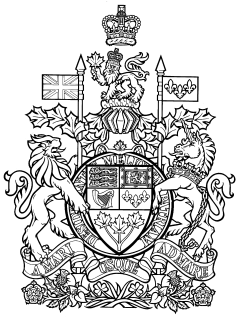

CANADA

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OFFICIAL REPORT
(HANSARD)

Tuesday, December 8, 2009

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

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THE SENATE

Tuesday, December 8, 2009

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

Prayers.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, as you are aware, an incident occurred yesterday when 19 persons climbed onto the porch over the Senate entrance as well as the roof of the West Block.

A number of senators, their staff, and members of the Administration had their access to Parliament impeded. What is more, emergency responders were inconvenienced by unnecessarily having to respond, and other difficulties were caused by this assault.

These individuals may have sought to convey a message to the government, yet the real target of their action ended up being Parliament itself.

Honourable senators, we will all agree that this was a deplorable assault. This incident was a direct attack against the dignity of Parliament.

The Senate is offended by such a reprehensible display of disregard for the position of this body and all of Parliament, the very institution that represents and safeguards the rights and liberties of all Canadians.

It is my hope and, I believe, that of all senators that this act will be recognized not just as an affront to Parliament, but to all the people we represent.

SENATORS' STATEMENTS

HALIFAX EXPLOSION

Hon. Michael L. MacDonald: Honourable senators, the morning of December 6, 1917 was a morning like any other morning in Halifax and Dartmouth. Children woke up and headed to school. Parents went to work, many of them serving the war effort. However, before long, these cities and their people would be forever changed by a combination of both bad luck and human error.

At about 8:45 in the morning, the *Imo*, a Belgian relief ship, collided with the *Mont-Blanc*, a French munitions ship. Its prow missed the hold carrying 225,000 kilograms of TNT and other explosives, but sparks flew and almost immediately oily black smoke began powering from the *Mont-Blanc*'s hull. The crew, realizing the terrible disaster that was about to occur, abandoned ship and rowed furiously toward the Dartmouth shore. The French crew spoke no English and no one understood the shouts of warning on the shore.

The *Mont-Blanc* drifted toward the Halifax pier. Onlookers gathered to watch the burning ship, and Halifax police and fire crews, unaware of the danger, debated how best to put out the flames. The gathering crowds would only compound the tragedy that was about to occur.

At 9:04:34 a.m., the *Mont-Blanc* exploded. Its steel hull burst into a fury of red-hot, twisted metal that rained down on the cities. It was, and remains today, the largest man-made non-nuclear explosion in the history of the world. Part of the *Mont-Blanc*'s anchor landed nearly four kilometres away in the Northwest Arm, and a gun barrel landed more than five kilometres from the harbour in Dartmouth.

Nearly everything within a two kilometre radius of the blast was completely destroyed in a hail of fire, metal and flying glass. The blast caused a tsunami of water to pour into the cities, flooding as far up the shore as to where Barrington Street is today and pushing the *Imo* onto the Dartmouth shore. The pressure waves were enough to bend iron bars and shatter concrete. Fires broke out around the city and buildings collapsed onto their helpless inhabitants. Rail lines, telephone, cable telegraph, water and electrical services were all gone.

As terrible as the destruction was, it paled in comparison to the human tragedy. More than 1,500 people were killed immediately. Over the next hours and days, more than 1,000 more would die. Nine thousand were injured, many with brutal wounds as bad as anything seen in the war. Hundreds were blinded and their bodies torn by flying debris. Others were crushed as their homes and workplaces caved in. The old Mi'kmaq settlement at Tuft's Cove was flattened and destroyed and would never be rebuilt. That evening, the disaster was compounded by the arrival of the winter's first blizzard, which blanketed the city, covering many survivors still trapped in the rubble.

Within minutes, the people of Halifax and Dartmouth pulled together to recover and to save their families and neighbours. British naval ships in the harbour were some of the first to respond to the disaster. Within a few days, help from as far away as Boston arrived. Students at Dalhousie's medical school, some of whom had started their studies only a few months earlier, were pressed into service. Hundreds of wounded were crowded onto the first trains away from the city. Doctors, nurses and supplies from across Canada began to pour into Halifax on the trains. The people of Halifax and Dartmouth soon knew they were not alone.

The tragedy that unfolded that day in Dartmouth and Halifax was of almost unimaginable scale. The heroism, generosity and compassion of Canadians, and of our American and British friends, were without precedent. Many Canadians will say that

Canada as a nation was born during the Great War on the slopes of Vimy Ridge. However, I know many Nova Scotians who would say that it was born on the burned and battered streets of Halifax and Dartmouth on December 6, 1917.

• (1410)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw your attention to the presence in the gallery of His Excellency Gordan Jandrokovic, Minister of Foreign Affairs and European Integration of the Republic of Croatia, who is accompanied by Her Excellency Vesela Mrden Korac, the distinguished Ambassador of Croatia.

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

Hon. Senators: Hear, hear.

[*Translation*]

NATIONAL DAY OF REMEMBRANCE AND ACTION ON VIOLENCE AGAINST WOMEN

TWENTIETH ANNIVERSARY OF TRAGEDY AT ÉCOLE POLYTECHNIQUE

Hon. Lucie Pépin: Honourable senators, the twentieth anniversary of the massacre at the École Polytechnique was commemorated on Sunday. The firearms registry that was introduced in response to that tragedy was the focus of a great deal of attention on that day in Quebec. I would like to share the concerns many Quebecers have about this issue with you.

There is no miracle solution to the complex problem of violence in our societies. We do know, however, that to eradicate this terrible scourge, we must be persistent.

In the past 20 years, governments have developed policies and taken actions to eliminate violence against women. The firearms registry was one such initiative. Moreover, the families of the victims of the École Polytechnique massacre see this registry as a monument to the young women who were killed by Marc Lépine. For many, this registry is a sign of progress.

The Montreal police force took advantage of the Day of Remembrance on Sunday to call for all parts of the registry to remain in force. Most police associations want the same thing. To the police, gun control is part of any integrated strategy to fight effectively against violent crime. Many Quebecers share this vision.

Many people do not understand why Parliament wants to dramatically scale back the registry and weaken this tool that the police themselves consider important to their work. These people question the advisability of eliminating the requirement to register guns and deleting the eight million gun records already in the registry. Some consider these changes a blow to the memory of the École Polytechnique victims and all other victims of gun violence.

It is illogical to question something that has greatly contributed to reducing the number of shooting victims in Canada. Certainly, there have been administrative problems with this registry, but it can be improved to accommodate farmers and other hunters without becoming dysfunctional. What is important is to have an effective registry in order to try to prevent other tragedies like the one at the École Polytechnique.

That, in a nutshell, is the appeal that the vast majority of Quebecers made to us, as parliamentarians, last Sunday. I hope it will be heard.

[*English*]

POPULATION HEALTH POLICY CONFERENCES

Hon. Wilbert J. Keon: Honourable senators, recently I had the honour to speak to and participate in the Population Health Policy Conference hosted by the Department of Health of the Government of British Columbia.

The conference coincided with the announcement by the Mental Health Commission of the establishment in British Columbia of the first of five special studies that will occur across Canada to learn more about homelessness and mental health. The entire event represents Canadian society at its best. This was an example of the federal, provincial and municipal governments acting in concert with community organizations and NGOs to address the serious societal problem in Vancouver and, indeed, all of Canada.

The World Health Organization has singled out the Government of British Columbia as a world leader in its whole of government approach to population health and correction of health inequities. British Columbia has been particularly successful with some of its initiatives with First Nations communities. Overall, that province has narrowed the gap between rich and poor in British Columbia when it comes to health status.

All honourable senators should congratulate the Government of British Columbia on this remarkable achievement, and we look forward to the outcome of the initiative by the Mental Health Commission.

Citizens of British Columbia now enjoy the best health status of any province or territory in Canada. However, as Mary Collins points out in her excellent report, *Healthy Futures for BC Families*, there is still a long way to go. There remain terrible health inequities in British Columbia, particularly as it relates to First Nations peoples. These can and must be corrected.

I recently also had the privilege of speaking to and participating in the Population Health Policy Conference hosted by the countries of the European Community and the World Health Organization. I have to admit, it does not make one proud to be a Canadian when participating at the global level on this subject. We lag far behind European countries when it comes to health equity.

Where do we go from here? I believe the solution is simple and straightforward: We must correct health inequities in Canada through population health that uses an all-of-government

approach to foster communities of good health, productivity, low crime and overall well-being. Collectively in Canada, we have all the tools to do this. We simply must get on with the job.

THE HONOURABLE VIVIENNE POY

Hon. Lorna Milne: Honourable senators, it is my tremendous pleasure and privilege to announce that our own Senator Vivienne Poy has been chosen to carry the Olympic torch in my home city of Toronto.

Even better, Senator Poy will carry the torch through the heart of the area where I grew up and that my father, Bill Dennison, represented on the Toronto Board of Education, City Council, in the provincial legislature and as comptroller and mayor for almost 35 years.

Senator Poy will carry the torch for 300 metres up Parliament Street, right through the middle of dad's old Cabbagetown area. She tells me she will not actually be running with it; just walking and perhaps even limping a bit. Senator Poy was nominated for this great honour by the Royal Bank of Canada as a community torch bearer to represent the many diverse communities of the great city of Toronto. She will be joining a most illustrious group that includes Sidney Crosby, Steve Nash, Shania Twain, Karen Kain and the young founders of Free the Children, Craig and Marc Kielburger.

Senator Poy's sponsor, the RBC, has been one of the longest standing supporters of Canada's Olympic team. In fact, they have been supporting the team since 1947. They also support the Paralympics as well as the torch relay runners this year, 12,000 people strong, from coast to coast to coast. The RBC also supports Hockey Canada and the Canadian Snowbirds, among other worthwhile enterprises.

Senator Poy is a most remarkable woman. She is responsible for the fact that Canada now officially recognizes May as Asian Heritage Month. She has been awarded a Gold Medal Award of Excellence in Race Relations, as well as an Eid-ul-Fitr Award from the Association of Progressive Muslims of Canada. She has served as Chancellor of the University of Toronto and, since I know of her great interest in genealogy, I personally was able to have her succeed me as the honourary patron of the Ontario Genealogical Society. We now realize that she will be known as an athlete, as well.

I offer my congratulations to Senator Poy. I do hope it will not snow on December 18 at 6:58 a.m. when she begins her run up Parliament Street in the darkness just before dawn.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Michael George and Dr. Alexandra Bain of St. Thomas University, two distinguished professors from Canada who will participate in a Senate of Canada sponsored Canada-Croatia exchange.

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

Hon. Senators: Hear, hear.

HUMAN RIGHTS DAY

Hon. Donald H. Oliver: Honourable senators, I rise today to call your attention to December 10, Human Rights Day. December 10 commemorates the day in 1948, when the United Nations General Assembly adopted the Universal Declaration of Human Rights.

The declaration comprises 30 articles that form a comprehensive statement of basic standards for human rights and freedoms. One of the most important statements for minorities is found in Article 2, which states:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

• (1420)

Furthermore, Article 7 of the Universal Declaration of Human Rights states:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Although the declaration is not a binding document, it has been the cornerstone in the development of human rights instruments worldwide, including the Canadian Charter of Rights and Freedoms. This year, the UN's Human Rights Day slogan is: Embrace Diversity, End Discrimination. The UN High Commissioner for Human Rights, Navi Pillay, explained that they chose this theme because discrimination spreads mistrust and humiliation for victims, and leads to violence, conflict and discord generally.

Yet today, in spite of various treaties and laws, the fight against discrimination remains a daily struggle for millions around the globe, Canada included. In 2008, 16 countries enacted or initiated new human rights-related laws; 100 UN member states ratified human rights treaties and instruments; and 11,000 law enforcement personnel were trained in human rights norms and standards by the Office of the UN High Commissioner for Human Rights. Moreover, there has been a $24.2 million increase in voluntary contributions to the OHCHR in 2008. This is proof that the worldwide community believes in the application of human rights.

A 2009 study of Canadian multiculturalism revealed that skin colour, not religion or income, was the biggest barrier to immigrants feeling that they belonged in Canada. It is more troubling that among minorities born in Canada, Black people have the lowest sense of belonging, the lowest level of trust in others and the weakest sense of Canadian identity. Honourable senators, this must change.

We need to keep talking about racism and promoting culture and language and minority rights. Only by keeping the spotlight fixed on these issues can we embrace diversity and end discrimination, as the UN invites us to do. We must lead our country toward real changes in equality and fairness.

MR. HOWARD ANDERSON AND GRAND CHIEF GUY LONECHILD

Hon. Lillian Eva Dyck: Honourable senators, I wish to introduce two First Nations men who have dedicated their lives to strengthening First Nations communities in Saskatchewan.

First, Mr. Howard Anderson was just 16 years old when he signed up to fight for Canada in the Second World War. A status Indian from the Gordon First Nation in Saskatchewan, Mr. Anderson exemplified strength, courage and honour on the battlefield.

Upon returning to Canada, Mr. Anderson was outraged by the blatantly unjust treatment given to Indian veterans in the distribution of post-war benefits. Mr. Anderson has led the fight for just compensation to First Nations veterans over the past 50 years. Through his previous position as Grand Chief of the Saskatchewan First Nations Veterans Association, Mr. Anderson brought the issue of equitable compensation to Aboriginal veterans to the forefront of the federal government in 2000. His passion and dedication to correcting the wrongs of the past moved the Government of Canada to establish the Veterans Compensation Package of 2002. Mr. Anderson continues to lead the fight for equal compensation for First Nations veterans and to instill in all Canadians the contributions that First Nations veterans and soldiers have made and continue to make to Canada. We thank you, Mr. Anderson.

Second, Mr. Guy Lonechild is the current Grand Chief of the Federation of Saskatchewan Indian Nations. Prior to his election as Grand Chief this past year, Mr. Lonechild served as Vice-Chief of the FSIN for nine years. During his time, he made great strides in addressing economic development in First Nations communities. In addition, he actively advocated for greater female participation in First Nations organizations and governance. As Grand Chief, Mr. Lonechild has already focused on addressing issues concerning women, children and youth. Mr. Lonechild's leadership has given First Nations people in Saskatchewan renewed hope and optimism.

Honourable senators, I thank both Mr. Anderson and Grand Chief Lonechild for their dedication and contribution to First Nations people, not only in Saskatchewan but throughout Canada. It is through the work of such great First Nations leaders that our road to a free, diverse and just Canada can be achieved.

[*Translation*]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of Bob Gainey, the Executive Vice-President and General Manager of the Montreal Canadiens.

He is a guest of the Honourable Senator Dallaire.

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

[*English*]

MILITARY FAMILIES

Hon. Linda Frum: Honourable senators, I rise today to draw your attention to the support that our government is giving to military families.

Our Prime Minister, Stephen Harper, recently announced that we would be contributing $250,000 to the Military Families Fund on behalf of Their Royal Highnesses, the Prince of Wales and the Duchess of Cornwall. This was in response to a request from Their Highnesses for a donation to be made to an organization that supports military personnel and their families, rather than an official gift that is usually offered during a Royal visit.

Honourable senators have no doubt heard of the Military Families Fund, which is administered by Canadian Forces Personnel and Family Support Services. Created just over two years ago by retired General Rick Hillier, former Chief of the Defence Staff, the fund helps families when something unexpected happens. In one case, the fund helped to fly in a relative to look after the children of a deployed member of the Canadian Forces when his wife had to be hospitalized. In another case, the fund provided a family with temporary care for their severely disabled child when they were transferred to another province.

The fund is growing thanks to donations from businesses and from supportive men and women across this country. Honourable senators, I am proud that our Conservative government is among those supporting this valuable organization.

On November 10, Prime Minister Harper attended the inaugural True Patriot Love Tribute Dinner. The True Patriot Love Foundation was created to raise funds for programs that would improve the well-being and morale of members of the Canadian Forces and their families, and to honour their selfless service. As a member of the dinner committee, I pay homage to the many volunteers who worked to make the True Patriot Love Dinner such a success and especially to the event's driving force, Mr. Shaun Francis. Over $2 million was raised that night by the Toronto community for this extremely worthy cause.

Our men and women in uniform serving at home and abroad, as well as their families, have made great sacrifices on our behalf. With the help of organizations such as the Military Families Fund and the True Patriot Love Foundation, we will continue to do all that we can do to support them.

HONG KONG VETERANS MEMORIAL WALL

Hon. Vivienne Poy: Honourable senators, I rise today to pay tribute to a group of Canadian soldiers who fought bravely in Asia during the Second World War and who have remained, until recently, largely unrecognized by the majority of Canadians.

On December 8, 1941, at approximately 8 a.m., Hong Kong time, the Japanese Imperial Armed Forces invaded Hong Kong. This marked the beginning of the engagement in battle for almost 2,000 Canadian soldiers from the Winnipeg Grenadiers and the Royal Rifles of Canada, who were sent to Hong Kong to help to defend the colony.

Outnumbered and faced with an enemy with superior arms, our Canadian soldiers fought heroically for 17 and one half days. The battle began 68 years ago today, soon after the bombing of Pearl Harbor, and ended on Christmas Day. In that battle, 290 soldiers were lost and, for those who were taken prisoner, their suffering continued in POW camps. By the end of the war, Canada had lost more than one quarter of the soldiers originally deployed to Hong Kong in November 1941.

Through the determination of the Hong Kong Veterans Commemorative Association, which was formed by the children of the veterans who served in Hong Kong, a monument was erected recently in Ottawa so that our veterans will be remembered by both our government and our schoolchildren. The National Capital Commission, private donations and the Hong Kong Economic and Trade Office all helped realize the association's dream of a magnificent memorial to honour their brave family members.

• (1430)

On August 15 of this year, I had the honour of participating in a moving ceremony to unveil the Hong Kong Veterans Memorial Wall on Sussex Drive. On the granite wall that resembles the mountains of Hong Kong are the names of 1,976 soldiers, 2 nursing sisters and a dog named Gander.

The Hong Kong Children's Symphony Orchestra, sent by the Hong Kong government to thank our troops for their defence of Hong Kong, held a fundraising event in Toronto, and subsequently performed at the memorial wall and at the Canadian War Museum in Ottawa.

Our Hong Kong Veterans Memorial Wall will tell future generations about those who so bravely served their country. Their names will always remind us of their sacrifices and we will remember them.

GREY CUP 2009

Hon. Stephen Greene: Honourable senators, I rise today to pay tribute to the Montreal Alouettes, this year's Grey Cup champions.

I have been an Alouettes fan practically my entire life. I grew up with Sam "The Rifle" Etcheverry, "Prince Hal" Patterson, Red O'Quinn and Herb Trawick.

My prized possession as an eight-year-old was securing Sam Etcheverry's autograph. Sam, who passed away this August in Montreal, was the greatest quarterback in Alouettes history until Anthony Calvillo came to town.

Canada's love for the Canadian Football League is evidenced by the record-breaking telecast by The Sports Network where over 14 million Canadians watched the game in whole or in part, making it the most watched Grey Cup in history and the most watched television program in Canada in 2009, including the National Football League's Super Bowl, the Academy Awards and the Stanley Cup playoffs.

However, all is not perfect in the CFL. The Ottawa franchise needs to be revived and there should be a franchise in Atlantic Canada, hopefully in Halifax.

Moreover, with all the wonderful football talent coming out of Canadian universities now, there should be renewed recognition of Canadian players by ensuring opportunities on CFL teams for them, especially at quarterback. In most positions, Canadian players can compete with American players, as witnessed by Saskatchewan's all-Canadian receiving corps.

What is needed is a way for CFL teams to carry and develop a Canadian quarterback, perhaps allowing a fourth quarterback, provided the player is a Canadian. In Russ Jackson, Don Getty, Frank Consentino, Gerry D'Attilio and Joe Krol, all of whom played in Grey Cup games, there have been some great Canadian quarterbacks in the past — and there can be again.

Moreover, adding a Canadian quarterback in the CFL will greatly increase competition at the university level, where most of our players come from. I encourage the CFL to look into this possibility at their annual rules meeting.

Congratulations to Larry Smith, Jim Popp, Mark Treastman and the 2009 Montreal Alouettes.

ROUTINE PROCEEDINGS

STUDY ON CURRENT SOCIAL ISSUES OF LARGE CITIES

THIRTEENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE TABLED

Hon. Art Eggleton: Honourable senators, I have the honour to table, in both official languages, the thirteenth report, an interim report, of the Standing Senate Committee on Social Affairs, Science and Technology entitled: *In from the Margins: A Call to Action on Poverty, Housing and Homelessness*.

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

THE ESTIMATES, 2009-10

SUPPLEMENTARY ESTIMATES (B)— ELEVENTH REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, December 8, 2009

The Standing Senate Committee on National Finance has the honour to present its

ELEVENTH REPORT

Your committee, to which were referred the Supplementary Estimates (B), 2009-2010, has, in obedience to the Order of Reference of Tuesday, November 17, 2009, examined the said Estimates and herewith presents its report thereon.

Respectfully submitted,

JOSEPH A. DAY
Chair

(*For text of report, see today's* Journals of the Senate*, Appendix, p. 1559.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

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

ECONOMIC RECOVERY BILL (STIMULUS)

TWELFTH REPORT
OF NATIONAL FINANCE COMMITTEE PRESENTED

Hon. Joseph A. Day: Honourable senators, I have the honour to present, in both official languages, the twelfth report of the Standing Senate Committee on National Finance, which deals with Bill C-51, An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and to implement other measures.

(*For text of report, see today's* Journals of the Senate*, p. 1550.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

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

VICTIMS OF HUMAN TRAFFICKING PROTECTION ACT

BILL TO AMEND—FOURTH REPORT
OF HUMAN RIGHTS COMMITTEE PRESENTED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to present, in both official languages, the fourth report of the Standing Senate Committee on Human Rights, which deals with Bill S-223, An Act to amend the Immigration and Refugee Protection Act and to enact certain other measures in order to provide assistance and protection to victims of human trafficking.

(*For text of report, see today's* Journals of the Senate*, p. 1552.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

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

[*Translation*]

THE SENATE

NOTICE OF MOTION TO EXTEND WEDNESDAY
SITTING AND TO ALLOW COMMITTEES
TO MEET DURING SITTING OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I give notice that, later this day, I will move:

That, notwithstanding the order adopted by the Senate on February 10, 2009, when the Senate sits on Wednesday, December 9, 2009, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and

That committees of the Senate scheduled to meet on Wednesday, December 9, 2009, be authorized to sit even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

• (1440)

[*English*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

COUNCIL OF STATE GOVERNMENTS—
ANNUAL MEETING AND REGIONAL POLICY FORUM
OF EASTERN REGIONAL CONFERENCE,
AUGUST 2-5, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Council of State Governments Forty-ninth Annual Meeting and Regional Policy Forum of the Eastern Regional Conference, held in Burlington, Vermont, United States of America, from August 2 to 5, 2009.

ANNUAL MEETING OF SOUTHERN GOVERNORS'
ASSOCIATION, AUGUST 21-24, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Southern Governors' Association's Seventy-fifth Annual Meeting, held in Williamsburg, Virginia, United States of America, from August 21 to 24, 2009.

COUNCIL OF STATE GOVERNMENTS—
ANNUAL MEETING OF SOUTHERN LEGISLATIVE
CONFERENCE, AUGUST 15-19, 2009—REPORT TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Council of State Governments Sixty-third Annual Meeting of the Southern Legislative Conference, held in Winston-Salem, North Carolina, United States of America, from August 15 to 19, 2009.

[*Translation*]

THE SENATE

NOTICE OF MOTION TO PERMIT PHOTOGRAPHIC
COVERAGE DURING TRIBUTES

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That a photographer be authorized in the Senate Chamber on Thursday, December 10, 2009, during tributes for the Honourable Senator Milne, on the occasion of her retirement from the Senate, with the least possible disruption of the proceedings.

[*English*]

MOTION TO PERMIT PHOTOGRAPHIC
COVERAGE DURING TRIBUTES ADOPTED

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

> That a photographer be authorized in the Senate Chamber on Wednesday, December 9, 2009, during tributes for the Honourable Senator Grafstein, on the occasion of his retirement from the Senate, with the least possible disruption of the proceedings.

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

Hon. Senators: Agreed.

(Motion agreed to.)

HEALTH INEQUITIES

NOTICE OF INQUIRY

Hon. Wilbert J. Keon: Honourable senators, pursuant to rules 56 and 57(2), I give notice that on Thursday, December 10, 2009:

> I will call the attention of the Senate to Health Inequities in Canada.

PARLIAMENTARY REFORM

NOTICE OF INQUIRY

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, pursuant to rule 57(2), I give notice that, two days hence:

> I will call the attention of the Senate to issues relating to realistic and effective parliamentary reform.

QUESTION PERIOD

ENVIRONMENT

CLIMATE CHANGE POLICY

Hon. Grant Mitchell: Honourable senators, I was pleasantly surprised yesterday — I might have been even moderately happy — when I heard that Minister Prentice declared that Canada has a clear climate change policy.

Some Hon. Senators: Hear, hear!

Senator Mitchell: That is what I am trying to get at here. I want to share the government's enthusiasm for that.

Senator Mercer: Wait for it.

Some Hon. Senators: Stop right there.

Senator St. Germain: Perfect statement.

The Hon. the Speaker: Order. Honourable senators, the rules do permit a short preamble to a question.

Senator Mitchell: I do not know how many honourable senators remember our colleague Senator Nick Taylor. He used to say that if you throw a little bit of red meat, they start rattling the cage. Love that guy.

I want to share the enthusiasm of the government members, but I have been known to be a bit skeptical — I do not want to say cynical — about these kinds of announcements.

Therefore, I will ask the leader, who is in cabinet and who knows, I am certain, Minister Prentice, whether she is aware of or has actually seen and held in her hands a clear climate change policy detailed and written by this government.

Senator Milne: She is quiet now.

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, as I have said many times, Canada is committed to working constructively in Copenhagen. We will do our fair share, and we want to see an agreement in Copenhagen. It is in our interests, and our negotiators are working toward this goal.

The government invited provinces and territories to attend as part of Canada's delegation, which is a first for our country. Minister Prentice had consulted with his provincial and territorial colleagues in the lead up to the conference, as I reported before in this place.

As I have said many times, we want a binding agreement on all major emitters. Our targets are clear and realistic, and our government supports an approach that achieves real environmental and economic benefits for all Canadians.

Senator Tkachuk: You cannot get clearer than that.

Senator Mitchell: The leader answered a question that I did not ask. It was not a trick question, but it raises my senses of cynicism and skepticism.

Could the leader please just tell me by saying yes or no: Has the minister seen the plan that Minister Prentice said is so clear? Could the leader tell us when it will be tabled in this house so that we can all see it, too?

Senator LeBreton: The honourable senator knows that cabinet deliberations are confidential. Minister Prentice has been clear in speaking publicly, and he is committed to his work in Copenhagen. We have a first-class team of negotiators in Copenhagen.

Senator Mercer: He sees it from Washington. The mail is slow from Washington.

Senator LeBreton: Everyone who is going to Copenhagen is committed, as I mentioned in my first answer, to coming out of Copenhagen with a plan for the environment that is in the interest of not only our world partners but also in the interest of Canadians.

One thing Minister Prentice will not do is sign on to something like the previous government did, which had no intention of ever living up to the commitment.

Senator Mockler: Another question from the lost leader.

Senator Mitchell: Speaking of cabinet, it was reported by Jeffrey Simpson of *The Globe and Mail* — and I know the leader often reads reports to defend her position, so I will use one — that a senior minister in her cabinet is skeptical and does not believe in the science of climate change.

Senator Mockler: That is not factual.

Senator Mitchell: Would the minister, in the absence of any concrete plan that would suggest otherwise, please confirm that she herself believes in the science of climate change, that it is occurring and that it is driven by human activity? Could the minister let us know that?

Senator LeBreton: The last time I sat in cabinet, I did not see Jeffrey Simpson sitting at the table. I do not think this is an appropriate question because I cannot answer for Jeffrey Simpson; I can only answer for the government.

Senator Carstairs: You can answer for yourself.

Senator Mitchell: I was asking the honourable senator to answer for the government.

Senator Mockler: Another question from the lost government, the lost leader.

CANADIAN WHEAT BOARD

WORLD TRADE ORGANIZATION NEGOTIATIONS

Hon. Robert W. Peterson: Honourable senators, my question is to the Leader of the Government in the Senate. With the negotiations nearly complete on the new World Trade Organization Agreement in Geneva, prairie wheat and barley producers are concerned about the future of the Canadian Wheat Board. The current draft of the agreement would kill the Canadian Wheat Board's single desk marketing system by 2013 by a decision of governments of foreign competitor countries. We now know that Canada's negotiating team in Geneva has not been given a mandate by the government to defend the board from being gutted.

Why would the government abandon its own farmers on the world stage at this critical time?

Senator Mercer: Shameful.

Senator Peterson: The minister, however, claims the decisions about the future of the Wheat Board will be made in Canada.

Honourable senators, backroom secrecy in the Prime Minister's Office is not what farmers have in mind when they think of a made-in-Canada decision. The only acceptable decision is one made democratically by Western farmers themselves.

When will the government stop trying to kill the Wheat Board? As the courts and the farmers themselves have clearly said, it does not have the right to do so.

Senator Tkachuk: The guy who wrote that is from Nova Scotia. They are really up in arms.

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, the government's intentions were not written in the Prime Minister's Office, as the honourable senator claimed.

• (1450)

The government's position with regard to the Canadian Wheat Board was clear in the last two general elections. We obviously have different views from those of the opposition on the role of the Wheat Board.

We will continue to work with the board to ensure that it serves the best interest of farmers and maximizes every marketing opportunity available. While there may be differences in approach, we all agree that farming is changing and the Wheat Board must change with it.

Senator Peterson: I have a supplementary question. I am not so sure that Western farmers will be happy with the response but, to be clear, is the minister saying that her government has no intention of supporting Western farmers in their fight to protect the status of the Canadian Wheat Board at the WTO negotiations in Geneva?

Senator LeBreton: Our view on the Canadian Wheat Board is well known. Two elections have been held where our position on the Wheat Board has been made known.

Senator Mercer: Answer the question. Will the honourable senator stand up for Canadian farmers?

Senator LeBreton: As I said previously, we believe in marketing choice.

FOREIGN AFFAIRS

CANADIAN ECUMENICAL JUSTICE INITIATIVES

Hon. Mobina S. B. Jaffer: Honourable senators, my question is for the Leader of the Government in the Senate. In January 2010, Kairos: Canadian Ecumenical Justice Initiatives of Christian organizations that aim to effect social change through advocacy, education and research programs, was to initiate work on its gender-based violence legal clinic in Congo. The goal of the gender-based violence legal clinic was for women who are currently targeted by different forms of human rights violations, particularly sexual violence. In eastern Congo in 2005, 40,000 women were raped in the Kivu district alone.

Recently, the Minister of International Cooperation announced that the government has cut the funding for this multi-year project that was to begin in January 2010.

How can a project like this one be cut, particularly when the Development Assistance Accountability Act is concerned with the promotion of international human rights standards?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, our government is committed to making Canada's international systems more focused, efficient and accountable. In the effort to reach this goal, tough decisions must be made.

We focused on 20 countries and have established three priority themes for the Canadian International Development Agency. These themes are food security, children and youth, and economic growth. After completing the due diligence, it was determined that the organization's project did not meet these priorities.

Senator Jaffer: As Canada's envoy in the Sudan, I observed the work Kairos undertook with children in the Sudan and in other parts of Africa. How can CIDA justify, at the last minute, cutting Kairos's project when it was contributing such good work on behalf of all of us?

Senator LeBreton: As I said, honourable senators, tough decisions had to be made. We are not moving away from funding church groups. For example, we are supporting The Primate's World Relief and Development Fund, the Catholic Agency for International Aid and Development, the Mennonite Central Committee, the United Church of Canada and World Vision. Only last week, the Minister of International Cooperation announced $30 million for the World Food Programme, which will help feed almost 17 million people in developing nations. In fact, honourable senators, CIDA's $30 million contribution is in addition to the $185 million that we have provided to the World Food Programme so far in 2009, making Canada one of their strongest partners.

LABOUR

MUSEUMS LABOUR DISPUTE

Hon. Sharon Carstairs: Honourable senators, we are approaching Christmas and yet, as we drive in to Parliament Hill every day, we see representatives of hundreds of museum workers for the Canadian Museum of Civilization and the Canadian War Museum still on strike.

We have seen absolutely no action from this government. These employees have indicated that they are prepared to go to binding arbitration. This minister was prepared, in fact, we were all on high alert last week when CN Rail engineers were on strike, to compel them to go to binding arbitration.

When will the Minister of Labour act so that the children of this country, who are being denied the programs at the Canadian War Museum and at the Museum of Civilization, can have those programs reinstated?

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, I answered this question last week. As honourable senators know, a mediator has been working on this issue since before the walkout. Minister Rona Ambrose has indicated that she is prepared to name an arbitrator but that cannot happen until both sides agree on the arbitrator. Minister Ambrose stands ready to move on this issue quickly if both parties agree.

As I stated last week, it is to be hoped that both parties will come to the table and resolve this matter because, as the honourable senator states, valuable work and access are being denied to Canadians who wish to use the facilities of the museums.

Again, honourable senators, the minister is ready to proceed. Hopefully, both sides will agree to an arbitrator and will settle this strike.

Senator Carstairs: The Minister of Labour is not prepared to do what she must do. All she had to do with the CN Rail strike was, frankly, threaten to introduce back-to-work legislation and she brought both sides to the table. Why is the minister unwilling to use that leverage with respect to our own employees at these museums?

Senator LeBreton: Honourable senators, the mediator who is working with both parties has worked hard to resolve this issue. The minister is prepared to name an arbitrator; both sides must agree. The situation of CN Rail had serious economic

consequences. That is not in any way to undermine the seriousness of this strike as well. The minister has indicated her willingness to name an arbitrator. Both sides must agree, however. At this point, we are still hopeful that both sides will agree to this and an arbitrator will be named to resolve this strike.

Senator Carstairs: With the greatest respect, the strike has been going on for three months. The mediator has not been able to get a resolution. The arbitrator has not been appointed because the employer is not willing to come to the table. The employer — us — is unwilling to come to the table.

Surely, after this length of time, the government must be prepared to put the cultural interests of Canadians at the same level as their economic interests.

Senator LeBreton: Honourable senators, there is nothing more that I can add to what Minister Ambrose has been doing on this file. I know people are concerned about the strike dragging on — in particular, people who access the museums in this city and those who visit this city. However, I will make the honourable senator's views known to Minister Ambrose.

[*Translation*]

Hon. Jean Lapointe: Does the minister know who is preventing the arbitration process from going forward?

[*English*]

Senator LeBreton: Honourable senators, I do not personally know that, but I will take the honourable senator's question as notice.

[*Translation*]

Senator Lapointe: Honourable senators, I will end by saying that I know who is responsible, and if an arbitrator is not named by tomorrow's Question Period, I will reveal that person's name.

• (1500)

OFFICIAL LANGUAGES

TABLING OF REPORTS

Hon. Claudette Tardif (Deputy Leader of the Opposition): My question is for the Leader of the Government in the Senate. The final report on the 2003-2008 Official Languages Action Plan should have been tabled before the Roadmap for Canada's Linguistic Duality 2008-2013 was introduced. Allow me to read from section 36 of the accountability and coordination framework in Annex A of the action plan:

> In accordance with the mandate he has received from the Prime Minister, the Minister responsible works with the President of the Treasury Board, the Minister of Justice and the Minister of Canadian Heritage to coordinate the presentation to the government of interim and final reports on the implementation of the Action Plan.

The interim report has been presented, but not the final report. When will the final report on the action plan be presented?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): Honourable senators, I will make inquiries with my colleague, the Honourable James Moore, and report back as soon as possible.

[*Translation*]

Senator Tardif: Thank you, Madam Minister. Perhaps you could also ask him how we can prepare for and compare the results of the Roadmap, since there was no final assessment of the results from the 2003-2008 Action Plan. What criteria will be used to assess the Roadmap?

[*English*]

Senator LeBreton: I will be happy to do so.

LABOUR

MUSEUMS LABOUR DISPUTE

Hon. Terry M. Mercer: Honourable senators, I wish to follow up on the questions of Senator Carstairs and Senator Lapointe with respect to the strike of the museum workers.

I understand that the leader's responsibility is as Leader of the Government in the Senate, but her other colleagues in cabinet have specific responsibilities, besides Minister Ambrose, the Minister of Labour, who seems to be, in my estimation, abdicating her responsibility. We have two political ministers involved here. The political minister responsible for Eastern Ontario is Mr. Baird and the political minister responsible for Western Quebec is Mr. Cannon.

I urge the leader, as a long-time resident of the National Capital Region, to talk to both Mr. Baird and Mr. Cannon. Perhaps the three of them could urge Ms. Ambrose to finally move and get this strike over with. We are getting close to Christmas. These people have suffered too long, basically because of the inaction of the employer, which is the Government of Canada. I urge the leader to do that as quickly as possible.

Hon. Marjory LeBreton (Leader of the Government and Minister of State (Seniors)): The honourable senator might as well throw me into the bargain too, because one of the museums is on LeBreton Flats.

Honourable senators, Minister Ambrose has worked diligently on this matter. I do not believe for a moment that she has abdicated her responsibilities. I will be pleased, honourable senators, to speak to my colleagues Minister Cannon and Minister Baird. I am well aware that these museums are in their jurisdictions. There is also the matter of the board of directors and Mr. Rabinovitch. There are many players involved here.

I have read all the email tracks from the striking workers. It is hoped, as I have said before, that both sides will agree to an arbitrator and that this matter will be resolved as quickly as possible.

ORDERS OF THE DAY

POINT OF ORDER

SPEAKER'S RULING RESERVED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I rise on a point of order concerning a report of the Standing Senate Committee on National Finance on Bill C-51, which was brought in earlier today. This is an act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and to implement other measures. I will demonstrate that the committee erred in recommending these amendments. Under the practices of the Senate, they are clearly out of order.

Bill C-51 was referred to the National Finance Committee on December 2, 2009. By way of this reference, the committee was empowered to examine the provisions of the bill, but this power clearly does not extend to the provisions of the Patent Act that are being amended by Bill C-51.

Honourable senators, the procedural authorities are clear on this point. The second edition of the *House of Commons Procedure and Practice* states, at page 766 and 767:

> . . . an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.

Before someone gets up and says this is from the rules of House of Commons, in fact the rules of the House of Commons do apply in this case because this is a bill that originated in the other place. This is a government bill and a budget bill, on top of that.

In the section entitled "The Admissibility of Amendments in Committee," the sixth edition of *Beauchesne* notes, on page 207:

> An amendment may not amend sections from the original Act unless they are specifically being amended in a clause of the bill before the committee.

Honourable senators, clauses 63 to 66 of Bill C-51 propose to amend the following sections of the Bankruptcy and Insolvency Act: Sections 65.11(10)(*a*), 84.1, 84.2 and 88. These are the only sections of the Bankruptcy and Insolvency Act being amended by Bill C-51, no more and no less.

The Standing Senate Committee on National Finance reported the bill back with amendments to the following sections of the Bankruptcy and Insolvency Act. It proposes to amend clauses 60(1.5)(*a*)(ii)(A), 60(1.5)(*a*)(iii)(A) and subsections 81.3(1), 81.4(1), 81.5(1)(*b*)(i), 81.5(1)(*c*)(i), 81.6(1)(*b*)(i) and 81.6(1)(*c*)(i).

Honourable senators, the National Finance Committee exceeded its authority in reporting amendments to sections of the Bankruptcy and Insolvency Act that are not being amended by Bill C-51. I submit that the amendments to Bill C-51 reported by the Standing Senate Committee on National Finance are out of order.

Hon. Sharon Carstairs: Honourable senators, I will be pleased to address this particular point of order. I happen to have attended the National Finance Committee meeting this morning and I took with great interest the amendments that were proposed, in this case by Senator Ringuette.

It is quite true that there are limited ways in which we can amend acts if certain provisions of those acts are not before us. However, if one carefully examines Bill C-51, one will read on page 46 that the bill, as presented by the government, specifically addresses, with a topic heading, the amendments related to the Bankruptcy and Insolvency Act.

As a result of that, the government has in fact opened that act. Once the government has opened the act and is itself proposing amendments to that act, then that act, I would submit, becomes open to the rest of us to make the appropriate amendments to that act.

Had the government made no amendments whatsoever to the Bankruptcy and Insolvency Act, I would suggest that Senator Comeau would have a good case. However, the government did open the act and, in so doing, gave all honourable senators the opportunity to use those amendments to bring about much-needed amendments to the Bankruptcy and Insolvency Act.

• (1510)

Hon. Consiglio Di Nino: Honourable senators, I have a few brief comments. I raised the issue at a meeting of the Standing Senate Committee on National Finance because I really believe that the amendments introduce a new purpose not intended by Bill C-51. The amendments go beyond the scope of Bill C-51. When Senator Carstairs talked about the government opening up the particular act. The summary of Bill C-51, the last item — this may be a fine difference but there is a difference — reads:

> Part 2 . . . also amends the Bankruptcy and Insolvency Act and chapter 36 of the Statutes of Canada, 2007 to correct unintended consequences resulting from the inaccurate coordination of two amending Acts.

I would submit it is not opening up the act but is a consequence of actions taken that, in effect, opened up the act. As it says in the bill itself, "unintended."

Hon. Joseph A. Day: I do not know if honourable senators feel the same, but I am at somewhat of a difficulty following the debate without a copy of the report in front of me. The report filed earlier today has not been passed out yet, and I suggest that perhaps we should await further debate on this particular matter until we receive the document we are talking about.

Hon. Jerahmiel S. Grafstein: On the same point, honourable senators, I have just been given the bill by Senator Carstairs. I have heard the argument before. Again, I urge the Speaker to look at page 46, amendments related to the Bankruptcy and Insolvency Act. It deals with specific amendments and then it concludes with sections referring to the Bankruptcy and Insolvency Act, section 66:

> Sections 84.1 and 84.2 of the Bankruptcy and Insolvency Act, as enacted by section 64, and section 88 of that Act, as enacted by section 65, apply to proceedings commenced under that Act on or after the date on which this Act receives royal assent.

It is clear on the face of it, prima facie, that the matter has been opened, that amendments are appropriate, and it brings us to the practice that recently, in the last decade or so — and it is not just this government but previous governments — has been adopted, particularly when it comes to appropriations, by taking the subject matter of one act and using that as a indirect means of amending a whole series of acts, which are far reaching in effect. The chairman of the Finance Committee, my colleague Senator Day, has brought that to the attention of all honourable senators and forced us to read some of these provisions.

This is nothing new; this is the Departments of Justice and Finance, the bureaucracy using an opportunity to jam through, under different colours, far-reaching provisions that have a huge impact on the policies of Canada. I am not condemning or criticizing the government for this particular practice. It is a practice that has grown up. The Senate, which is supposed to be the chamber of second sober thought in giving legislation careful review, has been pre-empted from doing so because of the timing and the means of doing so. Clearly the practice is wrong. Clearly it goes to the heart of the rules of this place; it goes to the heart of Beauchesne. You cannot do indirectly what you choose not to do directly. That is what has happened. It is a bad practice, and I hope the Speaker will address this matter, clarify and allow us to proceed with these amendments.

Hon. Hector Daniel Lang: Honourable senators, I too attended that particular meeting this morning, and it was made very clear to me that what was brought forward is what I would call a midnight amendment. This amendment came forward at the last second, and it has great implications to this house and to the other place, both financial and otherwise, as well as to the questions that face those people today.

As my fellow senator said, it is beyond the scope of the section that was to be dealt with in the bill before us.

I would submit, honourable senators, when the Speaker prepares to rule, if we allow this, it will permit us, at any given time when an amendment on a piece of legislation is introduced for our consideration, to do anything we want in the scope of that broad piece of legislation. I do not think that was the intention for this bill or any bill put before the house. Quite frankly, I was taken aback as a member of the committee to have such a significant amendment brought forward at the last second for our consideration. We dealt with it in the space of about twelve and a half minutes. Honourable senators, I would not call that something coming from the house of second sober thought.

Your Honour, my colleague is correct: This has gone well and far beyond the scope of the amendment put forward for our consideration at the committee meeting this morning.

Hon. Anne C. Cools: Honourable senators, I rise to speak on this point of order raised by Senator Comeau. I would like to support the fact that these amendments as contained in the report on Bill C-51 are in order. I was not at the committee meeting in question, so I do not have the first-hand experience of some of the honourable senators. I have listened with some care to Senator Comeau, Senator Di Nino, Senator Lang and also to Senator Carstairs. I am having a bit of difficulty following the debate because the debate has involved some novel language such as "midnight" amendments. I do not know what they are, but I admit I come from another generation. Senator Di Nino spoke of the amendment not being within the purpose of the bill. The purpose of this bill is so wide in scope that it is very difficult indeed to say as much.

Honourable senators, I support Senator Grafstein, as the honourable senator has been observing, for some time now, that these so-called budget implementation bills have seemed to grow like topsy. There are just too many unrelated issues and unrelated questions included in them, and that in itself deserves some study. I invite honourable senators to resist the temptation to listen to some of the arguments that have been tendered by the government because the government has led in placing the Bankruptcy and Insolvency Act to the committee. Senator Carstairs has observed and has used the term "open the act." That is the proper and correct constitutional language. The practice and the rules of this house are to the effect that in the course of amending a bill before us we cannot wander into new terrain other statutes that have not been before us in the bill. However, Bill C-51 goes into the terrain, the Bankruptcy and Insolvency Act. The word is "open." It opens that act. Bill C-51 is an act to implement certain provisions of the budget tabled in Parliament on January 27, 2009, and to implement other measures.

• (1520)

By the way, honourable senators, there is a misstatement that continues to be made in this place and the other: "tabled" in Parliament. Bills are introduced in one house or the other, but some continue to speak about them being "tabled" in Parliament. It does not work that way. That is another story for another day.

In any event, honourable senators, at page 46 of Bill C-51, as has been stated here, the bill itself opens up the Bankruptcy and Insolvency Act and amends the act in its sections 63, 64 and 65. As you can see, those amendments are substantial. They cover from its page 46 right through to page 49. For that reason, the argument that to move an amendment to Bill C-51 in respect of those sections of the act that have already been opened is a spurious and specious argument. That is one statement I want to put on the record.

Honourable senators, I appeal to senators once again. These omnibus-type bills are being overused by the government. I entreat members to try to correct that overuse. It does not matter who began it; bad practice is bad practice. My honourable friend, Senator Angus, says it was the Liberals. I do not see any Liberals in government these days, yet the practice continues. At the end of the day, a bad practice is a bad practice under any name. The sections are open and the act itself is open, so one can hardly accuse Senator Ringuette of acting improperly.

Honourable senators, I want to speak to this whole question of the scope of the bill and the purpose of the bill. I am having difficulty with it. From what I can comprehend or grasp — and I could be very wrong, some senators are using the words "scope" and "purpose" to somehow allude to the BNA Act, particularly section 54. I shall put that on the record for His Honour's sake; it is important for us to give His Honour as much information as we can.

Section 54 of the BNA Act, 1867 states:

> It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

That provision is a House of Commons matter, frankly, honourable senators. With respect to those two sections of the BNA Act, section 53 and section 54, one is a limitation on the Senate and one is a limitation on the House of Commons. That particular section is a limitation on the House of Commons. I think those arguments are spurious and may not stand in the way.

Honourable senators, I would like to answer some senators. I can accept the fact that there was no mal-intention ever intended. I have been to many committee meetings. However, it is not unusual — as a matter of fact, I would say it is usual — for committee meetings, particularly at the end of a study of a bill, to move to clause-by-clause consideration. I assume that this is what happened, at which time committee members would have been free to propose amendments. Those committee members are under no obligations whatsoever to give their adversaries any notice. Often, those amendments are made in those last 15 or 20 minutes of a committee meeting. That should surprise absolutely no one and it should not seem as though Senator Ringuette was acting improperly.

Honourable senators, from my quick view of it — and I confess, as I said before, I was not at the committee; I have not read the bill from cover to cover; this is not something that I paid a lot of attention to. I happened to receive, as everyone did, the report in my hands. One of the pleasant young pages here sprung a copy of the bill into my hands, I looked it up and from my quick view of it, I agree that Senator Ringuette's amendments to Bill C-51 are in order.

Honourable senators, if it was thought that those amendments were inadmissible or out of order — and I do not know why — we beg the question as to why these issues were not raised in committee. Maybe they were; I do not know. Maybe we can look at that matter another time. However, it seems to me we are always affirming the rule that committees are masters of their proceedings. Maybe someone tried to raise points of order and failed to succeed for some reason or another.

Honourable senators, in any event, what we have before us is a report that has already been adopted in the committee. Let us understand that this matter is serious. What we have before us is a report of the committee that has been adopted there, which means that the house has one of two choices: to reject the report in its entirety or in part, which can be done by a vote; or, alternatively, to send the report back to committee for reconsideration. That completes my remarks, honourable senators. Senator Ringuette is in order. I do not know if I agree with her on the substance, but she is in order.

Hon. Pierrette Ringuette: Honourable senators, I was caught off guard somewhat because after the chair of the committee tabled the report, we were told that we would deal with the report and the bill, as amended, tomorrow. I guess if there is a first point of order to be looked into, it is exactly that; that this house has not abided by the rules about committee reports and that this specific committee report was to be looked into and discussed in this chamber tomorrow.

However, honourable senators, since His Honour has agreed to listen to the point of order that was brought by Senator Comeau and Senator Di Nino, before proceeding I will say also that a point of order on the same issue was brought in front of the committee, and I would like His Honour to look at the proceedings and the ruling at the committee that has set a precedent with regard to Bill C-51.

With respect to Bill C-51, it is called the budget bill, but only by name. In reality, Bill C-51 is an omnibus bill. It is not a money bill with regard to the amendments in the Bankruptcy and Insolvency Act. It is not a money bill for the government. It is, however, a money bill for the hundreds of thousands of employees who have been loyal to corporations for 30 to 35 years and those corporations have turned their backs on these employees and have not put sufficient money into pension funds.

By not accepting these amendments, honourable senators are saying that they want the Canadian chartered banks that have received $93 billion through taxpayers' money into pension funds.

• (1530)

By not accepting these amendments, the government is saying is that they would like the Canadian chartered banks, that have already received $93 billion through taxpayers' money from this government, to continue to receive more money, rather than the hard-working Canadians who have been working 30 and 35 years for those corporations. For those Canadians to receive that money would only be fairness.

What is happening here, Your Honour, is that we have procedural and political games going on.

I will tell honourable senators this: This weekend I will have been in this place for seven years. Not one of you can say that I have not defended the people who sent us parliamentarians here, not defended the small- and medium-sized businesses, and not defended hard-working Canadians. I am still doing this, and I will continue to do it until my last breath.

Some Hon. Senators: Hear, hear!

Senator Ringuette: I can table, Your Honour, the proceedings of the committee on December 3, when we started hearings on Bill C-51 with the different officials as witnesses. If one looks through the 37 pages of testimony of the officials, one will see that most of this omnibus bill consists of amendments to acts and that they are not, per se, new issues. My issue is an amendment also.

The officials constantly told us that this was housekeeping, over and over. That is a further indication that this is an omnibus bill.

Pages 1 to 17 of the bill amend the Income Tax Act. Pages 18 to 20 relate to Bretton Woods, and that is not in the budget. The beef farmers' issue is not contained in the budget. At page 21 we have the Broadcasting Act to increase their loan and that is not in the budget. Pages 21 to 40 are 20 pages of legislation not contained in the budget. Actually, honourable senators, it only amends the Canada Pension Plan in the year 2012. How is that for housekeeping?

Pages 41 and 42 are about Nova Scotia petroleum and will only come into effect in April, 2010. Pages 43 to 44 relate to containers, also the same issue. Pages 45 to 46 deal with the quarterly financial reports.

On page 46 there is the pension plan for PPP Canada Inc, public-private partnerships. For the people who were at the meeting of the Standing Senate Committee on National Finance a month ago, and for the people who read the report of the Public Service Commission, there was an audit done on this particular group. Most of the employees hired have no proof of their competencies. There was no public hiring process. The government is now asking for pensions for those employees.

On pages 46 to 49 is the Bankruptcy and Insolvency Act. That is not in the budget either.

Honourable senators, this omnibus bill, Bill C-51, is 49 pages in length. There are 13 pages that are budget-related. Therefore, 26 per cent of this bill is budget-related; 36 per cent is non-budget-related. In other words, 74 per cent of this bill is about amendments qualified by the officials of government as "housekeeping."

What is the purpose of these two amendments that I have tabled?

Honourable senators will recall that about six weeks ago there was a major demonstration on Parliament Hill by a group of seniors who used to work for Nortel. Most of them had worked for at least 30 years for Nortel. They had worked hard and dedicated much of their family time to the success of that corporation. Some of them have now retired. Others had planned to retired. Others of them are still employees, but maybe not for long. They were here to ask parliamentarians to give them — at a minimum — dignity in their senior years through a process that would mean zero spending and zero commitment by this government. It would be only a small amendment to the Bankruptcy and Insolvency Act.

The bankruptcy act was opened up through Bill C-51. The two amendments that I have proposed to the Bankruptcy and Insolvency Act are to do exactly what the Nortel pensioners want; what the AbitibiBowater pensioners and employees want; what the Fraser Papers employees and pensioners want; what the Canwest pensioners and employees want; and what 1.6 million Canadians, who are now working in corporations with under-funded pension plans that are all subject in these times of economic crisis to bankruptcy, want.

The two amendments that I am proposing are to ensure that the liability from the pension fund for those hard-working Canadians stands on the same ground as all those Canadian banks that are making billions in profit and buying financial institutions in the U.S. and the U.K. and not treating Canadians decently, the Canadians who have built those financial institutions.

When a corporation files for bankruptcy, these amendments are to include unfunded pensions of retirees and employees at the same level as creditors. If one looks at the definition of "creditor," it will generally describe a company that has provided goods and services and has not been wholly or partially paid. That is exactly what pension funds are. They are a contract between the employer and the employee. The employer has not lived up to and paid the employee what he or she is owed.

In recent months some major Canadian corporations have filed for bankruptcy.

• (1540)

Last year, honourable senators, we amended the Bankruptcy and Insolvency Act to protect employees' salaries from other priority benefactors of liquidity provided by the Bankruptcy and Insolvency Act.

My next door neighbour is a chemical engineer who retired four years ago from Fraser Inc. in Edmundston. Fraser has used funds for miscellaneous purposes that, by contract, should have been invested. Fraser filed bankruptcy with a total debt of $300 million. The company owes current and former employees $180 million in pension payments. Sixty per cent of the company's debt is to the pension plan.

In addition to losing 40 per cent of their pensions, these people have already lost their plan benefits. As we become older, our health becomes more delicate. Some Fraser retirees had prescription drug benefits of up to $900 a month. They no longer have that benefit. That was not in their retirement plan.

If this amendment does not pass, Fraser employees and retirees will lose 40 per cent of their income. A 60-per-cent pension on a salary of $50,000 for the last five years is $30,000. By losing 40 per cent of their pension, they lose $12,000 a year, bringing their family income, after 30 or 35 years of loyalty and hard work, to $18,000, which is below the poverty line anywhere in this country.

I emphasize that these amendments will cost the government nothing. Yet, how many thousands of families will be brought below the poverty level if these amendments are not accepted? How can honourable senators take their Christmas break with their secure salary, their secure pension plan and their secure health plan having said "no" to these hard-working people? How can honourable senators do that?

Honourable senators, I come from a poor family. I know what it is to work and yet live below the poverty line. No hard-working Canadian deserves that from any one of us, not with our protected incomes and pensions. If honourable senators play games on procedure, they are playing games with the livelihoods of hundreds of thousands of Canadians. If that is what honourable senators want, go ahead and play them.

The Hon. the Speaker: I thank all honourable senators for their interventions. I will take the matter under advisement.

ELECTRONIC COMMERCE PROTECTION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Donald H. Oliver moved second reading of Bill C-27, An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.

He said: Honourable senators, I am pleased to rise in my place today to begin second reading debate on Bill C-27, the electronic commerce protection act. I have actively supported a stand-alone piece of legislation to combat spam for some six years. I have introduced, on separate occasions, two private member's bills in this place in pursuit of my goal to prevent unsolicited messages on the Internet, so I take much personal satisfaction in seeing this bill come from the other place where its principles enjoyed widespread support.

Some honourable senators may recall that in February 2005, when I spoke in this chamber on Bill S-15, I quoted Bill Gates. He had pointed out that spam had become more than an annoyance; it exposed families and children to pornography and fraudulent content, and it cost businesses millions of dollars a year.

I also reminded this chamber of what was then a new phenomenon called "phishing;" emails in which someone falsely claimed to be a legitimate enterprise in an attempt to scam the user into providing private information that could be used for identity theft.

Today, the problems associated with spam have become even worse. Some of the most malicious forms of spam include "Trojan horses" and other "malware" that gives others control over one's computer, turning it into what has been called a "zombie computer." By remotely controlling these zombies, spammers spread further emails.

It is little wonder, then, that the volume of spam continues to grow. Unsolicited emails represent between 80 per cent and 90 per cent of email traffic around the world. It is estimated that last year, a total of 62 trillion spam emails were sent.

A poll in 2007 found that Canadians received an average of 130 spam messages each week. That number was up 51 per cent from the previous year. I am sure that we can provide our own anecdotal evidence that the amount of spam continues to grow. In April 2008, an EKOS survey showed that 72 per cent of Canadians considered spam to be a major problem.

Honourable senators, when spam is used in these ways, it undermines the trust that businesses and consumers have in the digital world. As I have pointed out in this chamber before, spam is a serious threat to the great promise of the Internet for individuals, for businesses, for governments and for society at large.

The last time I brought forward an anti-spam bill, some industry stakeholders argued that Canada did not need a piece of stand-alone legislation. Some thought that all Canada required was more public awareness so that consumers could stop buying from spammers.

• (1550)

Honourable senators, this was a weak argument then. It is even weaker now, at a time when we want to encourage trust and confidence in the digital economy. We want consumers to know that the Government of Canada is on guard against those who would use email for malicious and fraudulent purposes.

In fact, the bill before us represents part of the Government of Canada's broad-based efforts to foster more electronic commerce in Canada and put us at the forefront of the digital economy. The Government of Canada has begun consultations on ways to modernize the Copyright Act. It also intends to table amendments to the Personal Information Protection and Electronic Documents Act, PIPEDA.

In the years that have passed since I introduced my first piece of anti-spam legislation, the government has marshalled the forces necessary to win the war against spam. We have the findings, for example, of the 2005 report of the Task Force on Spam that called for strong legislation against spam. Honourable senators, I had an opportunity to appear on two occasions before that task force. On each occasion, I was asked to bring forward arguments to try to persuade them that we did need a stand-alone piece of legislation. I was successful in that.

We continue to learn from the experience of other countries in constructing and applying their anti-spam regimes. For example, we saw how the legislation in Australia was very effective in cutting down the amount of spam-based pornography and the impact that the private right of action had in curtailing phishing and other forms of spam in the United States.

Honourable senators, I believe that the bill before us has benefited from study by the Standing Committee on Industry, Science and Technology in the other place and will capture the intent of both Senator Goldstein's and my efforts with our private members' bills. It is a long awaited measure that will put in place many of the recommendations of the Task Force on Spam. We will finally have legislation that will put an end to Canada's reputation as a place where spammers can flourish.

Bill C-27 prohibits the sending of unsolicited commercial electronic messages; the use of false and misleading representations online, including websites and addresses; the use of computer systems to collect electronic addresses without consent; the unauthorized altering of transmission data; the installation of computer programs without consent; and the unauthorized access to a computer system to collect personal information without consent.

Much of the strength of the bill before us comes from the enforcement regime. Honourable senators may recall that I pointed to the enforcement challenges when speaking on my original bill. I was pleased to see that the bill before us not only outlines the various responsibilities of the CRTC, the Competition Bureau and the Privacy Commissioner, but it enables these bodies to work together and with their international counterparts.

For example, the CRTC will enforce the provisions against sending unsolicited commercial messages and will have responsibility for the provisions that prohibit the altering of transmission data without authorization. It will further prohibit the surreptitious installation of programs on computer systems and networks by requiring consent for the installation of all computer programs. In this way, we can help stem the flow of malicious computer programs such as spyware and keyloggers.

Bill C-27 gives the Competition Bureau a mandate to address false and misleading representations online and deceptive marketplace practices such as false headers and website content.

The Office of the Privacy Commissioner has responsibilities to protect personal information in Canada. Bill C-27 prohibits the collection of personal information without consent through unauthorized access to computer systems and the unauthorized compiling or supplying of lists of electronic addresses.

Honourable senators, the bill provides the CRTC with administrative monetary penalties, AMPS, of up to $1 million per violation for individuals and up to $10 million for businesses. The Competition Bureau will also administer AMPS under the current AMPS regime in the Competition Act of up to $750,000 for individuals with $1 million for subsequent violations and up to $10 million for businesses with $15 million per subsequent violation.

Bill C-27 also provides a private right of action in which individuals and businesses may pursue actions against spammers in the civil courts. For example, it would permit an online retailer that was a victim of a denial of service attack to pursue both the persons who conducted the attack and the persons who paid for and directed the attack to recoup the actual business losses incurred and, in appropriate circumstances, obtain statutory damages.

As we introduce these provisions to protect the interests of consumers against spam, we must also take care not to restrict the legitimate use of emails for commerce. I will speak to some of those specifics of the bill later.

Clause 6 of Bill C-27 prohibits the sending of unsolicited commercial electronic messages, commonly referred to as spam. The consent regime to allow for the sending of commercial electronic messages is based on an "opt-in" regime that stipulates no electronic message can be spent without the individual opting in by way of express consent or at least implied consent.

Implied consent arises where there is an existing business relationship or an existing non-business relationship. Implied consent covers situations where intended use or disclosure is obvious from the context and the organizations can assume, with little or no risk, that the individual is aware of and consents to the reception of the commercial electronic message. This implied consent can be used within a 24-month period unless, of course, the individual has opted out of receiving messages.

There is a time-limited exemption for those existing businesses and non-business relationships that are in effect prior to the act coming into force. These are covered in what is called the transitional or grandfather clauses found in clause 63.1 of the bill. They extend the implied consent regime for a period of 36 months — which I think is a long time — to allow commercial entities time to contact existing clients and obtain their express consent for future communications.

The act also permits implied consent to be used in the case where there has been conspicuous publication of an electronic address, such as on a website or in a print advertisement. In these circumstances, the sender's message must be relevant to the person's business, role, functions or duties in a business or official capacity.

Honourable senators, there is a clause that clarifies that in the instance of the sale of a business, the purchaser is deemed to have an existing business relationship with the seller's clientele.

In these ways, we cut down unsolicited email, but we leave the electronic avenues open for legitimate commerce.

Honourable senators, transmission data relates to the telecommunications functions of dialling, routing, addressing or signalling a message. Clause 7 of Bill C-27 prohibits the unauthorized alteration of transmission data. This forbids any person from changing the transmission data of any message that would cause the message to be delivered to a destination other than or in addition to that requested by the sender, unless the alteration is made with the express consent of the sender or in accordance with a court order.

This clause prohibits persons from accessing networks in order to alter transmission data. This addresses, among other things, the issue of "pharming" whereby violators intentionally alter the transmission data to redirect unsuspecting Internet users to false websites or caller ID spoofing, where individuals alter the caller ID in an attempt to identify themselves as a trusted source, such as a financial institution.

• (1600)

Clause 8 of the bill prohibits the unauthorized installation of a computer program on another person's computer system which causes an electronic message to be sent from the computer system, unless the express consent of the owner or authorized user of the computer system has already been acquired.

This clause is designed to address the installation of malicious computer programs, which include malicious software, viruses and spyware, as these programs are often a precursor to more malicious online activity. The clause also prohibits the further use of the computer program installed to send out electronic messages without consent, as a computer infected with a virus can be remotely controlled. It should be noted, honourable senators, that the majority of spam is currently sent through virus-infected computers.

Another issue addressed by this provision is something called a denial of service attack, which is also conducted through remotely controlled computers. Denial of service attacks are attempts to keep a server, a network or a website down by flooding it with a whole series of unwanted traffic.

Express consent is always required in order to install a new computer program, with certain exceptions allowing for automatic updates or upgrades. This bill contains provisions to ensure, for example, that automatic upgrades to antivirus software will not be treated as spam under the law. This means that running some applets such as JavaScript and Flash programs will not require express consent every time these programs are run. Other limited exceptions are also defined.

The Competition Act amendments add violations respecting misleading and deceptive representation in online commercial messaging, including false headers, subject lines, websites and electronic addresses. These new prohibitions are designed to allow the Competition Bureau to better address aspects that relate to unfair and deceptive market practices.

The amendments to PIPEDA contained in clause 78 of the bill address the unauthorized collection of electronic addresses, commonly referred to as address harvesting, and the collection of personal information without consent by way of unauthorized access to a computer system. Address harvesting is the collection of bulk lists of email addresses by automated means.

The second amendment is meant to protect personal information stored on commercial or corporate computer systems from unauthorized collection. While clause 8 of the bill addresses unauthorized installation of computer programs, this clause addresses the subsequent use of such software to collect personal information about the computer users themselves.

Honourable senators, I believe this bill strikes the balance required to encourage the digital economy to flourish based on innovation on the part of legitimate businesses and confidence on the part of consumers.

I have said in this chamber many times that Canada has been one of the few industrialized countries that did not have a regulatory regime to control spam. Today, I am pleased, excited and proud to see that this lack of protection for businesses and consumers will soon be at an end. I urge all honourable senators to join me in supporting the principle of this significant piece of legislation.

(On motion of Senator Tardif, debate adjourned.)

[*Translation*]

THE SENATE

MOTION TO EXTEND WEDNESDAY SITTING AND TO ALLOW COMMITTEES TO MEET DURING SITTING OF THE SENATE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government) pursuant to notice of earlier this day, moved:

> That, notwithstanding the order adopted by the Senate on February 10, 2009, when the Senate sits on Wednesday, December 9, 2009, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1);
>
> That committees of the Senate scheduled to meet on Wednesday, December 9, 2009 be authorized to sit even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[*English*]

Hon. Claudette Tardif (Deputy Leader of the Opposition): I would like to seek clarification from the honourable senator. In our discussions this morning, it was indicated that, because of the circumstances of a Liberal Christmas party, we would be quite willing to extend the hours after four o'clock to six o'clock tomorrow evening.

Is that understood in your motion, honourable senator?

Senator Comeau: Yes. We may be getting the HST bill tomorrow evening. If that were to be the case, would the honourable senator be agreeable that all other items on the Order Paper would remain in their place and that we would have a small group here in the Senate to receive the HST bill without necessarily getting into anything other than possibly moving it to second reading?

We would not touch any other item, other than receiving the HST bill.

Senator Tardif: That would be agreeable to this side if the sole purpose is to receive the Bill C-62, on the HST, after 6 p.m.

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

Hon. Joseph A. Day: May I have further clarification? Assuming the bill is received tomorrow evening — which I hope it is — is it the honourable senator's intention with the small group here to ask that the bill be expedited in terms of its hearing time, or would the normal two-day second reading time prevail?

Senator Comeau: I appreciate the question, because I want to ask the other side's indulgence in that when we approve the bill for first reading we ask, with leave, that the bill proceed to second reading at the next sitting.

That would be my recommendation, which would save us having to wait the two days and we could proceed to second reading on Thursday.

Senator Day: I have a supplementary question. I am not sure if the bill will be coming to the National Finance Committee, but as chair of the committee, I can state that we will be ready to deal with it on Thursday.

Senator Comeau: We can have further discussion between me and the deputy leader on the other side. As I understand it now, the bill would go to the Standing Senate Committee on Banking, Trade and Commerce, but we are open to suggestions from the other side.

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

Some Hon. Senators: Question.

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

(Motion agreed to.)

• (1610)

CONTROLLED DRUGS AND SUBSTANCES ACT

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

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-15, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts, with amendments), presented in the Senate on December 3, 2009.

Hon. Joan Fraser moved the adoption of the report.

She said: Honourable senators, the *Rules of the Senate* require that the person who presents a report with amendments to a bill provide an explanation of those amendments, which I shall try to do. I note that your committee adopted these amendments on division.

Bill C-15 is commonly known as the most recent drug bill, as there have been many others in the past. Its stated purpose is to provide for minimum penalties for serious drug offences, to increase the maximum penalty for cannabis or marijuana production, and to reschedule certain substances from Schedule III of the Controlled Drugs and Substances Act to Schedule I.

The stress on serious offences was confirmed by the Minister of Justice, the Honourable Rob Nicholson, when he appeared before your committee on October 8 and said, among other things:

> . . . we are not targeting the university student, caught with a couple of joints or a plant or two. We are targeting those who profit off of the vulnerabilities of those addicted to drugs. We are targeting organized crime.

That is the first piece of background that I would draw to the attention of honourable senators before I discuss the specific text of the amendments.

The second piece of background is that, given that the bill is concerned with mandatory minimum penalties for offences of trafficking or production for the purposes of trafficking, it is useful to know that in the laws of Canada, trafficking of drugs is defined as, to sell, administer, give, transfer, transport, send or deliver the substance, to sell an authorization to obtain the substance, or to offer to do any of the above.

At second reading, the Senate approved Bill C-15 in principle. It is my belief that the amendments that your committee presents respect the principle of this bill and fall squarely within its scope.

The first amendment is to clause 1, on page 2. It refers to a provision of the bill that would bring in a mandatory minimum prison term of one year if someone is convicted of trafficking and if that person, within the past 10 years, has been convicted of another drug offence or has served a term of imprisonment for a drug offence within the past 10 years. Your committee believes that the clause, as written, has a very broad scope indeed. For purposes of illustration, one might have been convicted 10 years ago when one was a university student if one gave a colleague a couple of marijuana joints on his birthday, and 10 years later one might pass around a little marijuana at a backyard barbecue among friends and find oneself facing a mandatory minimum of one year in prison.

Clearly, judges need to be able to send people to prison when they have done something such that they truly deserve to go to prison. However, the amendment that your committee proposes says, in effect, that judges should retain the discretion to lighten the mandatory minimum where it is appropriate and only where it is appropriate.

The committee proposes to amend the paragraph that I described to say that the mandatory minimum sentence of one year would come into play only if the person now convicted of a drug offence today had been convicted, within the previous 10 years, of another drug offence and had served a term of imprisonment of one year or more for that offence. The mandatory minimum would thus come into play if the person had been convicted of a comparatively serious drug offence in the past. Otherwise, although the person would be guilty of today's offence and the judge would be free to impose the sentence that he or she deemed appropriate in those circumstances.

I remind honourable senators that previous convictions are already part of the aggravating factors that judges take into consideration when sentencing individuals. Therefore, this amendment would not prevent the Crown from presenting prior convictions or any other factor during the sentencing hearing for the judge's consideration. It would simply prevent the imposition of an automatic mandatory minimum sentence in that one circumstance.

The second proposed amendment is to clause 3, on page 4, of the bill. This requires a short explanation because wandering around the thickets of the Controlled Drugs and Substances Act is right up there with wandering around the Criminal Code and the Income Tax Act in terms of complexity.

As written, Bill C-15 would impose a mandatory prison term of six months for someone who produced 5 to 201 marijuana plants for the purpose of trafficking. Numerous witnesses told your committee that, as drafted, this was excessively severe and that it could lead to the over-incarceration of small-time street dealers and growers because five plants is considered to be a very low level at which to bring in mandatory prison terms.

One witness, Mr. Darryl Plecas, Director of the Centre for Criminal Justice Research at the University of the Fraser Valley, was notable on this count because he strongly supports mandatory minimum sentences for drug offences. However, even he noted that five plants was too low a level. It is quite likely to be the amount one had for individual consumption, not for trafficking as we normally think of it.

Your committee contemplated this difficulty and recommends deleting that particular mandatory minimum. It would still be an offence to cultivate marijuana and mandatory minimums would remain for those caught cultivating that number of plants if there had been aggravating factors, such as danger to public health or safety; the use of traps, devices or other objects likely to cause death or bodily harm to individuals; or the involvement of

minors. In such cases, mandatory minimums would remain. Absent those aggravating factors, your committee recommends removing the mandatory minimum and restoring judicial discretion, so that the judges would be able to determine the sentence for those caught cultivating comparatively small amounts of marijuana.

The third proposed amendment is to clause 4, on page 5, which concerns the bill's proposed review provision. When Bill C-15 was before the House of Commons, a review provision was inserted. However, as has happened so often in the past, the provision did not include the Senate. It said that a review should be undertaken by a committee of the House of Commons or of both houses of Parliament.

• (1620)

Many honourable senators will recall that our customary practice on those occasions is to amend such clauses to say that the review shall be conducted by a committee of the Senate, of the House of Commons or of both houses. Your committee has done that in this occasion, but we have also made one other change to the review clause.

The review clause in the original bill says that the review shall be conducted within two years. A fair number of witnesses, including one serving police officer in Victoria, reminded senators that at the end of two years, we will not know that much about the way this bill has affected Canadians, and indeed the judicial process. Some trials under this legislation will not even have been concluded. Numerous statistics will not have been gathered.

For that reason, your committee proposes to preserve the requirement for review within two years, but to insert another review after five years, by which time we should have more material available.

Finally, honourable senators, in clause 5, on page 6, your committee has inserted a provision that courts not be required to impose a mandatory minimum punishment of imprisonment if the court is satisfied that the person to be sentenced is an Aboriginal person, that the sentence would be excessively harsh because of the offender's circumstances and that another sanction is reasonable in the circumstances and is available. If the court does not impose the mandatory minimum, it must give reasons for that decision.

Your committee makes this recommendation on the basis of substantial testimony that we heard about the differential impact of our judicial system on Aboriginals. In general, honourable senators, we all know that there is a differential impact, but I am not sure how many of us know how great that impact is. There are places in Canada where Aboriginals make up 80 per cent of the inmate population of prisons.

The incarceration rate in fiscal 2007-08 for non-Aboriginals in this country was 130 incarcerated for every 100,000 Canadians. I repeat, that rate was 130 for non-Aboriginals. For Aboriginals, the incarceration rate that year was 970 per 100,000, and that gap is rising.

We heard evidence that there are many reasons for this extraordinary disparity between the fate of Aboriginals and non-Aboriginals in our system. Some of the reasons relate to things like Aboriginal offenders' lack of familiarity with the judicial system, including their lack of awareness or capacity to access appropriate counsel when needed.

It is also true that particularly in the North, Aboriginals — anybody in the North, but Aboriginals in the context of this amendment — have terrible trouble accessing drug treatment. This bill provides that mandatory minimum imprisonment terms do not apply if offenders complete a proper drug treatment program under one of the provincial programs or one of the drug courts. However, there are no drug courts in the North. For that matter, there are no drug courts east of Ottawa, nor are there going to be any drug courts east of Ottawa.

Drug treatment programs are scarce in the North. All drug treatment programs tend to be oversubscribed. There is a waiting list for most programs; and this situation bears more heavily on Aboriginals, particularly those in the North, than it does on the rest of us.

It was in the light of that kind of situation that we thought it appropriate to reimpose judicial discretion when the case involves Aboriginals. Honourable senators will note that I said, "reimpose." The Criminal Code now, in section 718.2(*e*), instructs judges to take into account the particular circumstances of Aboriginals when they are being sentenced, and urges alternatives to imprisonment.

There are some who believe that provision of the Criminal Code will continue to operate. However, your committee heard expert testimony, including testimony from a retired judge, that if this bill were passed as is, it would override the Criminal Code's provisions for particular consideration of the circumstances of Aboriginal offenders. Honourable senators, that is why your committee proposes to, if you will, reinstate that discretion under specific circumstances.

Again, there is no question of anybody having a free ride. Individuals who commit an offence under these amendments will be liable for punishment. The only question is whether the bill should be amended to ensure that the harsh provisions for mandatory minimums apply to the people that the minister and the summary of the bill says the provisions are designed to apply to — the real crooks — and avoid sweeping up far lesser candidates unintentionally into the net of this bill.

I hope that helps honourable senators to understand what their committee did and why, and I thank honourable senators for their attention.

The Hon. the Speaker *pro tempore***:** Are there any questions to Senator Fraser?

Hon. Anne C. Cools: I want to address a question to Senator Fraser as chair of the committee.

The Hon. the Speaker *pro tempore***:** I am sorry to interrupt. Senator Fraser's time was finished. Are you asking for more time, Senator Fraser?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Five minutes is fine.

The Hon. the Speaker *pro tempore***:** Senator Fraser, will you accept questions?

Senator Fraser: Yes.

Hon. Anne C. Cools: The phenomenon of mandatory minimum sentences seems to be a raging one, and I do not understand where it is coming from in law. Did any of the witnesses before the committee, including the minister — assuming, of course, that the minister appeared before the committee — give the committee any substantive evidence as to why this phenomenon is happening?

The term that the honourable senator used is "judicial discretion," but the phenomenon of mandatory minimums reveals an enormous mistrust of the judges. It bothers me a little bit; as a matter of fact, it bothers me a lot. However, what bothers me more is that there seems to be no evidence coming forward from the ministry to tell us why we are going down this road.

There has been no discussion, no white papers, nothing really. Can the honourable senator share with us, since I am an independent and I do not have easy access to membership in these complicated committees — not that I mind these days anyway — if the committee has been able to discern or to glean any evidence as to where this is coming from and why?

Senator Fraser: The Minister of Justice appeared before the committee; so did officials. The Minister of Public Safety, despite repeated invitations, did not. However, the appearance of the Minister of Justice did address this question, and we put comparable questions to officials who appeared before us.

• (1630)

Statistical evidence that mandatory minimums have the effect of diminishing crime, which one would assume is the object, was not offered to the committee. The stated object, and I am paraphrasing, is to send a message both to would-be criminals and to the public in general that Canada takes certain offences seriously.

The committee heard from about 62 witnesses, so we did a thorough study of this bill. A great many of the witnesses said that mandatory minimums do not have the effect of diminishing crime, particularly when the criminal involved is one of the lower level people I spoke about in connection with these amendments. As one lawyer put it: I said to my client, "Why did you do this? What were you thinking?" My client said: "If I had been thinking, I would not have done it." At that level, we are often talking about addicts who are trying to support their habit and not thinking down the line about whether they would face some kind of mandatory minimum.

The other element of justification is that mandatory minimums offer some degree of incapacitation. That is, while someone is locked up, he will not be out there on the streets committing another crime.

The United States, as honourable senators know, has many years of experience with much harsher mandatory minimums for drug offences. The evidence there was that they have not worked and that, indeed, many jurisdictions in the United States are now backing away from mandatory minimums.

Senator Cools: Honourable senators, historically, several principles were supposed to govern the phenomenon of punishment and sentence. I have been reading up on this. I believe there was retribution, deterrence, rehabilitation and another one. There are four.

Senator Fraser: It is incapacitation.

Senator Cools: However, there seems to be no debate on these issues. If the government has made a finding that judges are being too lenient, then perhaps the government should take measures to talk to the judges and find out why. Yes, people can talk to judges. This is a lot of foolishness that you cannot speak with judges because you can. You can speak with judges at conferences and meetings to try to discern where the problem lies. In other words, the problem can be a bad administration of the law or poorly drafted criminal code sections or something. The problem could be in a dozen places. What worries me is that no one seems to be looking to see where the problem is. There is just this one particular solution, reduce judicial discretion.

Honourable senators must remember that there was a time in history when, for example, many crimes were capital offences, but I distinctly remember rape. There was a period of time when no judge would convict on the old charge of rape because to convict on any kind of rape was to convict on a capital offence that carried execution. No judge would convict. Someone had to discover that the problem was inherent in the criminal law itself, not the judges.

It is extremely worrisome to me that we are not searching for the root causes and someone is applying this thing to reduce judicial discretion.

The Hon. the Speaker *pro tempore***:** Because of time allotment, I will allow Senator Fraser to give a brief answer to the honourable senator's question.

Senator Fraser: All I can say in terms of actual evidence is that when asked about statistics, the minister said that he was not basing his policy on statistics.

Senator Cools: He was not?

Senator Fraser: No, he was not. I think I am fair to him when I say he was basing it on the arguments I tried to describe earlier.

As to the honourable senator's broader observations about the nature of the law and its evolution over time, I bow to her experience on that one.

Hon. John D. Wallace: Honourable senators, I rise today to speak in opposition to the report of the Standing Senate Committee on Legal and Constitutional Affairs. I am the sponsor of Bill C-15 in the Senate. I am a member of

the Standing Senate Committee on Legal and Constitutional Affairs, so I am familiar with the issues that Senator Fraser has spoken to, and I believe I am quite familiar with the issues that relate to this bill.

I say to you at the outset that I am speaking in opposition to the report. I feel strongly that this chamber should reject the report of the committee, in particular, because of the amendments that it would bring to Bill C-15, if implemented.

The essential reason I say that is that this report and the amendments contained in it would seriously undermine the goals and objectives of Bill C-15.

The purpose of Bill C-15 — and there is a lot of debate around this and how to achieve it — is to enhance the protection and security of our citizens, our neighbourhoods and, in particular, our youth, as it relates to the drug issues that are prevalent or exist in this country. That is what Bill C-15 is working to achieve, but not by itself, as I will explain. It must be taken in the context of other initiatives that are taking place in this country to deal with drugs, but that is the underlying purpose of it.

The bill focuses on the trafficking, production, importation and exportation of illicit drugs. It does that by implementing, as Senator Fraser has said, mandatory minimum sentences when those activities or the activities around those four offences occur. It is based on the premise that the trafficking, production, importation and exportation of illicit drugs are not acceptable in our society and that there will be significant and certain consequences for those who engage in those activities. I do not want you to be confused about that. It is not a wink and a nod — we would rather you did not do it, but if you do, we might turn a blind eye — but is based on the assumption that trafficking, importation and exportation of illicit drugs are not acceptable in our society.

Bill C-15 focuses very much on drug problems in this country that result from the activities of organized crime. As we have heard from many witnesses, organized crime seems to be at the heart of drug trafficking and production in this country.

Bill C-15 also focuses on weapons and violence that are involved in the drug trade; the risks to our neighbourhoods that arise from the drug trade; and, the difficulty and the problems that law enforcement has with repeat offenders involved in the drug trade.

Bill C-15 addresses each of those issues. As to whether Bill C-15 is in itself an answer and will solve all of these issues, I will say at the outset that it will not. However, it is very much a step in the right direction and a significant improvement over the law today as it relates to the trafficking, production, importation and exportation of drugs.

• (1640)

I would like to put Bill C-15 in context. Senator Fraser did a good job of highlighting the issues involved in the committee report amendments. However, we cannot just look at those sections in isolation and try to understand the bill in that limited context. There is a history behind Bill C-15. Yes, it is presented and put forward by the Department of Justice. I am the one in the Senate presenting it to you on behalf of the department, but there have been years of consultation behind Bill C-15 that have led to the bill in its current form. That consultation has been initiated by the Minister of Justice. It has involved all of the provinces and territories of the country. It has involved law enforcement officials throughout the country. It has involved three federal departments: Justice, Public Safety and Health. It has involved municipalities throughout the country, and our citizens. I would not want honourable senators to think that Bill C-15 was cobbled together overnight or over a period of a couple of weeks, without extensive consultation and input. I firmly believe it represents the result and consensus of those consultations.

An integral component of dealing with the drug situation in this country is addressed by the Department of Justice, again in consultation with the provinces and territories, through the National Anti-Drug Strategy. That strategy has three fundamental pillars in dealing with the issues in particular of trafficking and production of drugs. The three pillars focus on drug prevention, drug enforcement and drug treatment, and within those, the need for funding. As we heard in evidence before us in committee, there has been a dramatic increase in funding provided by the Department of Justice, Public Safety and Health in addressing and dealing with those three pillars.

I want honourable senators to understand that, although I am speaking to you today about the Controlled Drugs and Substances Act and the amendments to that act that deal with enforcement, that is not the whole picture. It is part of a comprehensive plan that involves the National Anti-Drug Strategy.

Once again, the focus of the bill is on the protection and security of our citizens — those who are not involved in the drug trade; those who are not involved in illegal activity. I suppose that is 99 per cent of the population. However, it is not solely focusing on their protection. The bill also recognizes that there are those who get involved in the drug trade and require rehabilitation. Considerable thought must go into the sentencing of offenders. Again, perhaps I am being like the minister; I do not have a statistical report to support this, but I would say that 1 per cent of the population are offenders; 99 per cent are not. What Bill C-15 attempts to do is to enhance that protection and security and, at the same time, address issues to prevent the recurrence of criminal activity by those who get involved in the drug trade.

As I mentioned, the National Anti-Drug Strategy is a comprehensive approach involving the federal government, provincial governments and law enforcement. To give you a sense of the type of support and the attitudes of some of those who have been involved in the consultation and preparation of the National Anti-Drug Strategy, I would like to read to you some comments that I think you might find useful in understanding, outside Ottawa, what is the feeling in the provinces and beyond.

I will read excerpts from some of the materials that I have. The first one is from the Honourable Michael Murphy, the Minister of Justice from the province of New Brunswick. On November 16 of this year, he wrote in his submission:

> Thank you for this opportunity to comment on and to express my support for the provisions of Bill C-15 which would amend the Controlled Drugs and Substances Act.

In referring to illegal drug abuse, he says:

> It is a social problem that cannot be ignored and that requires a solid public policy and legislative response.

He goes on to say:

> The mandatory minimum provisions that are contained in Bill C-15 will give further support to this larger effort. Increased penalties and mandatory minimum sentences will be effective in helping to combat and reduce the production and trafficking in illegal drugs, and as a result of provisions in Bill C-15, will also include and target amphetamines and date rape drugs.

Again, that is Minister of Justice Murphy in New Brunswick.

My next reference is a letter received on September 29 from the Ministers of Justice and Ministers of Correction and Public Safety for the provinces of Saskatchewan, Alberta, Manitoba and British Columbia. That submission states:

> Ministers support the quick passage and proclamation of the mandatory minimum penalties for drug trafficking offences Bill (C-15) and note the significant link between the drug trade and organized crime.

Justice Minister Alison Redford from Alberta made her own submission in addition to that and wrote:

> Deterrence and denunciation are critical sentencing objectives in addressing such crimes. Mandatory minimum penalties can be an effective means of communicating this message through the sentencing process.
>
> We support increased penalties for these offences and believe that the penalty structure proposed by the Bill provides an appropriately calibrated response to these serious crimes. Mandatory minimum penalties serve to segregate offenders from society and preclude them from committing offences against society while incarcerated. Further, the imposition of such sanctions responds to legitimate public concerns about the adequacy of sentences presently imposed in such cases. Appellate courts have recognized that public confidence in the administration of justice is linked to the ability of the system to impose appropriate and predictable sanctions.

On November 17, Attorney General Ross Landry from Nova Scotia wrote:

> In Nova Scotia we are very concerned with the damage caused to the people of our province, not just by drug usage, but also by the dangerous sub-culture that surrounds the production and distribution of illegal drugs in our society. While some suggest the individual decision to use drugs affects only that person, the dangerous sub-culture affects everyone, and can lead to injury or death to innocent members of our community. In our view, Bill C-15 recognizes this distinction, and takes aim not at drug users, but those who create dangers for others.
>
> For example, Bill C-15 does not target simple trafficking, but trafficking which benefits a criminal organization, or which involves violence, threats or weapons. It also takes steps to protect the youth of our society, by imposing minimum sentences for trafficking to youth, or when at or near a school or place which youth frequent.
>
> In our view, this bill is not about targeting those who use drugs but it is about protecting public safety aimed only at dangerous activities associated with illegal drugs, and while it takes a strong stance, it is a balanced approach. For these reasons Nova Scotia is pleased to support the bill.

Those are representative of some of the feedback, the attitude and support from the provinces.

I have several others. This is from law enforcement officials. I will read a comment from Staff Sergeant Pierre Gauthier, who is with the drug unit of the Ottawa Police Service:

> . . . I will tell you that (Bill C-15) will address some of the serious issues that are not currently being addressed, in ways that will assist us to do a better job.

Chief Superintendent Pierre Perron, Director General of Criminal Intelligence with the RCMP, said:

> The bill will certainly send a strong message that Canada is serious about drug trafficking. We are taking this as a serious threat to the community, to our children and the population in general. This is how I would see the bill giving us a hand.

• (1650)

Deputy Chief O'Sullivan from the Ottawa Police Service said:

> . . . this is one more tool in the tool basket for targeting those who are preying on our communities and who are out there doing the trafficking and production.

Finally, this comment is from Mayor Fassbender from the City of Langley, British Columbia. The mayor appeared before us and said:

> . . . I do know that this bill does make that correction that is necessary to deal with organized crime, to deal with the industry that it is and the people who are not drug addicted, who are not in our community's homeless. I am talking about the people who are using this industry to make a lot of money and are parasites in our community, sucking the lifeblood out of our community in so many ways, whether it is the safety of our police departments or our fire and rescue services or the safety of neighbours.

As I said at the outset, honourable senators, Bill C-15 is reflective of what the federal Department of Justice has received in these lengthy consultations. It is not simply a made-in-Ottawa solution; it is very much a made-in-Canada solution. It is not a final solution but certainly a major step in the right direction.

I would like to mention another matter, which Senator Cools touched upon and which is important to understand. It concerns the fundamental purposes or principles of sentencing. Obviously, mandatory minimums are part of sentencing. We ask ourselves: What is the objective? As legislators, what should we be considering and trying to achieve when we are looking at issues of sentencing and mandatory minimums?

The Hon. the Speaker *pro tempore***:** Senator Wallace, I am sorry, but your time has expired. Are you asking for more time?

Senator Comeau: Five minutes.

Senator Cools: Give him 20 minutes, if necessary.

Senator Wallace: I apologize for that. I will move, then, specifically to the amendments and my comments on those amendments that are contained in the report.

As Senator Fraser points out, clause 1 of the bill, which deals with trafficking, focuses on establishing mandatory minimums in the case of a criminal organization if violence is involved, if a weapon is involved, or if the person convicted was a repeat offender; that is, if the person was convicted of a designated offence or served a term of imprisonment for a designated offence within the previous 10 years.

The amendment that was made undermines the bill considerably. Again, this is dealing with repeat offenders. The result of the amendment is that it would say that the person would receive the mandatory minimum if the designated offence occurred within the 10 previous years and the offender served a period of imprisonment of one year or more for that offence. The amendment does not say the sentence was one year, but it says "served a term of imprisonment."

For example, someone could have received a sentence of six years for a previous offence but, with our early remission provisions, could serve one sixth of the sentence. It would be a serious offence to receive a five- or six-year sentence, but it is possible to serve less than one year.

This amendment seriously negates the impact and the attempt to discourage repeat offenders. It seriously undermines, again, the intent and spirit of Bill C-15 and the intention of the various provinces and law enforcement officials. I would strongly suggest to honourable senators that that trafficking amendment should be rejected.

The next amendment deals with clause 3 of the bill and focuses on the illegal production issue, particularly as it relates to marijuana. Since my time is drawing short, I will paraphrase.

Currently, the bill provides a six-month mandatory minimum if someone is involved in the production of marijuana for the purpose of trafficking and it involves between 5 and 201 plants. The amendment took that out. The result of that change is that anyone who is found producing marijuana, up to 201 plants, could receive the mandatory minimum. Of course, it would have to be proven that it involves trafficking.

However, here is the problem: This would only relate to those who are doing so on someone else's property; if the production of marijuana involved a health or safety hazard to someone under the age of 18; if the production involved a public safety hazard in a residential area; or if the person placed a trap. Those aggravating factors would have to be proven. Someone who is producing up to 201 plants, not in a residential area, on their own property and not involving youth, would not attract a mandatory minimum. Two hundred plants is a huge number. This is a major issue. On an annual basis, the wholesale value of that would be in the $350,000 range. This is serious stuff.

The problem is that by making this deletion, it is saying to the criminal world, "Divide up your business into 200-plant allotments, put it out in the countryside, and you will not attract the mandatory minimum."

That cannot be the right message. As legislators, is that the message we want to send out about drug production? It cannot be. That provision should be rejected. We should be sending out a strong statement that we, at this point in time in Canadian society, are not accepting drug production as an acceptable and legalized means of doing business.

The Hon. the Speaker *pro tempore***:** Senator Wallace, your five minutes is up.

Hon. George Baker: Honourable senators, I will be brief.

Senator Keon: I believe you.

Senator Baker: I do not have a written speech or any notes. I first want to say, honourable senators, that Senator Wallace has done a great job for the government during these committee hearings.

Some Hon. Senators: Hear, hear.

Senator Baker: He certainly has put forward the government's position with great strength. I simply indicate, on his last point, that although a minimum sentence is taken away in the legislation, it does not prevent the trial judge from imposing a sentence that is even harsher than the minimum sentence.

Simply put, honourable senators, I believe the minimum sentences take away the extremes. In other words, trafficking in marijuana, for example, says Senator Wallace — and as the chair has pointed out — can mean simply passing a joint. That is a cigarette of marijuana, as I understand it.

Some Hon. Senators: Oh, oh!

Senator Baker: Some people call it a roach of marijuana.

Senator Baker: Simply passing this roach to someone else would constitute trafficking and thereby bring into play these serious penalties that we are talking about.

• (1700)

It is like the gun legislation we recently passed that instituted the offence of assault with a firearm requiring a minimum sentence. A firearm is defined under the Criminal Code, as members of the legal committee know, as a barrelled instrument that shoots a projectile. In that case, a BB gun has been defined in law as a firearm and, under a minimum sentence, would attract a minimum penalty equal to that of a machine gun.

The problem with minimum sentences is that they take the discretion away from the judge in extreme cases. I am not saying these cases are continually ongoing, but I am sure Senator Andreychuk, as a former judge, will support me when I say that we should not take away the discretion from the judge and place it in the hands of the Crown prosecutor.

Now, honourable senators, the experts on this legislation are here in the Senate. If honourable senators look at the case law, it constantly quotes the Senate committee. The House of Commons committee is not quoted in case law because there is nothing of substance that they can report on. As I mentioned before, Senator Nolin sometimes is called as a witness as he was recently before the Supreme Court of British Columbia. He was the chair of that famous report and that famous document I read recently when we were addressing this bill.

Apart from Senator Nolin, another senator is considered to be an expert on that subject and I learned it inadvertently. One of the witnesses before the committee was Dr. Neil Boyd. One thing I do before a Legal Committee meeting is to go to the computer and consult Quicklaw or Westlaw/Carswell, the electronic libraries of case decisions, to see if any of these people's names appear in cases. These sources tell me much more than a brief summary of their biography. They tell me if the witnesses have been in court, professing a particular subject or not. I looked up Dr. Neil Boyd, who was to be a witness that afternoon. I read where he had written to a court concerning academic privilege, and he was supporting the fact that an academic at the University of British Columbia should not have their sources disclosed.

I was about to switch to the next page to see what else the source said about Dr. Neil Boyd when I noticed the name Larry Campbell, Chief Coroner for the Province of British Columbia. I found this information interesting because here was the chief coroner trying to find out what was in the academic research documents of this particular academic that Dr. Neil Boyd supported. The chief coroner, the judge referred to him as "Larry," said that he phoned up this academic and asked for the information. It concerned the body of a dead woman that had washed up on the shoreline in a park in British Columbia. The academic said, I am not going to tell you; it is privileged; to which the chief coroner said, You will receive a subpoena in about an hour.

The hearing took place, and the impression I was given from the case was Dr. Neil Boyd was on this side and of course the coroner was on the other side. I thought this committee meeting would be an interesting one. We have the former coroner, now a senator, and a witness at completely different ends of this question of privilege.

I went to the committee meeting, and to my surprise, Senator Campbell, when it came to his turn to question Dr. Neil Boyd at the video conference, lobbed him an easy question, and Dr. Neil Boyd answered in an almost lovable fashion. Then Senator Campbell put forward another question supporting Dr. Neil Boyd.

After the committee meeting, I was walking back to the Senate chamber, and I recounted to Senator Campbell the court case I had read, the judgment, and I asked what had happened between the two of them; I was expecting fireworks. He paused and asked if I had read his most recent book. I had not, so he told me to read his book. I went back to the office and read his book called *A Thousand Dreams*. Guess who the co-author is: Dr. Neil Boyd.

This is a magnificent book. It was released about three weeks ago, and it goes into Vancouver's Downtown Eastside and the fight for its future. I recommend that book to anyone. It talks about the very things the Senate committee disclosed so many years ago.

I read a third book during consideration of this bill. Now I am reaching my main point. I will read to honourable senators two lines from this book. I will tell you what the book is later. It says here:

> I blew a few smoke rings remembering those years. Pot had helped, and booze; maybe a little blow —

Blow is cocaine.

> — when you could afford it. Not smack, though.

I looked up smack. It is heroin. He goes on:

> I had discovered that it didn't make any difference whether you smoked reefer —

Reefer is marijuana. I looked it up and that is what it means. He goes on:

> You might be bored, or alone.

This is a university student.

> Everybody was welcome into the club of disaffection. And if the high didn't solve whatever it was that was getting you down, it could at least help you laugh at the world's ongoing folly and see through all the hypocrisy and bullshit and cheap moralism.

The author of that book is none other — and it is his life story — than Barack Obama. It makes one wonder.

All political parties supported this bill in the House of Commons, but when you have a bill, honourable senators — I will give you an example because this is what really bothers me. Here is a case four months ago, 2009, Carswell B.C. 644 *R. v. Chu*. This young man, a student, was at a rave, a dance, a Halloween dance, and it is a regular thing that the police visit these dances to charge people. This was called Project Tirana; last year it was called Project Temporal. This is from the court judgment. The year before that, it was called Project First. They made 10 arrests this past year, 13 the year before and 14 the year before that. It was all for passing one ecstasy pill. What bothers me about it is that people should not be passing ecstasy pills. Let us face it; that is a criminal offence, and everyone knows it is.

• (1710)

However, when you read the documentation, it describes what the undercover female officer, Constable Haines, wore at this rave. All I can say is that she really fit in with the group that was there. She wore very attractive clothing. She went over to this young man and here is the conversation from the judgment:

> Cst: Do you have some stuff for me?
>
> Acc: No. Let's dance. I'll get it for you later.
>
> Cst: Uh No. I need it now. I want to be happy now.
>
> Acc: Ok wait here, don't move.
>
> Cst: Ok I'll be here.

Three minutes later, the young man comes back with a rolled up piece of paper and puts it into her hand. The judgment continues:

> Cst: Oh, wow, thanks. How much?
>
> Acc: Oh, nothing, for you free.
>
> Cst: Oh wow, really? You're a sweetie! Thanks.

At paragraph 11, it states: —

> The constable then gave the accused a hug. She signalled the arrest team to indicate that a transaction had occurred.

There are 30 such cases documented in this one case.

Years ago, Senator Oliver, the great professor of law that he is, would tell us that would be a question of entrapment. In the old days, that was entrapment. However, the elements of entrapment have changed. It is no longer entrapment. It is entrapment, as the judge points out in another case where Justice Clark claimed it was entrapment because the police officer had actually suggested they would have an affair.

Honourable senators, all of this bothers me, and there are other cases. I have one case here of a chap who came back from Afghanistan. He had passed a joint of marijuana and was charged with trafficking. He was not only dishonourably discharged, but he suffered the Criminal Code consequences before the court martial, because that is the law. One might say that is double the penalty and should not be given out, but that is the way the system works for someone in the Armed Forces.

The act takes place and the penalty is granted, although that person obviously was not trafficking in a drug; the person went and obtained the drug for an officer who asked for the drug and said she would then dance with him.

Do honourable senators know that this bill brings the passing of one ecstasy pill up to life imprisonment? This bill moves ecstasy from Schedule III to Schedule I. One might say that would be up to life imprisonment, but the judge will not give life imprisonment. Honourable senators, when it is put up to life imprisonment, other things kick in. The reverse onus kicks in, as Senator Nolin would say, and one cannot get out of jail.

The Hon. the Speaker *pro tempore***:** Is the Honourable Senator Baker asking for more time?

Senator Baker: Two minutes.

The reverse onus is on and one has to go to jail. Then, during the bail hearing, one has to appear before the judge. There, one has to explain to the court why one should be released. Under our law, that person is supposed to be released. There is no such thing as having someone who has not been proven guilty of an offence resting in a jail. That is not our system.

However, we have incorporated certain offences into the Criminal Code that require a reverse onus, and this is one of them. If one has a Schedule I drug with life imprisonment, the reverse onus applies.

What is the next thing? One cannot get a pardon for an indictable offence until 17 years after being charged. The reason for that is it requires seven years for an indictable offence, and then 10 years is added on if any condition is placed on that person.

We just passed a law that makes it mandatory for a condition of no firearms. It is a condition of the punishment. One has to wait for that 10 years and then seven years after that.

What is even worse, honourable senators, is that today, if someone has a conviction, or even if charged with an indictable offence, they cannot even get into the United States. A person cannot travel anywhere if they have that conviction on their record.

That young man, or woman who gave an ecstasy pill to someone, or passed a marijuana joint to someone, may end up being charged with a life imprisonment sentence and never be able to get a job for the rest of their lives. Thank you.

Hon. Anne C. Cools: Honourable senators, perhaps there is no time, but I was hoping that either Senator Wallace or Senator Baker would clarify.

The Hon. the Speaker *pro tempore***:** Would Senator Baker take a question?

Senator Baker: Yes.

Senator Cools: Honourable senators, it is a clarification that I am looking for. Maybe I did not hear properly, but I understood Senator Wallace to say something about an accused receiving a sentence of six years and only serving one year or one sixth of that sentence. There is a lot of misconception about sentences. I was hoping that perhaps Senator Wallace or Senator Baker would explain to honourable senators that a sentence of six years means precisely that, six years; and a sentence of life means precisely that, life.

I have some experience with this, and it is a very complex process. On detention and incarceration there is something called the warrant. It is a complicated system. There are warrants for this and warrants for that. When an inmate is sentenced, there is something called his warrant and his warrant expiry date. Maybe one of the honourable senators can explain it because they are on

the Legal and Constitutional Affairs Committee. For a person with a life sentence, even if it is 25 years before being eligible for parole, known as the parole eligibility date, has a warrant expiry date, is the day he or she dies.

In the same vein, if an inmate is sentenced to six years, that warrant will expire at six years. It does not matter if he served two years in the institution and another year in a halfway house; that sentence is —

The Hon. the Speaker *pro tempore*: Senator Cools, I am sorry; I must ask Senator Baker for a brief explanation.

Senator Baker: Honourable senators, in short, Senator Wallace is correct on the six and one. What he is talking about, and it is always on my mind as well, is when someone is sentenced to a term of imprisonment, there are two ways the person can get out. One is to get out through our federal system of parole, which would not allow someone to get out after one sixth of their sentence, but they could apply under provincial law to the warden. They apply to the warden and they are sent home. They are under strict conditions, but they have served only one sixth of their term.

Those provincial justice ministers who wrote to Senator Wallace and said, "We need people to spend real time in federal prisons," were not thinking about their own system that allows people out after serving one sixth of their time.

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

Some Hon. Senators: Question!

• (1720)

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: All those in favour of the motion to adopt the report will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: All those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

Call in the senators. Is there agreement?

Hon. Consiglio Di Nino: Honourable senators, I have spoken with the other side and, with leave of the Senate and notwithstanding rule 67(2), as acting whip I request that this vote be deferred until 5 p.m. tomorrow, with the bells to summon honourable senators to the chamber to ring at 4:45 for 15 minutes.

Let me explain. Leave is not required if the vote takes place at 5:30 with a 15-minute bell but, as we have heard, there is an event tomorrow evening. I have had a discussion with the whip on the other side, and I think you will find we are in accord. I just realized I have not chatted with the independents, and I apologize for that. I do not do this often. I would ask that instead of 5:30 tomorrow that the bells ring at 4:45 for a 5 p.m. vote

The Hon. the Speaker *pro tempore*: Honourable senators, there will be a deferred vote at five o'clock tomorrow. Do all honourable senators agree?

Hon. Senators: Agreed.

CANADA CONSUMER PRODUCT SAFETY BILL

TWELFTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— DEBATE SUSPENDED

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-6, An Act respecting the safety of consumer products, with amendments), presented in the Senate on December 3, 2009.

Hon. Joseph A. Day, moved the adoption of the report.

He said: Honourable senators, Senator Eggleton is Chair of the Standing Senate Committee on Social Affairs, Science and Technology, and he is unable to be here. In the interests of assisting the government in their legislation by moving it along, I undertook to present this report on behalf of the chair. I have spoken to the deputy chair and he is in accord with that procedure.

Honourable senators, with your permission, I would like, in the next short while, pursuant to rule 99, to explain to you the amendments to this particular piece of legislation.

Honourable senators may be looking in your desks for the report. It is the committee's twelfth report, dated December 3, 2009. It deals with several amendments, some of which were not accepted and do not appear here. Others that were accepted appear in this particular report.

Honourable senators, permit me to start by stating that everyone supports the principle of consumer product safety. It seemed like every witness had to come in and say that so they would not be branded as trying to be objective with respect to the legislation and then branded as being against consumer product safety.

I put that up front, honourable senators, that we all support consumer product safety and those who supported these amendments believe that they improve this legislation to make it more likely to stand up to a court challenge.

In that regard, I would like to thank all of the honourable senators on both sides of this chamber who participated in the committee hearings on this matter. We had a good series of witnesses and hearings.

I would equally like to congratulate Senator Martin, who is the sponsor of this bill, and who steered it through the committee and will continue to do so, presumably, here in the chamber.

Honourable senators, the amendments reflect that we listened to the witnesses who appeared. Let me just give you a little sampling of the witnesses who appeared on this. This name you will hear often: Mr. Paul Glover. He is the Assistant Deputy Minister and he appeared the first day we had the hearings, the last day, and he appeared at the table during clause-by-clause consideration of this particular matter.

Mr. Paul Glover, as you might guess, has had a lot to do with the drafting and support of this legislation. It would be very strange indeed to have Mr. Glover agree to any amendments, and he of course has not. I will go into these amendments in a little more detail once I go over the list of witnesses.

Honourable senators, the Canadian Consumer Product Safety Coalition comprises the Canadian Association of Importers and Exporters, we have heard of them; the Canadian Copper & Brass Development Association; Canadian Federation of Independent Businesses; Canadian Gift & Tableware Association; Canadian Hardware & Housewares Manufacturers Association; Canadian Institute of Plumbing & Heating; Canadian Toy Association; Canadian Water Quality Association; and the list goes on.

Honourable senators, there are 13 large, national organizations that are members of this coalition. The coalition appeared, gave us a submission as well, and asked for several amendments.

Likewise, several other associations appeared individually: Canadian Consumer Specialty Products, Canadian Standards Association and the Canadian Association of Importers and Exporters. They recommended amendments to the bill to make the bill work better, and we listened to those submissions.

With the amendments, we have gone from the high platitudes and generalizations down to where we go with respect to clause-by-clause consideration of any bill. We have to deal with the manner in which the drafters of the legislation have put these ideals — all of which we support — into words. That is where we diverge.

I have to stop reading this legislation, honourable senators, because each time I read it I find more that I think is not acceptable and I worry that the legislation will not withstand judicial review.

The problem with that judicial review and the eventuality of portions of this bill being struck down by want of due process and by want of precision, is that it will not happen for 5, 10 or 15 years. Then the regime set up and working under this legislation will no longer be effective. That is part of the concern and motivation for these amendments.

• (1730)

I can assure honourable senators that every one of these amendments, both technical and substantive, has been reviewed more than once by a number of legal counsel. A number of people have given advice on these amendments, and not one of the amendments will pose a problem from a legal point of view, and they are, in fact, desirable.

Honourable senators, I will briefly describe some of the amendments. I do not propose to deal with all the technical ones. On technical amendments, the minister must be satisfied on a balance of probabilities, and the minister is both the judge and the prosecutor.

An amendment made in the House of Commons was worded such that it applied to procedure in the House of Commons and was inappropriate in the Senate of Canada. I moved an amendment in that regard so that the Senate will be in the loop with respect to the review of this legislation and amendments.

There has been discussion in a number of areas. One area is incident reporting. Another is with respect to disclosure of private information and confidential business information. Another is seizure. Yet another is passing over private property without a warrant and not being responsible for so doing. Some people felt that a warrant should be required to pass over private property. The amendment does not go that far, but I believe that the wording "and not responsible for so doing," without some limitation, could mean that the inspectors passing over private property can be reckless and negligent, that they can knock down doors or do anything they want and not be held responsible.

Of course, the department says inspectors would not do that. That is what we heard with respect to all the examples we gave. We said that, because of the way this provision is worded, this situation could happen. The department said that we should trust that inspectors will not do that. We do trust them to a degree. We are giving a lot of power for the supervision of this industry, so to a degree we do trust them. However, there must be some fundamental right of protection. It is that balance that we are looking for in these amendments. I think we found that balance. I think that this legislation, with these amendments, is much better than it was and is more likely to stand up to scrutiny.

The legislation that this bill replaces is 40 years old. The powers we give now in this bill are likely to be exercised by people long after we leave this place. The trust that we are asked to have now might not be as easily given 20 years from now. Who knows who the inspectors will be. Who knows what personal relationships might exist between a particular company and a particular inspector. If the inspector has all these rights, who knows whether there might be harassment or misuse of power. There is nothing to protect a company, an individual, an importer, a packager, a labeler or a person who writes the information on how something works. These are the people we are talking about in this bill.

Honourable senators, warrants with respect to offices is another issue that has raised concerns. The current act requires warrants for private dwellings.

The minister has the right to issue a recall. Perhaps it is best to start with that right, honourable senators. I appreciate that these amendments first arose at the committee hearings and that it takes a while for the ministry to study and digest them. I have tried in the last few days to have the minister focus, rather than on generalities, on the wording of the amendments and to tell us what the concern is with each amendment. That is the way in which we can advance this file rather than by going immediately to generalities.

The minister said that the Department of Agriculture and Agri-Food has more powers to protect cows than she does to protect people. She made that statement because I suggested that the minister order the recall rather than the inspector. In that instance, honourable senators, I was directed to the legislation that deals with the Minister of Agriculture.

The Hon. the Speaker *pro tempore***:** Senator Day's time has expired.

Are you asking for more time, Senator Day?

Senator Day: I would appreciate a little more time.

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

Hon. Senators: Agreed.

Senator Day: Thank you, honourable senators.

The Minister of Agriculture, not an inspector, has the right to order a recall. That is one issue that was raised by the minister that I was able to track down.

Honourable senators, that right is found in the Canadian Food Inspection Agency Act, section 19.

On the issue of private property, I went to various other pieces of legislation to find out if the phrase "and is not responsible for so doing" is repeated. I found the Canada National Parks Act, the Canada National Marine Conservation Areas Act and the Export and Import of Rough Diamonds Act all have the wording "may enter into and pass over private property." They do not have the exculpatory provision that makes them not responsible.

Other legislation says that they are not liable, but in that legislation the risk is much higher. One is the Human Pathogens and Toxins Act, with which we dealt a short while ago, and another is the Navigable Waters Protection Act.

Honourable senators, I suggest that the provision is overkill in this area. It is not necessary. If it were, similar wording should be used in other acts that says, inspectors are not liable for trespass. If they said that in this legislation, it would be clear that it does not include other things. It is only the act of trespass for which they are not liable or responsible.

Honourable senators, the ministry issued a letter on December 7, which all of you would have received. On the second page, the bottom paragraph states:

> The department, —
>
> — this is the Department of Health,
>
> — like many federal departments, employs a step-wise approach to compliance and enforcement and seeks to resolve issues of compliance voluntarily.

• (1740)

Those are exactly the words we put into the proposed section 31. However, in order to ensure that the minister is protected in the event of an emergency, each of these amendments includes a situation where the minister does not have to go through the voluntary debate with manufacturers or importers in the event that there is, in her submission — and her submission alone — the likelihood of imminent danger to health. We included that everywhere. The minister is saying, "I would not be able to act and small industry would be able to hold me up." That is not the case.

Honourable senators, the minister made two other points. First is that the amendments I have proposed would result in some baby having to die before she could act. Second, another statement was made by the minister in the last few days, that by proposing these amendments, I must be acting for some unknown and unnamed group. I am here to do the job of a senator. I am not acting for any unnamed group.

Some Hon. Senators: Hear, hear.

Senator Day: I would never propose an amendment that I felt would result in a baby dying before the minister could act. They are absolutely false statements. They are beneath the dignity of the Minister of Health.

Some Hon. Senators: Hear, hear.

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

Hon. Yonah Martin: Honourable senators, I wish to thank the Honourable Senator Day for his statement today and for the work that he has done as critic.

Hon. Tommy Banks: Your Honour, if Senator Martin, as the sponsor of the bill, speaks now, does that close debate?

The Hon. the Speaker *pro tempore***:** No.

Senator Martin: I also wish to acknowledge the work of the committee and all honourable senators around the table who put a lot of effort into this bill; the work of Mr. Paul Glover, Assistant Deputy Minister, and his colleagues at Health Canada; and our minister. Witnesses who came before our committee were clear in their support of the consultative process. This included our Privacy Commissioner, Ms. Chantal Bernier, who expressed confidence that all of her concerns were addressed in the ongoing assessment that took place.

I, too, have a list of consumer groups, physicians and other organizations that expressed clear support for this bill unamended. They include Canadian Cancer Society, Canadian Toy Association, David Suzuki Foundation, Wellness Coalition,

Dr. Eldon Dahl, Ecojustice, BC Injury Research and Prevention Unit, Canadian Consumer Specialty Products Association; Karen Hora, Manager of BC Children's Hospital, to name a few.

I respectfully disagree with the Honourable Senator Day who has spoken about the amendments.

Honourable senators, the fundamental purpose of this bill is to modernize Canada's product safety legislation and better protect the public by addressing or preventing dangers to human health or safety posed by unsafe consumer products.

Canada has fallen behind our international trading partners, like the United States and the European Union, that have already modernized their product safety regimes. This proposed act is in keeping with these safety regimes and would afford Canadians comparable levels of protection.

The amendments made to Bill C-6 by the Standing Senate Committee on Social Affairs, Science and Technology would significantly weaken the legislation as they put the interests of industry ahead of the interests of the health and safety of Canadian consumers. The amendments would limit the government's ability to respond quickly to dangerous consumer products. That, honourable senators, defeats the main purpose of the bill, which is to improve protections for consumers. The amendments would also create an unreasonable burden for government by increasing the administrative requirements associated with the act. That red tape would limit our ability to administer the act effectively and, therefore, limit our ability to protect the health and safety of Canadians.

To make the marketplace safer for consumers, we have to do two very important things. First, we have to establish new rules for industry that would reinforce that manufacturers, importers, advertisers and sellers are responsible for the products they offer to consumers. For those who shirk that responsibility, we need greater powers for our inspectors. Legislation without enforcement would be ineffective.

The amendments proposed by the committee would create serious flaws in the legislation. For instance, amendments to the mandatory reporting portion would weaken the reporting criteria of Bill C-6. It would limit important incident information received by the government and would jeopardize the government's ability to identify dangerous products. This amendment creates too much discretion for industry on what is reported. In our view, a single incident can be important. One incident can alert us to a need for action.

The manufacturer of an unsafe product may seek to minimize the amount of information reported. While we all agree that most industry acts responsibly, we cannot leave it up to industry alone to decide what information about a dangerous product is reported.

Health Canada needs more information about specific products to judge whether they might be a hazard to the health of Canadians. If the amendment was accepted, Health Canada would have to continue to rely on our counterparts in other countries to share information. We would constantly be lagging behind in our ability to react.

Honourable senators, we do not want to have a repeat of the situation we faced a few weeks ago. We learned from the United States about a dangerous baby crib — due to improperly installed drop sides — being distributed by a Canadian corporation.

There is also a flaw with the amendment related to the release of confidential business information or CBI as it is known. This information can be fairly benign. CBI can be something as simple as the description of a product, a model number or information about retailers that sell a particular product.

For those reasons, Health Canada needs to be able to share this information with our trading partners and facilitate cooperation when a potentially dangerous incident arises with a consumer product. If Health Canada was required to notify a manufacturer or distributer every time they made a phone call disclosing that information, they would be spending too much time notifying corporations at the expense of the work associated with protecting the health and safety of Canadians.

As well, our trading partners may become reluctant to share confidential business information with Canada because of this requirement to disclose to industry, which may be perceived as "tipping off" a company to future actions.

All in all, the amendments would bring no real benefits to Canadians or to industry. The amendment is seeking to limit a clause of the bill that already has appropriate limits. Under the original bill, disclosure would only be to an agency that has functions relating to health and safety. No agency would be sent information until they have agreed in writing to keep the information confidential and to only use it for the purpose of carrying out those functions.

The proposed amendment to the seizure and detention power in clause 20 would limit Health Canada inspectors' ability to verify that consumer products are in compliance with the law. The seizure power would have been important in dealing with unforeseen product safety issues complementing the general prohibition.

For example, take the situation with the unsafe cribs. These cribs were compliant with our crib standards, but became unsafe due to improper installation and broken pieces. With the seizure and detention provisions, Health Canada inspectors would have been able to seize and detain shipments of these cribs until compliance with the new act had been verified.

• (1750)

With the amendment proposed by committee, inspectors would have to wait until they had reasonable grounds to believe that industry had broken the law before seizing and detaining a product that is hazardous to Canadians.

Does any honourable senator in this chamber think it makes sense for Health Canada inspectors to wait until there is a problem with a product before they seize it, especially if it is one that could have been stopped at the source?

The amendment proposed to clause 21 of the act would require Health Canada to obtain a warrant to inspect an office. Health Canada inspectors would be able to inspect a factory, a

warehouse or a store, but would not be able to inspect an office without a warrant if entry is refused. Everyone knows that the most important records a business keeps are found in an office. The delays associated with obtaining a warrant create yet another administrative burden, and would create an opportunity for rogue businesses to remove or relocate records and make inspections more complicated than they need to be.

To require a warrant to inspect offices is completely at odds with comparable federal legislation containing inspection powers. It would create an unnecessary impediment to protecting the health and safety of Canadians.

The amendment requiring the minister to issue a recall is impractical for number of reasons. The amendment that would require Health Canada to provide notification of opportunity for voluntary compliance is equally problematic. We know that Health Canada takes a step-wise approach to compliance and enforcement, and works collaboratively with industry to resolve issues of compliance voluntarily. However, the department needs the necessary tools to take action when the voluntary approach will not work.

Overall, honourable senators, the amendments proposed by the committee would create loopholes and red tape that would allow irresponsible organizations, the ones that put profit ahead of health and safety, to evade the law rather than bring them in line. It would limit Health Canada's ability to be proactive and take action when required to protect the health and safety of Canadians.

Our current legislation is 40 years old and needs to reflect the realities of today's economy. I urge honourable senators to look carefully at the amendments before us today and put what is in the benefit interest of Canadians above all else. I urge you to defeat these amendments, return this bill to an effective, modern piece of legislation and pass it without further delay, so that Health Canada can get on with the business of improving consumer product safety in our country.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker *pro tempore***:** Will the honourable senator accept questions?

Senator Martin: Yes.

Senator Day: Senator Martin, thank you for your intervention. You were talking about confidential information, and corporate confidential information is the one issue we heard a lot about from many different witnesses. Did the honourable senator indicate that it could be as simple as a phone call that describes a product, the model or information on the retailer selling the product?

Senator Martin: In terms of process, what Health Canada officials may do to obtain information could be as simple as making a phone call. That is what I stated.

Senator Day: Regarding the honourable senator's comment as to what could constitute confidential information, I heard her say it could be as simple as a product model number; is that right?

Senator Martin: I did state it could be basic information.

Senator Day: In the honourable senator's view, does that fit within the definition of "confidential business information," which happens to be in the legislation we are being asked to pass?

When you look at the clause, you look back to the definition:

> "confidential business information" — in respect of a person to whose business or affairs the information relates — means business information
>
> (*a*) that is not publicly available;
>
> (*b*) in respect of which the person has taken measures that are reasonable in the circumstances to ensure that it remains not publicly available; and.
>
> (*c*) that has actual or potential economic value to the person or their competitors because it is not publicly available and its disclosure would result in a material financial loss to the person or a material financial gain. . . .

Is that the same "confidential information" that the honourable senator talked about in saying the amendments to clause 16 are not necessary; that it could simply be a matter of a product number or information about the retailer selling the product described in a phone call?

Senator Martin: What I was referring to is that the amendment to clause 16 would be an unnecessary burden to Health Canada in the process of their inquiries to receive information that would help them assess the danger of a situation and the hazard of a particular product.

With this bill, we want to tighten, strengthen and allow Health Canada the kinds of tools that are needed in this modern age, similar to what other jurisdictions have, like the United States and the EU. The honourable senator's amendment adds a burden to Health Canada, rather than doing what we are proposing in this act, which is to modernize and strengthen it and give it the tools required by Health Canada to conduct their business.

Senator Banks: I would like to thank Senator Martin for her thoughtful speech and ask a simple question.

Near the beginning of her speech, when she was enumerating those businesses who appeared in support of the bill, the honourable senator mentioned Dr. Dahl. Is that Dr. Eldon Dahl?

Senator Martin: I have to open up the attachment to double check the first name. I just have Dr. Dahl.

Senator Banks: I commend to honourable senators attention messages that they will all have received from Dr. Eldon Dahl of Calgary, who argued most strenuously in his submission to the committee against the bill and invoked the example of his home having been invaded months ago by armed officers, holding his wife and children at gun-point and stealing, in his view, things from his house which have yet to be returned.

I am wondering if it is the same Dr. Dahl.

Senator Martin: I do have a copy of a letter from Dr. Anne Doig, President of the Canadian Medical Association, representing 70,000 physician members, who is calling for support and passage of this bill.

Senator Banks: I thought I heard the honourable senator say —

The Hon. the Speaker *pro tempore*: The Honourable Senator Martin's five minutes have expired. Is the honourable senator asking for more time?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Five minutes.

Senator Tardif: Five minutes.

Senator Banks: I think I may have misunderstood. I thought I heard Senator Martin say "Dr. Dahl" and I think she might have intended to say "Dr. Doig," which is an entirely different matter.

Senator Martin: That was my error, Senator Banks.

The Hon. the Speaker *pro tempore*: Honourable senators, it is six o'clock.

(Debate Suspended.)

[*Translation*]

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, it is now 6 o'clock and having discussed this point with members of the other side, we have agreed to not see the clock at 6 o'clock.

From what I understand, there is only one senator who wishes to speak and his comments will be limited to five or six minutes. Therefore, we will finish our work shortly.

However, with the consent of the chamber, we should allow our committees to sit until six o'clock as planned.

[*English*]

The Hon. the Speaker *pro tempore*: Honourable senators, it is understood between both parties that we will not see the clock, that this item will be the last item debated on the agenda and that the other items will stay in the same order on the Order Paper.

Second, Senator Comeau is asking permission for the committee that meets at six o'clock to have permission to sit.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: We will now return to the debate on this item.

• (1800)

CANADA CONSUMER PRODUCT SAFETY BILL

TWELFTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—VOTE DEFERRED

On the Order:

> Resuming debate on the consideration of the twelfth report of the Standing Senate Committee on Social Affairs, Science and Technology (Bill C-6, An Act respecting the safety of consumer products, with amendments), presented in the Senate on December 3, 2009.

Hon. Wilbert J. Keon: Honourable senators, the subject matter of the bill has been well covered by both sides, but I would like to say a few words about this bill because it is extremely important. It has been mentioned that the current legislation is about 40 years old, and many people feel at serious risk if this bill fails to pass.

I wish to acknowledge that Senator Day did a tremendous amount of hard work on this bill. He read every word carefully and I thought at times he was preparing to speak to every word. Mercifully, he did not quite do that. We received some 3,000 emails about the bill and he read all of them. I watched and listened as he spoke to the bill and moved the amendments.

Having said that, however, I disagree with him because it is not wise to amend this bill at this time. It is likely as good as we can get. The positive emails made the point forcefully that we should get on with it and pass the bill because the entire area of consumer products needs much more scrutiny, as well as subsequent legislation. Let us face it: There are all kinds of holes in consumer product legislation and regulation, which means that Canadian consumers are being subjected to products that are not safe, whether they are ingested or played with, or are some other kind of products.

I am afraid that all of the proposed amendments have shifted the emphasis of the bill from consumer protection to industry protection, although not totally. I fully appreciate that the amendments were proposed to try to protect the rights of citizens, too.

Among the many people who came to see me and among the numerous pieces of correspondence that I received about the bill, I was truly impressed with the Canadian Medical Association. I will read a letter sent to Senator Eggleton, Chair of the Social Committee, by Dr. Anne Doig, President of the CMA. It states:

> On behalf of the Canadian Medical Association (CMA) and our 70,000 physician members, I am writing to indicate our support for Bill C-6, An Act respecting the safety of consumer products.
>
> As you know, Bill C-6 sets out to modernize the current regulatory regime dealing with consumer products that create, or could potentially create, a danger to human health safety.

> The CMA supports the comprehensive position statement and advocacy campaign which Safe Kids Canada has developed.
>
> Unintentional injuries from the use of consumer products are more common in children, with estimates of more than 18,000 emergency room visits for children per year as a result of product-related injuries. Injury prevention should be at the forefront of enhancing this important legislation.
>
> When we look to the international models and legislated regulatory frameworks, the European Union enacted the General Product Safety Regulations in 2005 and the United States signed the Consumer Product Safety Improvement Act in August 2008. Bill C-6 will achieve harmony with these international legislative measures, important when dealing with current global economies where many products available for sale are imported and products manufactured in one country contain materials from other jurisdictions. Safe Kids estimates that the global market for toys is valued at US $67 billion per year, with approximately 80% of toys in Western markets originating from China.
>
> Canadian consumers are at jeopardy because of the dangerous risk of injury from untested, uncertified consumer products and inadequate to standards. The lack of sufficient consumer protection can be dealt with by taking the opportunity to renew and modernize Canada's consumer product safety legislation, the stated intent of Bill C-6.
>
> Canada's doctors are front and centre in treating the consequences of unintentional injuries due to product-related dangers, sometimes resulting in serious harm and death. Therefore, the CMA asks for your support in ensuring speedy passage of this important legislation.

Honourable senators, we could debate this until the cows come home because it is a complex bill. Senator Day has done a superb job of being the critic on this bill.

I want to acknowledge the enormous amount of time that he put into this bill.

I appeal to all honourable senators on the other side to pass this bill, rather than to debate it back and forth for a long time.

Some Hon. Senators: Hear, hear!

Hon. Sharon Carstairs: Honourable senators, no one in this room is suggesting that this bill not pass. Rather, we are suggesting that we make the bill better, which is the purpose of the amendments. I suggest to Honourable Senator Keon, for whom I have utmost respect, that although Dr. Doig represents 70,000 physicians, I suspect that she and the others have not read the amendments proposed by Senator Day.

In listening to the Honourable Senator Martin, one would think that all of the minister's powers had been removed magically with the proposal of one or two simple amendments. Certainly, that is not the situation. The amendments are clear in that the minister has the overarching authority to act if she thinks there is a matter of health risk; and she may act instantly, without consultation or consideration of any other aspect of the bill. Senator Day has ensured that the minister would have that power.

In this place, balance should always be achieved between those who want consumer protection and the affected industries. However, honourable senators heard not from industry, but from 3,000 individual Canadians who said that their rights would be in jeopardy with the passing of this bill.

I cannot recall ever receiving that many emails from any other group of Canadians. I cannot ignore 3,000 Canadians who asked me to represent their interests. They asked me to examine the bill to ensure that their rights remain protected.

• (1810)

The government needs power; of that, there is no doubt, and that is achieved in this legislation. However, as we give to government, we must at the same time be willing to protect individual Canadians.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker *pro tempore***:** Is there continuing debate?

[*Translation*]

Hon. Jean Lapointe: Honourable senators, I greatly admire the courage of Senator Carstairs and Senator Day. With Dr. Keon's competence and reliability and my admiration for everything he has accomplished, he can be assured of my support to pass this bill as quickly as possible.

[*English*]

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

Some Hon. Senators: Question!

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

Some Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** All those in favour of the motion will please signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** All those opposed will please signify by saying "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** Is there an agreement on the vote?

Hon. Consiglio Di Nino: Honourable senators, as I moved earlier, with leave of the Senate, notwithstanding rule 67(2), as acting government whip, I move that the vote be deferred until 4:30 p.m. tomorrow, with the bells to summon the honourable senators to the chamber to ring at 4:15 p.m. for 15 minutes.

I have checked with the whip on the other side, who I believe is in agreement with this particular motion.

The Hon. the Speaker *pro tempore***:** Is it agreed, honourable senators, that the vote will be at 4:30 tomorrow?

Some Hon. Senators: Agreed.

(The Senate adjourned until Wednesday, December 9, 2009, at 1:30 p.m.)

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