autism. Their work came to fruition last November when the new $28 million GoodLife Fitness Autism Family Hub in Richmond, British Columbia, was opened, the first facility of its kind in North America. It is a state-of-the-art building that is slated to become a one-stop shop for families looking for support with autism and related disorders. It will include clinics, labs, classrooms, observation rooms and research spaces.

The Pacific Autism Family Network recognizes that one of the greatest issues for families dealing with individuals on the autism spectrum in British Columbia and in many parts of Canada is the lack of reliable information, leading to inconsistent and often inappropriate service delivery, therapies and inadequate resources. Currently in British Columbia, the wait time for a diagnosis can be years, with the average age of a confirmed diagnosis being 6 years old. By then, the most valuable years for therapy, from age 2 to 6, have already been lost.

With long wait times for diagnosis and then navigating the often inadequately responsive silos of medicine, education, research, psychological and social work, it is no doubt that it's very stressful for all concerned.

In addition, honourable senators, few teachers, social workers or medical practitioners have any specialized training in autism, and the wait to see the specialists we have can be years long.

If parents don't know exactly what their child needs or if it's not available, they are extremely vulnerable to misinformation and to those trying to sell them a "quick fix." Desperate, they may spend tens of thousands of dollars of their own money on what seems a promising program only to find out later that the person who sold it to them has no recognized credentials and that the program has no reliable evidence base whatsoever.

A visionary part of the Pacific Family Autism Centre is a research wing called Inform-Every Autism. The intent is to reach out to stakeholders all across Canada to collect and share information that can then be readily available to Canadians, no matter where they live.

It was most gratifying to see that last week the new health minister of British Columbia tour the Pacific Autism Family Centre, and it is hoped that the B.C. government will commit to ongoing financial support for the Inform-Every Autism research hub.

Honourable senators, I am an optimist by nature and would be quick to jump at what may be a valid quick fix, so I'm really pleased to see the establishment of a new research hub that will break down the silos and be open to evaluating new therapy programs. I'm pretty sure that even a private-sector product such as Fast ForWord will, if it proves useful, be able to be quickly adapted as a tool for therapists in the autism field.

Thank you very much, and thank you to Senator Munson for this really important inquiry.

(On motion of Senator Christmas, debate adjourned.)

• (1700)

QUESTION OF PRIVILEGE

SPEAKER'S RULING RESERVED

The Hon. the Speaker: Honourable senators, earlier this day Senator Plett gave written and oral notice of a question of privilege pursuant to rule 13-3. In accordance with rule 13-5(1), I now recognize the Honourable Senator Plett.

Hon. Donald Neil Plett: Your Honour and honourable colleagues, as was said earlier today, I gave notice that I would be raising a question of privilege with respect to a letter that we all received which publicly calls for House of Commons interference with the Senate as an independent chamber.

As I stated in my oral notice, among the parliamentary privileges guaranteed to all parliamentarians is freedom from obstruction and interference in the performance of their parliamentary functions.

Last week, Senator Lankin wrote a public letter to the Leader of the Opposition in the House of Commons, which I attached to my written notice that I filed with the Clerk and of which you should all have received a copy.

This letter encouraged the Leader of the Opposition, Andrew Scheer, to interfere in the proceedings of the Senate, specifically to instruct our caucus to move forward on a vote that our caucus is not prepared to do at this time. This invitation undermines the independence of this chamber and impedes the ability of senators to carry out their functions independently.

While this may be news to some of the senators in this chamber, the Senate of Canada was independent long before October 19, 2015. In fact, it has been independent since its inception. Inciting a member of the House of Commons to whip members of this independent chamber represents a profound misunderstanding of the role and function of our upper chamber and, more pertinently, a grave and serious breach of privilege.

The irony, of course, is that Senator Lankin has repeatedly praised the idea of an independent Senate. This letter, however, has made it quite clear that she believes in and is happy to promote the independence of some senators but not for others. Of course, some of the independents will try to argue that the difference lies in the fact that we belong to a national political caucus, or as Senator Harder as inaccurately called it, a party-controlled caucus.

To quote our former and well-respected colleague, the Honourable James Cowan, "Independence does not depend on where you sit but on how you act."

Despite what preconceived notions Senator Lankin may have about those who sit in political caucuses, she should understand that we are not whipped by the Leader of the Opposition in the House of Commons. Our leader does not control how we act, what we think, what we say, how we vote and certainly not when our caucus is ready for a question to be called.

Colleagues, being political or tied to a national party caucus does not diminish a senator's ability to think and act independently, and it most certainly does not rid a senator of the guaranteed privilege of freedom from obstruction and interference.

Our friend Senator Cowan also stated this with respect to the function of the Senate as a political chamber:

> We are not a new layer of the civil service with Senator Harder at our head. We are not a $90-million debating club. We are not a council of elders. We are not some sort of advisory panel . . . .
>
> We are one of the two chambers of Canada's Parliament, a foundational political institution that is independent of the elected House of Commons and independent of the government.

Colleagues, those who want to do away with the Westminster system are not the only senators who enjoy the freedoms and privileges in this chamber. Senators involved in political caucuses have never suggested that Prime Minister Justin Trudeau should instruct his appointees on how to act or how to vote, although some occasionally think that he might have. This is because we have long understood the importance of the independence of the two chambers in our bicameral system.

With respect to the content of the letter, Senator Lankin has deliberately misrepresented the facts, which is unfortunate, as it misleads the Leader of the Opposition in the other place, but more importantly, colleagues, as it is an open and public letter, it deliberately misleads Canadians.

And while I'm on the topic, I would like to note that I read every single comment on the *National Post*'s coverage of the letter that evening, and out of 100 comments that had been submitted, 74 per cent of the comments disagreed with changing the national anthem, 10 per cent had no opinion and only 16 per cent wanted the national anthem changed. But I digress.

Let's take a look at the facts. In May of this year, Senator Lankin had the opportunity to vote for an amendment to this bill, which she said she supported, which would have brought in gender-neutral wording yet also preserved historical, relevant lyrics. With reference to the said amendment, Senator Lankin stated in the Senate Chamber on May 30:

> I appreciate the attempt at creating gender-neutral language, which is the intent of the original bill. I also appreciate, personally, the respect for heritage language. It's a proposition I personally could support.

She then later stated:

> I will not be able to support this amendment, even though the language doesn't offend me and is gender-neutral, which is what we are attempting to achieve.

Her reason, ostensibly, was that she did not wish to see the bill returned to the house. However, had the bill been returned with this amendment at the time, there is every reason to believe that the amendment could have been accepted as a non-partisan solution to the issue.

That, colleagues, was five months ago, and because she and her colleagues refused to accept that compromise, the bill remains stalled.

The senator, in her plea to Andrew Scheer, talks about "the small group of . . . Senators obstructing the vote."

We have been working with Senator Lankin on reaching an appropriate solution in the spirit of compromise, over and above the aforementioned amendment, and in so doing, we have offered a number of solutions in which Canadians would have a better and more meaningful opportunity to weigh in on the anthem they hold so dear. These ideas were all rejected.

Ultimately, in good faith, we promised Senator Lankin that we would leave the issue of whether we are in fact ready to proceed with the question to our caucus. Our caucus discussed the issue and reached a decision that we are not ready to proceed with the question. Senator Lankin is well aware that this was a caucus decision and not the result of a few unruly senators.

This question of privilege meets the four criteria set out in rule 13-2(1). Rule 13-2(1)(a) states that the question must "be raised at the earliest opportunity." Clearly, as this letter was sent and made public during the chamber sitting on the last sitting day of the Senate, on Thursday, October 19, 2017, today marks the first opportunity to provide notice to the Clerk and thereby raise the matter.

Rule 13-2(1)(b) states that the question "be a matter that directly concerns the privileges of the Senate, any of its committees or any Senator." As clearly demonstrated above, the privilege that was violated is freedom from obstruction and interference in the performance of our parliamentary functions.

Rule 13-2(1)(c) states that this "be raised to correct a grave and serious breach." Clearly, inviting a member of the other place to interfere with the proceedings in this independent chamber constitutes a grave and serious breach of privilege, and I look forward to an appropriate correction to these actions, if ordered, to attain some level of assurance that this will not occur again.

• (1710)

On this note, colleagues will remember that on a budget vote recently, Liberal MPs, including members of cabinet, stood at the bar of the Senate Chamber, intimidating and putting pressure on senators as they were voting. This incident, colleagues, goes beyond that as the intervention into our affairs was only implicit in the case of the budget vote. In this case, a senator has explicitly called for interference into the proceedings of this chamber.

Rule 13-2(1)(d) states that the question be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available. As stated in both my written and oral notice, should there be a ruling that the actions of the senator constitute a prima facie breach of privilege, I am prepared to move the appropriate motion in order to seek such a remedy.

Colleagues, I will close with this: Parliamentary privilege enables parliamentarians to carry out our constitutional functions free from external interference and most certainly free from intimidation. Parliamentary privilege is one of the most sacred safeguards of the constitutional separation of powers. For Senator Lankin to invite the Leader of the Opposition in the House of Commons into the Senate is obviously inappropriate and insulting, but more than that, I maintain that it is a grave and serious breach of our parliamentary privilege to be free from obstruction and intimidation. Thank you.

Some Hon. Senators: Hear, hear!

Hon. Frances Lankin: Thank you very much. May I thank Senator Plett for his ongoing education of Frances Lankin in the *Rules of the Senate*, particularly as we have gone through Bill C-210. And I am learning quickly and I am learning on the job, so I don't have a prepared script. I will say that I have not participated in a point of privilege and discussion of this nature before. I will do my best and I will ask you to bear with me, Your Honour.

Let me begin, first of all, with the conditions that are set out in our rules for meeting the test of a prima facie case of breach of privilege. In fact, Senator Plett just ended on that point. I would agree with him that 13-2(1)(a) — to be raised at the earliest opportunity — has been met. On 13.2(1)(b) — that directly concerns privileges of a senator or any individual senator — I would also agree.

I take issue with 13-2(1)(c), that the test has to be met that it "be raised to correct a grave and serious breach." I will bring forward a number of discussions, both in *Senate Procedure in Practice*, in the Rules and in former Speakers' rulings that I think will demonstrate that, even if this were to be considered in the way that Senator Plett asks you to consider it, this would not meet the test of correcting a grave and serious breach.

In many of the treatments of this section, point (c) is tied to point (d) about seeking "a genuine remedy that the Senate has the power to provide." We don't know what that is at this point in time but those two things are often kept together.

If I may, I'd like to refer to the senator's letter raising his concern about a breach, in which he says, in the second paragraph:

> Among the parliamentary privilege guaranteed to all parliamentarians is freedom from obstruction and interference in the performance of their parliamentary functions.

I found that interesting because one of the first places I looked was to the Rules themselves. Under privilege, on page 130, it gives a definition of privilege and it talks about privileges including — so it's not an exclusive list. It includes, so other things can be added. But it includes freedom of speech in the Senate and its committees, exemptions from jury duty and appearance as witness in some cases and, in general, freedom from obstruction and intimidation.

I would put my first point to you, Your Honour, that intimidation is a word stronger than interference, but you do find interference as a word that is used in places in description of the procedure and practice in the Senate. I'll turn to that in just a moment, but in the definition of the Rules themselves, obstruction and intimidation.

The next place I will go in trying to understand whether anything that happened in fact meets a test of being a grave obstruction is to look at statements about the Rules in parliamentary privilege.

Parliamentary Senate procedural notes of August 2016 give a definition and purpose again — and I just said that in the Rules — but the last point is, "in general, freedom from obstruction and intimidation." That's repeated throughout a number of historical documents and references as well. If you look to the section within our *Senate Procedure in Practice*, on page 225, section 2, Collective and Individual Privileges and Contempts, you'll see it set out at the first paragraph.

> As explained earlier, the essential purpose of parliamentary privilege is to allow Parliament to control its proceedings without undue interference . . . .

I want to stress the word "undue," and I will go through a couple of them, because there are extensive notes on this matter, and the words "undue interference" are used in many cases. When the word "interference" is used, undue is the qualifier. It goes on to say "undue interference and," not or, "and fear of reprisal, as well as to allow members to carry out their parliamentary duties."

I would also look at some of the particular references further on in our practices and procedures. The writing gets smaller so, again, bear with me. On page 224:

> The purpose of privilege is to enable Parliament and, by extension, its members to fulfill their functions without undue interference or obstruction. Privilege belongs properly to the assembly or house as a collective. Individual members can only claim privilege if "any denial of their rights, or threat made to them, would impede the functioning of the House." In addition, members cannot claim any privileges, rights or immunities that are unrelated to their functions in the house.

On page 225:

> . . . . the essential purpose of parliamentary privilege is to allow Parliament to control its proceedings without undue interference and fear of reprisal, as well as to allow members to carry out their parliamentary duties.

In the parliamentary duties, as you go on and take a look at some of the Speakers' rulings over time, they make reference to the duty, opportunity and right to vote and not to be influenced or intimidated about how they will vote. I want to say that I think that's very different than the fact case before us.

Let me refer to a couple of those rulings. Again, I'm sure that there are many more that the Clerk's office will provide to you, Your Honour. I'm looking at a question of privilege about statements about Senate work from October 28, 2009. It is referencing a complaint by Senator Comeau respecting a press release and his concern was any form of public news media could be a breach of privilege and the matter complained of, he suggests, was comments about Bill C-25 that were made. It refers to a difference of opinion about how a bill was being treated and whether it was being brought forward to a vote or being held up.

In the Speaker's ruling, the Speaker asked the question:

> Do differences in how events are interpreted in the present case actually constitute a "grave and serious breach" of privilege? Was the Senate prevented from dealing with Bill C-25 as it wished? Do senators still exercise their rights and responsibilities unimpeded?

I would argue that, in the current case, that's certainly the situation, that people can deal with the bill as they wish and that they are unimpeded.

I bring that to your attention because it's not directly at one point, although it's privilege, but it is about a news release, but because the Speaker took time to understand what a grave violation would mean. I would think that that helps us in understanding that what Senator Plett is talking about doesn't meet the test of conditions set out in our rules to make a prima facie case.

A second question of privilege was a news release sent out by a member of the House of Commons. I believe it was Speaker Daniel Hays who was dealing with this complaint from Senator St. Germain. Not the current Senator Saint-Germain, the past Senator St. Germain who sat in this place.

Senator Mercer: Senator St. Germain the first.

• (1720)

Senator Lankin: Okay, that will work for me too.

In this case it's interesting because there was a minister of the Crown who wanted a bill to pass and there was a rural caucus of that minister's party who had concerns and wanted to see some amendments and were going to vote against the bill. And the minister said, "Look, this bill can be amended in the Senate, and I will be open to such an amendment being considered by the Senate and being sent back to us."

He did that in an open press release. Members here at the time were very incensed about what had happened, and Senator St. Germain said that this is a political strategy, it's manipulation, it diminishes the role and the independence of the Senate. Senator Kinsella raised concerns as well, in which he said it's generally accepted that any threat or attempt to influence the vote of or actions of a member is a breach of privilege. "Threat" again is used. I don't know what threat there was in that circumstance. I don't know other than the kind of exchange we often have in asking each other to vote for a position that we put forward, we hope with evidence and with rational argument. It's something that happens in this chamber and between chambers all the time. But this was something that upset the opposition of the day — Senators St. Germain and Kinsella and others who spoke to it — and, in fact, it would be interesting to look at how the Speaker ruled on this.

The key argument, I would say, is that the Speaker responded to one argument that was made by Senator Kinsella in support of the breach of privilege and suggested that the content of the press release somehow involved a threat or an attempt to influence the vote of a member. Now, it's a very serious charge, the Speaker says. Any clear threat would obviously constitute a breach of privilege; so too would any attempt to influence the vote of a member, either through a bribe or some other means. No evidence was presented in the exchanges heard Wednesday that this in fact is the case. No senator alleged that the content of the press release implied directly or indirectly any improper action on the part of the minister or anyone else that would constitute a threat against any senator or an attempt to influence the vote of any senator through a bribe or other illegitimate means.

I again point this out to you because of the threshold that has been established through various rulings about what a grave obstruction or grave interference or any such wording actually has meant in the past in this place, and the fact that it has been, I think, made clear in rulings that if there was an influence about how someone would vote, that would be a very serious situation.

Again, in a moment I will go into the facts of the issue before us, but I think it would be clear that there has been no intimidation, there has been no threat, there has been no bribe and there has been no attempt to change anyone's vote. Quite to the contrary, I have said publicly, in this place, on the record and in news media reports that I respect the open debate. I respect the positions taken by senators who are opposed to the position that I hold. I think it's an important part of a vibrant democracy to have an exchange of ideas; so too do I think having a vote is an important part of that. And an issue to ask for a vote is quite different than instructing, intimidating anyone or threatening anyone about how they vote. I think that there are others, and I don't think I will take the time to go through those.

Let me now say that it may be on my part a misunderstanding, as I think Senator Plett used much stronger words in terms of what I may be thinking is the role currently played by the Leader of the Official Opposition in the House of Commons. I took a look at a couple of things that the leader and the previous leader have said over there. Again, I will give you just three comments.

On June 28, 2017, in an online report on CBC with Rosemary Barton, I believe, it was reported that the newly minted Conservative leader Andrew Scheer said that if he is elected Prime Minister he will abandon the notion of an independent Senate as pursued by Prime Minister Justin Trudeau. Mr. Scheer goes on to say "his Senate appointees would be Conservative senators who would help implement a Conservative vision for Canada."

I think that's fair enough. That's his opinion and his approach, but it is clearly an opinion about independence in the Senate and his view that he will move away from the independence that many of us are trying to achieve in how this place operates.

I'll go to September 18, and this is posted in CBC News as well, an interview by John Paul Tasker. This is in respect to some actions the leader has actually taken. One will remember that recently Senator Beyak was removed from all of the committees she served on in this house by the Senate Conservative leader. But prior to that, when there were people from all across Canada asking for her to be expelled from the Senate and calling on MP Andrew Scheer to "do the right thing" as many of the letters I read suggested, he said that his view is Senator Beyak's recent remarks about First Nations people went a step too far but he won't remove her from the Tory fold just yet, implying he has the right and the ability —

Hon. Yonah Martin (Deputy Leader of the Opposition): On a point of order, Your Honour. I just want to say that the senator that is being discussed at the moment is not here to potentially defend such words that are accusatory. So if we could go back to the question of privilege. I'm just rising in defence of the senator who is being discussed at this time.

The Hon. the Speaker: Senator Martin, I don't take that as a point of order, quite frankly. Senator Lankin is quoting from news reports, and any senator on either side of the chamber is obviously entitled to enter the debate and to either refute or agree with what Senator Lankin is saying. Senator Lankin.

Senator Lankin: Thank you very much. And I would point out that I have heard a number of senators raise the point that a senator wasn't present, as you just did, which I think is very much against the *Rules of the Senate*, at least as I learned them in another chamber at another order of government, and you will note that I made no such reference to that.

He's not going to remove her from the Tory fold just yet, suggesting that he could.

More recently, from September 21, I believe it was a Global report that was posted online as well. In this case it makes reference back to previous remarks that had been made by Senator Beyak that referred to the experience of indigenous peoples in residential schools. There are some quotes from back then that I haven't got in front of me right now, but the report here indicates that she was removed from the Senate Aboriginal Affairs Committee by former party leader Rona Ambrose.

Forgive me if I'm confused about what the relationship is, or if that is in fact an incorrect statement of how it happened, then that could be put on the record and I would appreciate that as well, just going back, the reports that are currently there in the news.

Honourable senators, I wish to add a couple of things in terms of the facts of this case here and in a sense it leads to my opinion about the gravity or lack thereof and the allegation that's being made by Senator Plett. If I may, Your Honour, I know you will have received a copy of my letter to MP Scheer, and, as I go through it, there is nothing that aligns with what Senator Plett has said until you get to the second-last and last sentence of my letter.

In the second-last sentence, after having set out my remarks and opinions about MP Scheer, who quoted himself to be a feminist in *Chatelaine* magazine and went on in other interviews to talk about democracy and support, I said to him that I assume he is an ally, then, in these issues of democracy, these issues of women's rights. I don't know for what reason he voted against "O Canada" being made gender neutral. He did. I don't know the reason why, but I asked him to align with me and others who think that this issue is an important issue to be dealt with.

The actual two lines that I think are in dispute from my letter read:

> This is why I urge you to speak with the small group of Conservative Senators obstructing the vote and ask them to end the games.

The next line is:

> Tell them you believe it is time for a free vote on O Canada.

Let me deal with that last sentence. "Tell them you believe it is time for a free vote on O Canada," I think has no influence and intimidation. None of that is suggested.

• (1730)

Unlike what Senator Plett said in his presentation that I asked MP Scheer to interfere with their caucus, to instruct them, that I was inciting them, that I was asking him to whip them — none of these things can be actually taken from the letter and from what I think is quite an innocuous request that he ask them to end their games and that he support a democratic process that allows for a free vote.

I think the free vote is the question. I didn't ask that he tell any of you how to vote or intimidate any of you how to vote. I didn't ask that he withhold any privileges from you, if you didn't vote the way — he could tell you to vote against it, given he voted against it in the House of Commons. I didn't ask any of that. I said it's time for a free vote. If you're opposed to a free vote, I think you would find it offensive.

Other than that, it is an interesting way to raise the issue and to get on the record some of the things that have happened in discussion about how we might move forward, as I've continued to try to find a way to work with Senator Plett to find a way to work forward. I won't go down the road of responding to things you have said, because I'm sure there are things I've heard in those meetings that you wouldn't want me to go down the road to say, and I'm not going to do that in this place.

Let me also say that I think the primary issue is that the case has not been made to make the conditions. A secondary issue to be considered is that there has been no interference, intimidation, threats or direction on how to vote by MP Scheer. I would think if he did any of those things, you might want to figure out how to take a case against him, but not my letter that asks him to support a free vote.

I considered very carefully before I sent this letter because, as Senator Plett said, I have been outspoken about the fact that I think there should be a complete division between partisan caucuses from the House of Commons and this chamber. He's right that I walked a fine line there — I tried to walk a fine line — because, quite frankly, I find myself frustrated with what we are dealing with and how many times it appears there is a line of communication that influences what goes on here.

I will give him due fact that I am saying that if those are the rules you're going to play by, help me with those rules. But if we're looking changing those rules, perhaps I shouldn't have gone down that road.

I'm prepared to reissue this letter and to take out the second-to-last line that asks him to speak with, not to, the small group of senators. I will continue to ask him to express his support for a free vote in the Senate. I'm prepared to reissue it, and in that I might make other comments about what I think about the state of independence in the Senate and the role of the connection between the national caucus and Senate caucus. But I will perhaps remove the words that Senator Plett found the most objectionable.

Thank you very much.

Hon. Leo Housakos: Thank you, honourable colleagues. I heard with great interest the point of privilege put forward by my colleague Senator Plett and listened to the rebuttal by Senator Lankin.

Honourable colleagues, this is not just a simple point of privilege. This goes deeper even than points of privilege we've heard through the years. This goes to the core of our parliamentary system here and how the forefathers of this Confederation put together our system of democratic parliamentary government.

There's a reason why they embraced the Westminster parliamentary system, there's a reason why they created the hybrid of a system fundamentally based on that in the House of Lords back in Westminster, and there's a reason why that system has served this country so well. Over the last few months, we've seen in this chamber this reorientation of the word "independence" and independent parliamentarians when it comes to the Westminster system of parliament. We can try to redefine it, or some of the colleagues on the other side of the chamber can try to redefine the notion of independence in the Westminster system, but those who know better know it's not open to interpretation and it's not malleable. I know Senator Cools knows this better than anybody.

The whole notion of independence in our parliamentary system is sacred. When somebody calls into question or challenges the independence of any parliamentarian, in the other place or in this upper chamber, they call into question our very parliamentary system.

So when somebody decides to send a letter to anybody in the other place, let alone the Leader of Her Majesty's Loyal Opposition, in order to encourage, cajole or to do anything to members of his caucus on the Senate side is unacceptable. It's been unacceptable for 150 years, and it shouldn't become acceptable today.

Those of us who studied under great professors of political science in this country like J. R. Mallory understand what the word "independence" in the Westminster system means. It means every member who gets elected and every senator who is appointed and doesn't sit in cabinet is independent; regardless of what caucus they sit under, what political affiliation they have or if they're non-affiliated, the moment they are sitting in this place or the other place and they're not in cabinet, they are independent.

In this upper chamber, we are all independent, regardless of our political affiliation, except for one individual. That individual is the Government Representative in the Senate. That's not something I interpret. That's in our Constitution. When he got summoned here, and he was given the notice to serve as the government leader in the bridge between the other place and this place, he became dependent of the Crown. He serves in committee. That's why he got sworn in as a Privy Council member. So the only person in this place who doesn't have independence is the government leader. He's accountable for making sure the government's legislation gets through this chamber. We respect that, and we recognize that.

Everybody else is independent. My independence cannot be challenged by anybody in the other place. That's how Westminster works and the mother of parliaments across the pond, and that's how it was designed to work in this place.

When any colleague writes a letter to the other side in order to encourage or cajole somebody to vote a certain way, it is a breach of privilege without a doubt, Your Honour.

We also have to show fundamental respect to the rules in this place. Rules were not created on a whim, and they're not, again, malleable. We don't decide just because we came here and we don't like the rules that we've got to change them just because they don't serve our purpose at any given point in time. I understand, Senator Lankin, the rules can be frustrating, but that's how parliaments work.

There are many senators in this place with motions on the scroll. I co-sponsored a motion on the scroll with former Senator Merchant, who is no longer here. There are senators in this place who have been adjourning that motion for months now — adjourning it and not speaking to it.

Senator Mitchell: Fix it.

Senator Housakos: There's nothing to fix. That's part of the rules, and I respect the rules. But Senator Mitchell, I won't write a letter to the Prime Minister and say, "Can you please speak to the senators you just appointed to make sure there's a vote on my motion, because I want a vote on my motion?" That's not how Parliament works, colleagues.

And if we're going to make statements, they have to be backed up by some facts. When we say, for example, that Andrew Scheer — and quote a newspaper article. That other place was designed to deal with the pressure cooker of daily politics, not this place. This place is a place of sober second thought. We owe it to ourselves and to Canadians to try to separate ourselves as much as possible from the goings-on on that side.

I'm compelled to respond to a comment you made about Andrew Scheer, because the record has to be clear about him saying he does not believe in a Senate being independent or making sure he makes only partisan appointments. What he has a hard time with is with the charade of independence that has been going on in this place for the past few months.

Some Hon. Senators: Hear, hear!

Senator Housakos: Furthermore, colleagues, when Senator Lankin in her statement says that Andrew Scheer pulled Senator Beyak from committees or Senator so-and-so from committees, we should all know that in the Senate of Canada, there's nobody who can pull any senator off any committee. We have the right to sit on any and every committee in this chamber. It's our privilege. The moment somebody says to me I can't go to any committee, that's a breach of my privilege as well.

These are rules that have been around for a very long time, and we have to respect them. The moment rules are not respected, we fall into utter chaos.

Colleagues, I don't want to go any further than that. My arguments are clear and concise. Your Honour, I think there's enough precedent to understand this is a breach of privilege without a doubt.

Hon. Grant Mitchell: Honourable senator, I want to begin by simply re-establishing the question Senator Plett is asking or has raised. He's arguing that Senator Lankin's initiative to ask Mr. Scheer — in very polite and respectful terms, I would point out, as she did; I reinforce that — she's asking Mr. Scheer to talk to Conservative senators on Bill C-210 and suggesting that that constitutes interference and obstruction.

• (1740)

If one thinks about that logically and you put that together, the only way that could possibly be the case, that it could possibly be obstruction, would be if Mr. Scheer, in talking to Senator Plett and his Senate colleagues, could actually unduly influence or pressure them. This would not only be obstruction, but that would, of course, be an affront to senators' independence.

That begs a very important, broader question: Presumably Mr. Scheer talks to senators in his caucus absolutely every week about any number of issues and his preferences on each and every one of those issues.

So if Mr. Scheer is speaking to senators on Bill C-210, a single issue, constitutes obstruction and an affront to senators' independence, then speaking week after week to them on many issues behind closed doors, I would point out, would constitute a much greater magnitude of interference and obstruction.

Your Honour, a ruling upholding Senator Plett's complaint as a question of privilege would immediately and strongly suggest that actually sitting in that caucus with Mr. Scheer week after week is an even greater obstruction of senators' ability to do their work. I expect that Senator Plett doesn't want to go there.

Senator Plett mentioned Senator Cowan's words, but Senator Cowan's caucus was and is fundamentally different in two ways critical to their independence, and I acknowledge that. They do not sit with the national Liberal caucus. They're not sitting there with powerful, compelling, persuasive people, many of whom are their friends. And they do not whip their Senate caucus. Those are two critical variables in establishing independence in a way that the Liberal senators have done but hasn't been done on the other side.

This question of privilege indicates clearly and reveals for all of us — and I expect many Canadians who bore down to see it — Senator Plett's sensitivity to and concern with perceptions of senators' independence from his party's caucus on the other side, and that sensitivity has been very well reinforced by Senator Housakos.

This is an important admission because that independence, I believe, is at the root of this chamber's very credibility. I think Senator Plett's concern speaks to a stark and important problem that I have encountered time and again in my conversations with Albertans and other Canadians. Even if senators are not unduly influenced by sitting in a party caucus of powerful, compelling, persuasive MPs and leaders, many of whom are close friends, no one out there really believes that and nor can anyone convince them of that.

I think Senator Plett's initiative today is very helpful in revealing the real issue here. Thank you for exposing it, as you have, Senator Plett. It is not a question of privilege, but it absolutely does highlight the question of senators' independence and Canadians' perceptions of it.

Hon. Anne C. Cools: Honourable senators, I wish to join this debate. I begin by saying that I do not believe that Senator Plett has set out a case of privilege in this instance.

I have no doubt that some insult has been rendered to Senator Plett, but I would not couch it as a question of privilege.

For the information of newer senators, I wish to perhaps clarify and cite from whence our privileges derive. Our privileges are found in section 18 of the British North America Act, 1867:

> The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

Honourable senators, our Rules command us that the defence of privilege and the upholding of our privileges is the most sacred and important task that confronts and faces any individual member, in this case, any individual senator. Rule 13-1, under Breach of Privilege, says:

> The preservation of the privileges of the Senate is the duty of every Senator and has priority over every other matter before the Senate.

So the Rules take the question of a breach of privilege very seriously. We are commanded by our own Rules to uphold the preservation of privileges. That is important to note.

Honourable senators, I do not think that Senator Lankin has committed a grave offence. We should release ourselves of the burden that some enormous and incorrigible wrong has been committed. Senator Lankin may have indulged in a little folly here. But I do not think that Senator Lankin went out to breach privileges, to hurt members or to say to members, "You are ignorant and I am bright; and you are really, really ignorant, and I will teach you how to be bright."

In defence of Senator Lankin, and also in defence of my friend Senator Plett — because Senator Plett has a somewhat blustery outer person, but Senator Plett is a gentle and sensitive human being. I have known him in that role on many different occasions in this place. I have been here for 34 years; I have seen many things.

I wish to state on the record, for Senator Lankin's sake, that her appeal to the Leader of the Opposition in the House of Commons — and I can only interpret this letter and the words of her letter in her own words — as an appeal to our friend across the way in the House of Commons, Andrew Scheer. I have known Andrew Scheer for many years as well; I know him quite well.

I read from Senator Lankin's letter:

> I look forward to your support in tackling the complex issues women face. Issues like the wage gap, workplace harassment, and the underrepresentation of women and minorities on corporate boards; violence against women on

> Canadian streets and in our homes; and systematic issues in our courts that prevent many Canadian women and girls from finding the justice they deserve.

I do not think any of this applies to any women in this place; I really do not. Part of me wants to dismiss this as an exaggerated outpouring, perhaps, of important issues elsewhere. However, I can tell honourable senators that they are not an issue in this place. There is no woman in this place who can raise such complaints about anyone else in the Senate. On this matter, I can shamelessly defend my male colleagues.

Honourable senators, this appeal continues. This letter is addressed to the Leader of the Opposition in the House of Commons. Senator Lankin writes:

> In addition to the complex issues, I look forward to your support in overcoming the more obvious examples of gender equality in our country, notably the blatant discrimination in our National Anthem, which could be solved with the royal assent of Bill C-210.

I have a hard time, Your Honour and colleagues, describing the national anthem of Canada as "blatant discrimination." Our national anthem is a hymn. It is a sacred piece of work. It brings to mind the men who have served and fallen in many wars for many years.

The Hon. the Speaker: I am sorry to interrupt, Senator Cools, but could we stay with the point of privilege? The debate on the bill is a different matter. But if you want to stay with the point of privilege, it would be helpful. Thank you.

Senator Cools: I am speaking to the question of privilege, Your Honour. I am on it very precisely, and I am citing Senator Lankin's letter, which is the letter in question, and the words in question in this very debate.

• (1750)

Honourable senators, on the next page of the letter, Senator Lankin wrote:

> I am aware there are strong views on both sides of the debate and I truly believe that principled conversation and debate is healthy in a vibrant democracy. However, many stated objections have roots in an unequal view of women and men."

There is an unnecessary insinuation there.

The letter continues:

> Despite Conservative Senate leader Larry Smith's sagacious assertion in the Chamber that this bill "will pass in time" it is caught up in a procedural filibuster being carried out by a few Senate members of your national caucus. As a result, Senators have not been able to hold a final vote on the bill at third reading; even though it passed the House with overwhelming support, support it enjoyed from many within your caucus's newly formed Shadow Cabinet.

This is the most offending sentence in the entire letter, and Senator Lankin writes:

> This is why I urge you to speak with the small group of Conservative Senators obstructing the vote and ask them to end the games.

Honourable senators, Senator Lankin has made a judgment that some senators are obstructing a vote, which she finds objectionable. She is inviting the Leader of the Opposition to speak to the senators in question and ask them to stop, to "end the games."

I would suggest to Senator Lankin that perhaps the people she is referring to do not see their actions as a game. Perhaps they see what Senator Lankin is doing as the game. This is the nature of the business that we are in.

Honourable senators, this is what I view as a bump on the road, a rough day or something of a similar nature. However, I do not believe that Senator Plett's privileges have been breached. For me to believe that Senator Plett's privileges have been breached, I would have to believe that my privileges have been breached as well.

As far as I am concerned, the matter should be allowed to rest. Perhaps the question can be resolved with a simple, private apology from one senator to the other.

Hon. Marc Gold: I always hesitate to follow Senator Cools on matters of privilege and tradition, but I agree that the letter that Senator Lankin wrote does not rise to a breach of privilege. There is no obstruction; there is no intimidation; there is no threat. Nor, allow me to add, has there been any real answer in the responses to the points she made in her defence to the claim of privilege. There has really been no answer to the citations of what the Leader of the Official Opposition in the other place was reported to have said about the relationship between him and Conservative senators.

There has been a lot of rhetoric, and I use that in the neutral sense, about independence, an important concept. But I ask this, Your Honour: Is it a breach of a senator's privilege to imply that a senator is not acting in an independent manner? Because if it is, then I, and many of my colleagues, for the last eight months and beyond, have had our independence impugned on a regular basis in this chamber and in press releases. I understand that. I'm learning to understand it. It's politics. And principle and privilege and politics coexist.

We have been categorized as closet Liberals. Most recently, the appointment process has been impugned as a sham. I find that hurtful and I find it insulting, but it does not rise to a violation of my privileges. This is part of the world that we're privileged to live in. It does not rise to a breach of my privilege, and nor does the letter that Senator Lankin wrote, published and circulated rise to a question of privilege either.

Hon. David M. Wells: I have two simple points and I'll stay with the question of privilege. There's so much else I'd like to say and continue to say about the anthem itself, but this is on the question of privilege.

Senator Lankin, by her own admission, believed that the Conservative leader in the other place held authority over Conservative senators. In fact, Senator Lankin referred to the

removal of a senator from a committee by the leader in the other place. In fact, that is untrue. That senator wasn't removed by the leader of the other Conservatives in the House of Commons. That was done within our own Senate caucus. But it was clear that Senator Lankin perceived that there was authority over senators that the leader of the Conservatives in the other place could hold sway or somehow coerce a senator to act or not to act in a certain way. That's one of the points I would make on the question.

Second, we've all been encouraged by colleagues and ministers and others to act a certain way or not to act a certain way on a bill or something that's before us. But when it's taken to the level of writing a letter to someone with that perceived authority over us, and further, to elevate it by making it a public letter, I would say that's an attempt to interfere with the workings of all our independent senators — to interfere, possibly to intimidate. I don't think it may go to the level of intimidation, but for some it might. For me, it wouldn't. I'm not intimidated easily or at all. But I think it does go to the question of trying to influence our independent actions here in this chamber, by going to an outside factor hoping to gain influence.

Colleagues, that's all I would say on the question.

Senator Martin: I think this is an appropriate time to follow up on my colleague Senator Wells' remarks in that I will speak from the perspective of Deputy Leader of the Opposition.

We meet daily before our sitting to discuss the items that are priority items for our respective groups and we try to work to find a path forward. I was aware that there were meetings taking place. In fact, Senator Plett and others who may appear to be part of the small group of Conservative senators who are supposedly obstructing this process, were the ones who were quite open-minded in conversations that took place.

In fact, I had been talking to my caucus colleagues about readdressing where we stand, because in our caucus, in our group, as deputy leader, I take my instructions from the group and we discuss all items very thoroughly. I would like to say, in defence of Senator Plett and others that I think have been alleged to be the senators who were obstructing the vote and playing games, that is not accurate. In our caucus, if there are certain senators who are more passionate about certain items, then we have a full discussion about it.

So when I saw this letter on the day that it was made public, since returning from our summer recess, as a caucus, we have not looked at this particular item with the kind of attention that we may give it when it's time, because Senator Woo had adjourned it. I understood from my conversations with my counterpart in the ISG that because there were many other things happening, he wouldn't be speaking to it. As the new facilitator, there's a lot of weight of responsibility. I wanted to shed light —

The Hon. the Speaker: I am sorry to interrupt you for a minute, Senator Martin.

Honourable senators, it is almost 6 p.m. I am reaching a point where I believe that I have heard probably enough debate. I will hear from Senator Dupuis, who I saw rise, and Senator Sinclair. I think that will do it.

Will honourable senators agree not to see the clock until we have completed the interventions on the question of privilege?

Hon. Senators: Agreed.

Senator Martin: I'm simply shedding light to share information from my perspective as deputy leader that, as a caucus, it is a decision that we reach together on the readiness of going to that next stage.

• (1800)

So I simply note that, even in Senator Lankin's remarks, you see that the second-last sentence is one that, in my opinion, is unfairly accusing a certain group of senators. It is misleading. I simply say that, as the deputy leader who works with the entire caucus, it is not a small group that is obstructing but that there is a process that we follow in our caucus. That is what I'd like to put on the record for your consideration, Your Honour.

[*Translation*]

Hon. Renée Dupuis: When I try to read the question of privilege in French and English I run into the same problem. Under the *Rules of the Senate*, in determining what constitutes protection from obstruction and intimidation when a senator's individual privilege is involved, does the question as currently worded allow you to make a ruling? The question refers to a letter that was sent to urge someone to interfere in the Senate proceedings, which would prevent senators from carrying out their duties in an independent manner. In other words, does the question, as worded, allow you to make a ruling? The purpose of Senator Plett's question of privilege is currently not exactly clear.

The Hon. the Speaker: That is a good question, senator, but it must be reviewed.

[*English*]

Hon. Murray Sinclair: I will be brief, to quote my favourite ex-senator.

I wanted to add a few comments about some of the experiences I've had in dealing with similar issues in court, perhaps to assist Your Honour in coming to the decision that you have to come to.

The issue of privilege is very important to us, and I'm pleased to hear the comments from various senators about the importance of our independence. We have always, I think, talked about independence of individual senators as being very important, but I've heard references here, perhaps inadvertently, to the importance of institutional independence of this place from the other place as well. That's also very important. We need to consider that as we go forward, and I look forward to further discussion about that.

To return to the question that you must consider, Your Honour, the issue that you are being called upon to look at is whether or not a prima facie case has been raised with regard to the question of privilege as enunciated in the Rules. If this were an issue I were called upon to decide in the course of a trial, for example, on whether a lawyer's situation had been compromised by the

words or allegations of another during the course of proceedings, we always have to approach this from the perspective that there is a high standard to be met in order to respond to that allegation.

But here, and looking at the document that was raised in Senator Plett's letter and referred to as Senator Lankin's letter, I would point out that there does not appear to be any effort to cause intimidation. In fact, I would tend to the view that it's largely in reference to a practice that has certainly evolved in this chamber and appears to be almost a normal course of events, where there is free communication between the political caucuses here and the political caucuses in the house at least insofar as the Conservatives are concerned. I gather that before the Liberals who are in the Senate were kicked out of the Liberal caucus by the Prime Minister, it was probably the case at that point in time as well. So it would appear to have been a practice. In the letter, Senator Lankin refers to that.

But I also encourage Your Honour to look very seriously at the question of whether Senator Plett's motion raises a question "to correct a grave and serious breach" of privilege, and I don't see that, quite frankly, in the material provided to us and the submissions that have been made. That wording suggests that minor breaches are tolerable, but serious and grave breaches are the ones that this particular motion is intended to address. If anything, if there is a breach at all, it's a relatively minor one that has been created over the course of conduct by the political caucuses to this point in time. I particularly refer to the fact that in the media and in the interviews that have been granted by the two previous leaders of the Conservative Party of Canada, there has been very clear indication that they have given some input into decisions resulting in Senator Beyak being removed from committees in this chamber.

I also want to suggest, taking a look at the rule as well as the material that accompanies the rule, that there is an obligation on the part of the mover of a motion of privilege to indicate what kind of a remedy is being sought, because in the absence of a clear indication as to whether a remedy that is being sought is a genuine remedy that Your Honour can provide, it would be difficult for you to indicate that it's a supportable motion.

So on the basis of a sheer interpretation of the rule, I quite frankly don't see a question of privilege here.

The Hon. the Speaker: Senator Smith, did you want to say something?

Hon. Larry W. Smith (Leader of the Opposition): I just wanted one minute. I have been listening to this, and I'm not going to be critical of anything.

The Hon. the Speaker: Go ahead.

Senator Smith: Just so we have it on the record, the relationship between ourselves and our national caucus is such that we are an independent group.

In terms of Senator Beyak and that specific case, the decision was ours and mine. The reason it took longer than people wanted is because we gave every opportunity to study the situation of Senator Beyak. So I take great offence when anyone says that we were influenced by the other side. Not true. That was our decision.

The other point in terms of the relationship is that Andrew Scheer is very respectful of the independence that our group has in the Senate. We're really respectful. And we have the privilege of being part of a national caucus where we can go and listen to what's going on in their world and in our world, so that we can say, "What is the common ground that we can work with people on?" So I think it's really important to understand the benefits of being part of a national caucus.

Sir, there's only one other thing I'd like to say. In terms of the higher standard that we have, I would never send a letter to the Prime Minister asking him to influence one of his people. It's not right. It's not part of protocol. I didn't do well in procedural law, but I passed it. I can tell you, as a code of ethics, you don't send a letter to the leader of the other group. It's poor taste. You may not agree, but that's a point of view. I wouldn't do it to you, and I would expect you not to do it to us.

The Hon. the Speaker: Senator Woo, unless you have something new to add — go ahead.

Hon. Yuen Pau Woo: Your Honour, I just would like to draw to your attention — I'm sure you're aware and your support staff will be drawing this to your attention — that the privileges referred to under the broad rubric of "parliamentary privilege" include four items, only one of which has been discussed, i.e. the freedom from obstruction and intimidation. But there are three other items: freedom of speech in Parliament and in committees; freedom from arrest in civil cases; and exemption from jury duty and appearance as a witness in a court case. I would just ask that you take the entirety of parliamentary privilege into consideration when deliberating on this matter.

The Hon. the Speaker: I would like to thank all honourable senators for their very thoughtful interventions. It is a very important question. I will take it under advisement.

(*At 6:10 p.m., the Senate was continued until tomorrow at 2 p.m.*)