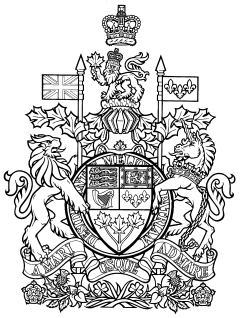

CANADA

Debates of the Senate

3rd SESSION • 40th PARLIAMENT • VOLUME 147 • NUMBER 64

OFFICIAL REPORT
(HANSARD)

Thursday, November 4, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: David Reeves, National Press Building, Room 926, Tel. 613-947-0609

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Thursday, November 4, 2010

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

Prayers.

SENATORS' STATEMENTS

ROYAL AGRICULTURAL WINTER FAIR

Hon. Donald Neil Plett: Honourable senators, every fall Toronto hosts the Royal Agricultural Winter Fair on the grounds of Exhibition Place. This year marks the fair's eighty-eighth year. It is better known as simply "the Royal." It will take place for two weeks starting tomorrow, November 5, and it will continue until November 14.

Queen Elizabeth II is the royal patron of this fair, and last year we were graced with the presence of her son, Prince Charles, and his wife Lady Camilla, who officially opened the winter fair with much fanfare.

Farmers and agricultural specialists from across the country will meet, learn and network, but they will also showcase their farm wares, produce and farm animals. Participants will also have a chance to join forums and discuss topics like new technological equipment and new agricultural trends.

This fair is not only for farmers, as it has a strong following of over 300,000 visitors every year. Onlookers come to take in the seasonal harvest and enjoy the good farm life in the city of Toronto.

Whether people come for the livestock competitions or the better known "super dog shows," with those cunning canines racing around obstacles, or the horse show matinees, there is something for everyone here. Visitors often see up to 3,000 head of cattle and over 1,300 horses, not to mention all the other animals that are entered into the competitions. This year the Royal has added a horse hockey match. They are marketing it as "less ice, more horse." Who has heard of horse hockey; our national pastime on horseback?

Notable legends who will participate include Darryl Sittler, Brad Marsh, Mark Napier and Rick Vaive. Wear your helmets, boys. This game should be good fun.

This fair will even host a rodeo, complete with barrel racing, bronco and bull riding and rodeo clowns. This is Toronto, right? I hope that some Manitobans will be there to show them how it is done correctly.

Let us not forget the giant vegetable display, where last year's prize winner was a 1,400-pound pumpkin. That is a lot of pies.

One of the more unusual and obscure exhibits will be the butter sculpture displays. It is like ice, except it is yellow and does not melt as quickly.

There will also be celebrity chefs sharing their secrets to cooking, baking and other tricks of their trade. If honourable senators want to go back to the agricultural traditions that Canada was built on, they should go to Toronto and explore the Royal Agricultural Winter Fair for a few hours.

CIVIL LEGAL AID

Hon. Catherine S. Callbeck: Honourable senators, legal aid, both criminal and civil, was on the agenda at last month's federal, provincial and territorial meeting of justice ministers. Provincial and territorial ministers once again asked their federal counterpart to consider the strategic importance of civil legal aid. Once again, the Minister of Justice agreed only to take their concerns back to his federal colleagues. For the last few years, the federal minister has refused to engage in meaningful discussions with the provinces on this matter — legal aid — even though we face a crisis in the area.

As many will know, civil legal aid includes both family law, such as child support and custody issues, and poverty law, that is, people who have lost employment or need to obtain disability or income security benefits. This problem affects all of Canada's low-income population, which often includes women and children, people with disabilities, recent immigrants and Aboriginal peoples. There are all kinds of stories about people having to represent themselves in court because they cannot afford a lawyer and they cannot obtain legal aid.

Islander Daphne Dumont, a highly respected lawyer, advocate and 2009 recipient of the Governor General's Award in Commemoration of the Persons Case, spoke about the lack of legal aid at a recent reception held by the Lieutenant-Governor of Prince Edward Island. She noted that "the basic access to justice is lacking" and called funding for civil legal aid a "perpetual problem."

Chief Justice Beverley McLachlin has said:

> Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education. The well being of our justice system — and the public's confidence in it — depends on it.

Our current civil legal aid system is a tragedy waiting to happen. It threatens people's rights and undermines the rule of law. I urge the Minister of Justice to reconsider his stance on civil legal aid, and work with his provincial counterparts to create a national funding stream for this much-needed service.

THE LATE REVEREND DR. DONALD E. FAIRFAX, C.M.

Hon. Donald H. Oliver: Honourable senators, I rise today to pay tribute to one of Nova Scotia's prominent Black leaders, Reverend Dr. Donald Fairfax. Reverend Fairfax died suddenly

on Friday, August 6, in Dartmouth, Nova Scotia, at the age of 90. He was a community builder who defended the rights and interests of fellow citizens, particularly youth, students, seniors, the disabled and the underprivileged. He was an exceptional leader who devoted his life to social justice.

Donald Fairfax was born on August 22, 1919 and was raised in Cherry Brook, Nova Scotia. In 1941, he entered Horton Academy in Wolfville, Nova Scotia, obtained a Baptist education and was ordained a minister in 1951. This ordination led to a brilliant five-decade career as pastor of the Victoria Road United Baptist Church in Dartmouth. He also served the Lukasville United Baptist Church for 31 years.

Reverend Fairfax was, above all, deeply concerned with social welfare and served the cause throughout his life. Here are but a few of his many contributions to his community: He was principal of Nelson Whynder School in North Preston where he gave youth the necessary tools to succeed in life; he was commissioner for the Nova Scotia Legal Aid Commission where he ensured that those in need received appropriate legal representation; he served on the Nova Scotia Human Rights Commission, where he strongly promoted equal opportunities for all; he was a member of the Black United Front of Nova Scotia, where he fought for the rights of Blacks; he was a board member of the Children's Aid Society and the Nova Scotia Mental Health Association, where he facilitated better opportunities for children and adults suffering from illness.

Honourable senators, Reverend Fairfax was a pillar in Nova Scotia and an advocate for education, human rights and social justice. His relentless commitment to his church, community and province has been honoured throughout his lifetime. Saint Mary's University and Acadia University awarded him with honorary degrees in recognition of his significant record of public service. He was also inducted into the Black Wall of Fame, received the Ronald Stafford Memorial Award by the Nova Scotia Association of Social Workers and the Queen's Golden Jubilee Award in 2002. He was also a member of the Order of Canada.

On August 12, *The Chronicle Herald* in Halifax paid tribute to Reverend Fairfax in a poignant editorial. The newspaper brilliantly summarized his contributions to Nova Scotia and said the following:

> It was his long, caring service as a pastor and the leadership he provided in civil rights, mental health services, educational opportunities for blacks, and support for the elderly and the poor that made Rev. Fairfax stand out as one of the great Nova Scotians of his generation. His passing is a huge loss to Nova Scotia.

• (1340)

TEACHERS INSTITUTE ON CANADIAN PARLIAMENTARY DEMOCRACY

Hon. Ethel Cochrane: Honourable senators, as you may be aware, this week Parliament Hill is hosting teachers from around the country as part of the Teachers Institute on Canadian Parliamentary Democracy. This annual event, which first began back in 1996, brings together 70 teachers from kindergarten to CEGEP in Quebec and every grade in between.

For six days every November, these teachers participate in an intensive professional development opportunity. Not only do they receive information sessions with a range of political, procedural and pedagogical experts, but they also gain an insider's look at the work of our Parliament. They meet with parliamentarians. They ask questions and gain an appreciation of the types of issues and challenges we wrestle with in our work, and they network and collaborate with peers from across the country. Together they develop new strategies and approaches for teaching their students about democracy, governance and citizenship.

Last night, I was pleased to attend the teachers institute dinner at the Château Laurier and speak on your behalf. It was a fabulous chance to meet exceptional educators and to learn from them about current events and approaches in the field of education.

From what I could see, honourable senators, the children and youth of Canada are in good hands. I am sure our colleagues who attended last night's event would concur. I take this opportunity to encourage all senators to become involved with this very worthwhile and valuable program. By attending the events and welcoming teachers into our offices, we share our knowledge, our understanding and first-hand experience of Canada's parliamentary system with the people who will shape and inform future generations of leaders.

In closing, I would like to thank all of the teachers who travelled to Ottawa this week to participate in this unique and challenging program. I applaud them for their work in classrooms across our great country, and I encourage them to become champions of political participation in their communities.

[*Translation*]

ROUTINE PROCEEDINGS

PRESIDENT OF THE TREASURY BOARD

2009-10 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the President of the Treasury Board's 2009-10 annual report to Parliament on Canada's performance and the Government of Canada's contribution.

THE ESTIMATES, 2010-11

SUPPLEMENTARY ESTIMATES (B) TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Supplementary Estimates (B) for the fiscal year ending March 31, 2011.

TREASURY BOARD

2009-10 DEPARTMENTAL PERFORMANCE REPORTS TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Reports on Plans and Priorities, Main Estimates, 2009-10.

[*English*]

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—ELEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Joan Fraser, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, November 4, 2010

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

ELEVENTH REPORT

Your committee, to which was referred Bill S-10, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts, has, in obedience to the order of reference of Wednesday, September 29, 2010, examined the said Bill and now reports the same with the following amendment:

1. *Page 5, clause 5*: Replace lines 15 to 22 with the following:

"**8.1** (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act, including a cost-benefit analysis of mandatory minimum sentences, shall be undertaken by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established for that purpose.".

Respectfully submitted,

JOAN FRASER
Chair

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

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

[*Translation*]

THE ESTIMATES, 2010-11

NOTICE OF MOTION TO AUTHORIZE STANDING JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT TO STUDY VOTE 10 OF THE SUPPLEMENTARY ESTIMATES (B)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Joint Committee on the Library of Parliament be authorized to examine and report upon the expenditures set out in Parliament Vote 10 of the Supplementary Estimates (B) for the fiscal year ending March 31, 2011;

That a message be sent to the House of Commons to acquaint that House accordingly.

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (B)

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

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2011, with the exception of Parliament Vote 10.

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

Hon. Senators: Agreed.

QUESTION PERIOD

OFFICIAL LANGUAGES

LINGUISTIC DUALITY

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate.

Yesterday in this chamber, the leader expressed her government's commitment to official language communities and to enforcing the Official Languages Act. However, the measures taken by her government since it came to power in 2006 suggest quite the opposite.

For example, in 2009, the government abolished the Canada Public Service Agency and transferred its responsibilities and those of the Centre of Excellence for Official Languages to a new

organization, the Office of the Chief Human Resources Officer of the Treasury Board Secretariat. Departments have since been left to their own devices and do not have the capacity, internally, to understand, interpret and analyze their obligations under the Official Languages Act.

Because these responsibilities changed hands, the public service now lacks official language coordination and champions.

Does the leader believe that her government's decision has anything to do with the poor performance of federal institutions, which, according to Volume II of the report on official languages, are still not managing to promote linguistic duality in Canada and create equitable workplaces?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will repeat what I said yesterday. Our government is fully committed and has demonstrated by our actions our full support for Canada's Official Languages Act. As honourable senators know, we have a five-year road map for official languages. It involves the largest amount of money ever invested by any government in official languages, and we are presently well into the program.

• (1350)

With regard to the honourable senator's citation of a specific report, I say the same as I said yesterday: That is why we have an Official Languages Commissioner. The Official Languages Commissioner, Mr. Graham Fraser, is the person to address these concerns to so that he can properly investigate.

[*Translation*]

Senator Tardif: Honourable senators, action is needed now. The Treasury Board of Canada Secretariat's Official Languages Centre of Excellence has seen a considerable drop in its workforce in recent years. From 2006 to 2009, the number of employees went down from 74 to 13 people.

Furthermore, the Treasury Board Secretariat no longer performs some of the important roles it did in the past. It no longer serves as a liaison with federal institutions. It no longer provides interpretation of the Official Languages Act. Furthermore, because of a lack of resources, it no longer acts as a leader in promoting bilingualism and it no longer performs the task of identifying official languages best practices.

With measures like these that are making federal institutions less and less accountable, what message is the government sending to Canada's official language communities, and how does it plan to correct and address the damning findings in the report on official languages?

[*English*]

Senator LeBreton: Honourable senators, the government relies on the work of an officer of Parliament, the Official Languages Commissioner. The Official Languages Commissioner tabled his annual report within this week. If the Official Languages Commissioner has reported areas where improvement is required or if something is not fully in compliance with the Official Languages Act, the government is fully committed to working with the commissioner and the department and will do everything it can to correct the situation.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

CANADIAN POLAR COMMISSION

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate.

In the March 2009 status report of the Auditor General, she discussed the federal government's process of making Governor-in-Council appointments to small federal entities. One of these was the Canadian Polar Commission. The CPC is an important commission that monitors, promotes and disseminates knowledge of the polar region; enhances Canada's international profile as a circumpolar nation; and recommends polar science direction policy to the government.

In her report, the Auditor General pointed out that the only position filled in this commission is that of executive director. The entire board of directors has been vacant since 2008. Here we are, more than a year after that Auditor General's report, and the government has still not moved to fill any of those seats on the board.

Why has this government not appointed directors to this important board?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the question is with regard to a specific agency of government. I will simply take the honourable senator's question as notice and refer it to the appropriate minister.

Senator Callbeck: I thank the leader for taking my question as notice and I look forward to the answer.

It is certainly not acceptable to have a board like this that does not have any members for over two years. The government talks a great deal about the importance of the Arctic polar region. In fact, it has been mentioned in the Speech from the Throne and in the last budget.

In the commission's 2009-10 annual report, here is what the executive director had to say:

> The Canadian Polar Commission needs to carry on leading the polar science debate, and raise flags about important polar issues. . . . It is more important than ever that the Polar Commission carry out its legislative mandate for the benefit of all Canadians.

When the leader is finding out why the government has not appointed any members to the board, I would also like to know how this entity has fulfilled its mandate when it has not had a board. In the absence of a board, who has been giving direction to the executive director?

Senator LeBreton: I will take the honourable senator's question as notice.

[*Translation*]

INDUSTRY

POTASH CORPORATION OF SASKATCHEWAN

Hon. Céline Hervieux-Payette: Honourable senators, my question is for the Leader of the Government. We were not surprised to learn that, under healthy pressure from Canadians and the Government of Saskatchewan, the Minister of Industry, Tony Clement, rejected the sale of PotashCorp. This last-minute about-face by the Reform government, which is supposedly ideologically in favour of deregulation, reminds us of the need to clearly define what constitutes a "net benefit" and the need for greater transparency in the analysis of a transaction that would allow a foreign company to take control of Canadian interests.

Can the Leader of the Government tell us when her government will show transparency and accountability when Canada's strategic interests are at stake, and will she tell us the terms and conditions under which this transaction was rejected?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I am always amazed when people opposite or people in the media seem to have known and been able to read the mind of the Minister of Industry, who, as we know, under the Investment Canada Act, had the responsibility to make this decision and to determine whether the transaction was of net benefit to Canada.

The Minister of Industry sent a notice to BHP yesterday, November 3, 2010, indicating that he is not satisfied that the proposed deal is likely to be of net benefit to Canada. The government has listened and consulted widely under the rules of the Investment Canada Act governing a review of foreign investment prior to the Minister of Industry making his decision. As I have pointed out to the honourable senator before in this place, our government is the only government that has stepped into matters such as this under the Investment Canada Act, unlike the previous government, which did absolutely nothing for 13 years.

Under the law, as honourable senators know, BHP now has 30 days to make further representation to the government. At the end of those 30 days, the Minister of Industry will make a final decision. Obviously, I cannot offer any further comment on the details of the minister's decision until those 30 days have passed.

I must note, though, that the suggestion of the Leader of the Opposition, Mr. Ignatieff, is that we overlook the 30 days. Perhaps Mr. Ignatieff knows the rules in the United States and the United Kingdom but clearly he does not know Canadian law. For him to suggest that we break the law is quite reprehensible.

Senator Hervieux-Payette: Honourable senators, I have a supplementary question. On October 21, 2010, the leader's favourite newspaper, *The Globe and Mail*, reported:

> Prime Minister Stephen Harper has signalled that he doesn't see Potash Corp. of Saskatchewan as a national corporate champion in need of protection from a foreign takeover, saying it's already American controlled.

I guess there must be a gap between the minister and the Prime Minister.

We now know that he was forced to defend Canadian interests not because of his beliefs, but because his hands were tied by Canadians, the Government of Saskatchewan and probably opposition parties. With news of the largest Russian fertilizer company, PhosAgro, displaying interest in bidding for PotashCorp, with the help of Moscow, the Prime Minister will be once again confronted with choosing between his beliefs and the interests of the Canadian people.

• (1400)

My question is very specific: When will this government stop flip-flopping and table legislation to define the notion of national interest that will remove any reasonable doubt that this Conservative government truly wishes to be transparent and accountable — we have many laws about this — in the defence of the strategic interests of Canadians?

Senator LeBreton: First, I am always amazed that people presume to know what is in my mind, in the Prime Minister's mind, or in Tony Clement's mind. Our government, unlike the previous government, has always said in matters like this one that any decision made would be in the best interests of Canada. That is exactly what was done in this case. Of course, we will now wait the 30 days that is required by law under the Investment Canada Act for the minister to make a final decision.

2011 CENSUS

Hon. Robert W. Peterson: Honourable senators, my question is to the Leader of the Government in the Senate.

I wish to refer to the mandatory long-form census. Honourable senators will recall that the government's main objection to this form was the fact that citizens could be put in prison for refusing to complete the census. In fact, it was so important to the leader's government that, during the height of the debate, Minister Clement announced he would table a bill removing any threat of imprisonment from the legislation.

Can the leader tell us when this legislation will be tabled, as I understand the census forms are being sent out as we speak?

Hon. Marjory LeBreton (Leader of the Government): The honourable senator is right. Minister Clement made that indication. As the honourable senator can imagine, the minister has been busy this last little while. However, I will ask him when he plans to table his legislation.

Senator Peterson: Thank you very much for that. In spite of how egregious the government has found this legislation, Mr. Clement has failed to act. The government seems to be focused more on putting people in prison rather than keeping them out.

Nevertheless, help is on the way. Liberal Carolyn Bennett has tabled Bill C-568 in the other place, which will remove, among other things, the prospect of jail time from the legislation. I trust this bill will meet the leader's concerns and that she will support this legislation.

Senator LeBreton: Honourable senators, I pointed out that Minister Clement made his intention known. He has been busy, as we all know, this last little while. The long-form census will be distributed much more widely as the National Household Survey. In the view of many, it should never have been called a long-form census because it was not a census. It was a survey because it was sent to a small percentage of the population.

I can understand the honourable senator's concern with the census, but it has been proven effectively that the Canadian public fully understands the intent of the government to have a mandatory short-form census and a longer household survey, which will provide excellent data to Statistics Canada and to people who are interested in accessing it. This issue is not an issue that is consuming great numbers of Canadians.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, while we are on this subject of the census, can the leader give us an indication of the government's current expectations as to the response rate for the new household survey form?

Senator LeBreton: As I said many times in answers to questions in this place, honourable senators, I believe, and a great number of people believe, that Canadians will be willing to fill out the National Household Survey. Nothing has changed other than that we are asking them nicely to fill it out and not demanding that they fill it out.

Senator Cowan: I did not ask that.

Senator LeBreton: In answer to your question, as I have said in this place before, I have seen the predictions of various agencies. Let us trust Canadians to respond to the questionnaire before people start assuming they will not do so.

Senator Cowan: I am not assuming anything. I asked the leader what the government's current expectation was as to response rate. I cannot believe that the government is embarking upon a major change like this one with no idea as to what the response rate will be, other than to say that they hope and expect that Canadians will respond more than they did to the mandatory survey. The best estimate we have is from Statistics Canada. They say that they expect less than 50 per cent response. Does the government agree with that estimate? If not, why not? What is the government's expectation?

Senator LeBreton: Honourable senators, our expectations are that the Canadian public will respond in great numbers to something they are asked to do nicely instead of something they are demanded to do.

ENVIRONMENT

CLIMATE CHANGE POLICY

Hon. Grant Mitchell: Honourable senators, I will ask this question nicely.

The government established cap-and-trade and certain 2020 targets as our Canadian climate change policy, not because it was good for Canada but because the U.S. was taking many of the same measures and they thought we should follow the U.S.

Now that the power structure of the government in the U.S. has changed more to the Republican side, unfortunately, will this government continue with what policies it has, such as they were; with what targets they had, such as they were; or will they wait until the U.S. tells them what to do next?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I guess that is the nicest way the honourable senator can ask a question. I will give him his due.

As I said recently, we support an approach to climate change that achieves real environmental and economic benefits for all Canadians. We continue to work with the Obama administration because the Obama administration is the government that we deal with at that level in the United States to develop clean energy technology and to take a continental approach on climate change. Given our deeply integrated industries, this approach is the only reasonable approach that can be taken. We will continue to work with the Obama administration on our mutual cross-border environmental concerns.

Senator Mitchell: I know the leader is trying to distance herself from the Republicans. I do not blame her, but they are hanging all over her.

The U.S. policy, like cap and trade, is dead in the water because of the new Republican influence. It is interesting to think that there is a huge Tea Party influence on the U.S. Republicans. If A equals B equals C, does the minister not draw the conclusion that if the Republicans drive environmental policy in the U.S. and that policy will drive environmental policy here, as her minister has said that it will, then is it not also true that the Tea Party will drive environmental policy in Canada? God help us all.

Senator LeBreton: The honourable senator has a vivid imagination. He said that the Republicans and the Tea Party are hanging all over me. I have many things hanging all over me but neither the Republicans nor the Tea Party is among that number.

• (1410)

PRIVY COUNCIL OFFICE

RELEASE OF INFORMATION

Hon. Pierre De Bané: Honourable senators, I would like to report to the Leader of the Government in the Senate a sad state of affairs that has really shocked me. I telephoned a certain department and told them that I would be a speaker, along with parliamentarians of other countries, at an event where we will be briefing young parliamentarians of emerging countries in sub-Saharan Africa about how democracy works.

I asked the civil servant to please send me off-the-shelf documentation about their department that I could use while doing my briefing with members of Parliament from other Western countries. His reply was: "I would love to help you, but I would feel more comfortable if your request came to me through the office of the minister."

I am old enough to know that there are sensitive matters that have to go through the office of the minister, of course. However, it is a different situation when one is asking for off-the-shelf documentation that may be published on the Web or wherever.

I was told to make my request through the minister's office. That is something I have never experienced before. Even for mundane, regular material — I did not want anything confidential, of course — I was told to go through the minister. This is shocking. After talking about transparency, accountability, and so on, I think that the department should be more forthcoming.

Some Hon. Senators: Hear, hear.

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for his question. I would appreciate it if the honourable senator would provide me details of his request. I do not know the circumstances or what the honourable senator was asking for.

The communications policy of the government, as I have pointed out in this place before, is the same as what was established in 2002. Nothing has changed. If a particular individual has made a comment to the honourable senator, I would like to have the information so that I can properly address the issue. I would appreciate it if the honourable senator would let me have the information and I will look into the matter.

Senator De Bané: I understand very well the leader's request for additional information, but I do not want to embarrass this civil servant. I assume he was acting according to the policies of the department. He is a senior official, not a junior one.

I would hate to embarrass a civil servant, but I also understand the leader's request to tell her the name of that official. Believe me, this is what I experienced today, and that is it.

Senator LeBreton: I can only draw the conclusion that the person who said this to the honourable senator was misinformed, because there are no new rules that restrict people from providing information. The communications policy of the government for all departments and ministers is exactly as it was in 2002. This government has followed the same procedures for ministers' offices and the government as were established under the previous government in 2002.

I suppose I should not speculate, but this individual, when he received the request from the honourable senator, should have sought the advice of his supervisor or whomever he is working with to confirm that the information the honourable senator requested was basic information on the operations of a particular segment of government, as the honourable senator mentioned.

All I can say to the honourable senator is that I am sorry this happened. However, there is little I can do or say unless I have more information. Despite what people might like to say, or what some in the media might like to suggest, the government has not changed the overall communications policy of the government since 2002.

ORDERS OF THE DAY

CANADA CONSUMER PRODUCT SAFETY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Yonah Martin moved second reading of Bill C-36, An Act respecting the safety of consumer products.

She said: Honourable senators, I am pleased to rise in this chamber as the sponsor of Bill C-36, the proposed Canada consumer product safety act. As my colleagues know, this is not the first time this bill has come before us.

The proposed Canada consumer product safety act was last before this chamber in 2009, and it was closely analyzed and studied. I am acutely aware of the work my colleagues did at that time and I know that among us in the chamber today we have significant knowledge, insight and experience with this legislation. Nevertheless, it is worthwhile to pause and consider what the legislation proposes to do and what its key elements are.

Bill C-36 will modernize consumer product safety in Canada. As part of a comprehensive Food and Consumer Safety Action Plan, the proposed legislation would change the approach to consumer product safety from reactive to proactive. It would provide a suite of important tools to establish a system based on active prevention, targeted oversight and rapid response.

At the present time in Canada, product safety is regulated through the Hazardous Products Act. Although suited to its time, the act has become outdated. That legislation was crafted to regulate a much smaller, less diversified and far less globalized product marketplace.

At a time when products still came slowly onto the marketplace and innovation was not as rapid and comprehensive, the Hazardous Products Act was no doubt an effective tool to achieve consumer product safety. Regulations were developed to deal with known risks as they emerged. Products for vulnerable populations have been a priority for these regulations, including toys and cribs.

However, the product marketplace today is profoundly different from that of 1969 when the Hazardous Products Act was brought into force. Today we have hundreds of thousands of consumer products, with innovation driving rapid product development and change. Globalization, with all its benefits, gives us complex supply chains and ready international access to markets. Manufacturing frequently takes place well beyond our borders, with materials and in conditions that we cannot always be certain about.

Honourable senators, we have a savvy consumer with varied tastes in Canada. Canadians are always on alert for the newest product, the sleekest design and the most contemporary model. These things are all good for the economy and I do not believe we should be putting up unnecessary roadblocks to the free flow of goods.

A post-market regime is the right approach for consumer products, but it demands modernized legislative tools to ensure effective and efficient oversight. That is the purpose of Bill C-36.

Bill C-36 introduces an important suite of modernized tools to ensure a proactive approach to consumer product safety. Right now, Health Canada does not have the power of mandatory recall. Many Canadians will be surprised to learn that when unsafe products, not subject to product or hazard-specific regulations, are discovered on the marketplace, officials are limited to negotiating voluntary recalls with manufacturers and importers.

• (1420)

Honourable senators, we benefit from an industry in Canada that values its reputation and works to be compliant with our laws and regulations. Despite these best efforts, unsafe products continue to be found in the market, and with increasing frequency.

Many times, the affected companies are highly motivated to take swift, voluntary action. They value their reputation, know their responsibilities and want to prevent further injury. Sometimes, honourable senators, the reaction is slow. There can be many reasons for this slow reaction. At its worst, it may be that a manufacturer or retailer does not wish to be accountable for the product safety failure. Other times, they may be trying to minimize or deny the risk.

In these cases, it is vital to have authorities to order mandatory recalls. These powers are held by our major trading partners. They use them sparingly and they are important and persuasive tools to ensure swift action.

Another important tool provided by this legislation is the general prohibition. As I said earlier, the Hazardous Products Act is a permissive regime. Consumer products are permitted onto Canadian markets without impediment unless they are specifically regulated or prohibited.

A general prohibition is a critically important tool in achieving active prevention. As articulated in the proposed legislation, this provision prohibits the manufacture, import, advertisement or sale of consumer products that pose an unreasonable hazard to human health or safety.

Honourable senators, industry in Canada understands product liability. Industry understands the proposed provisions at paragraph 7:

> No manufacturer or importer shall manufacture, import, advertise or sell a consumer product that
>
> (*a*) is a danger to human health or safety . . .

Paragraph 8 reads:

> No person shall advertise or sell a consumer product that they know
>
> (*a*) is a danger to human health or safety . . .

This legislation will reflect what is already required of them.

The concept of a general prohibition is common to them, as it is already in place in other jurisdictions. It helps to ensure a level playing field for all of industry. With a general prohibition, there can be no question about the shared responsibility that industry and the government have for product safety.

Another important element of the proposed Canada consumer product safety act is the requirement for industry to report when they know about a serious incident or death related to their product. This requirement will provide government with timely information about important consumer product safety issues.

It is illustrative to consider how our major trading partners currently gather intelligence about consumer products.

In the United States, for example, mandatory reporting of serious product-related incidents provides the government with intelligence that shapes their approach to targeted oversight. They have early alerts about serious incidents and are able to discern developing trends. This reporting, in turn, shapes their response, whether it is through recall of problematic products or other actions to achieve compliance.

Honourable senators, we work closely with our major trading partners, and with the United States in particular. We have benefited from the intelligence they gather through their mandatory reporting system, and we frequently work with them on joint recalls.

Honourable senators, we have not been equal partners in this international cooperation. Without our own system of mandatory reporting, we frequently rely on U.S.-specific information. This information provides important clues as to potential product-related problems in Canada, but it is not a complete picture.

If this legislation passes, a system for mandatory reporting will be implemented in Canada. It will generate information about our domestic product market. It will help us to assess product incident trends here within our borders.

Honourable senators, we thank our trading partners, and the U.S. in particular, for the support they have lent us by sharing their intelligence. With this provision, we will work as more equal partners.

Another important provision of Bill C-36 is the ability of the Minister of Health to require manufacturers or importers to provide tests or study results on products when they are asked to do so. It is clear that the ability to access test or study results to ensure compliance with the act is important. It will keep the accountability for safe products with industry itself, and reinforce our ability to take a proactive approach to ensuring compliance.

Another important element of this legislation is the requirement for industry to retain certain documents. This provision speaks to the central goal of the bill — efficiency. When unsafe products are detected it is important to act swiftly to remove them from the marketplace and inform consumers who have already purchased the goods.

Health Canada recognizes that the most efficient approach to product safety is to target the highest levels of trade, including manufacturers and importers.

Without overlooking the retail sector, when a product is identified with safety related problems before the goods are distributed, all complications can be avoided. Document retention will help us to act swiftly to analyze the supply chain and trace products.

These provisions are some of the key elements of Bill C-36. What do they accomplish? Bill C-36 provides the legislative foundation for a system of product safety that actively prevents problems, provides targeted oversight and responds rapidly when problems occur.

The legislation is a key element of the government's Food and Consumer Safety Action Plan. That plan has provided significant funding to increase the number of inspectors, enhance involvement in standards development, and improve outreach and information about consumer products to both industry and consumers. The resources will help the department find a product safety system based on a general prohibition against products that pose an unreasonable hazard.

With these resources, the government will implement the system for mandatory reporting of serious product safety incidents and use that intelligence for active prevention.

By doubling the number of inspectors, we will improve our efforts to ensure compliance with the legislation and expand our ability to respond rapidly when problems develop. These efforts will be particularly enhanced by the authority for mandatory recalls.

Honourable senators, as I said at the beginning of my comments, this legislation has already benefited from considerable scrutiny by my colleagues in this chamber. Before Bill C-36 was reintroduced in June, officials analyzed the concerns expressed about its predecessor legislation, and they analyzed the amendments the Senate had proposed.

Six changes were incorporated into the legislation at that point. Three of these changes spoke to senators' concerns about inspectors' powers. A further amendment also addressed concerns expressed by colleagues in this chamber. The government removed the words, "and they are not liable for doing so," from the provision that allows inspectors to pass over private property.

As before, inspectors are obligated to conduct themselves in a reasonable manner at all times and they remain liable for any damage that may result from negligent behaviour when passing through or over private property.

The government defined storage so that it is clear that it does not apply to goods stored by individuals for personal use. In Bill C-36, the minister is now made expressly accountable for the authority for recall and other orders.

In responding to concerns about the review of orders, the bill now sets out a 30-day review period to ensure that the review mechanisms or recourse available to industry are completed within a reasonable time frame.

Honourable senators, the Minister of Health worked hard before the bill passed the house and came to the upper chamber, to ensure that colleagues here would be satisfied with the legislation. The minister was advised that there remained some concerns among senators, and she was proactive in identifying and addressing those concerns.

Some honourable senators asked that the requirements of the Privacy Act be made explicit in this legislation, and so the government did so with amendments to clause 15(2):

> For greater certainty, nothing in this section affects the provisions of the Privacy Act.

• (1430)

The government also incorporated a series of technical amendments to address and distinguish the two houses of Parliament. Some of these amendments addressed the unique nature of each place and the fact that our committees are structured differently. Clause 38 was amended to address these concerns. For instance, before a regulation is made under paragraph 37(1)(*a*), (*b*) or (*c*), the minister shall cause the proposed legislation to be laid before each house of Parliament. In fact, Senator Cowan's proposed edit was adopted.

Clause 39 was also amended to ensure a rationale is provided in a timely way in cases where certain regulations are made without being laid before Parliament. The government amended clause 60 to address the concerns raised in the other place that clause 60 lacked clarity about the role of the minister in reviewing a notice of violation. This change required a further technical amendment to clause 56(1).

Honourable senators, the government deserves to be commended for the work they have done to address our concerns with the proposed Canada consumer products safety act. I hope that my colleagues will reflect on this as we study this legislation. Let us remember that in the past we have heard extensively from witnesses on this legislation.

Finally, honourable senators, let us consider how important these new tools have become. We hear on an almost daily basis of important product safety issues. In the past weeks, we have heard of the emerging and troubling issue of children's jewellery made with cadmium. Cadmium is a heavy metal and when ingested can cause serious health problems. Because there are currently no regulated limits on the use of cadmium in children's jewellery, Health Canada has exercised the limits of its authority under the Hazardous Products Act by releasing advisories to alert parents about these items and by asking industry for a voluntary ban on their use. The knowledge that under certain circumstances cadmium causes an unreasonable danger can provide Health Canada with a basis to use the general prohibition included in this legislation. Inspectors could be working right now to remove unsafe cadmium-filled children's jewellery from the stores.

Honourable senators, the time for this legislation has come. I look forward to working closely with you in moving this important legislation quickly through this chamber.

Hon. George J. Furey: Will the honourable senator accept a question?

Senator Martin: Yes.

Senator Furey: I thank the honourable senator for her comprehensive overview.

As honourable senators will recall, and the honourable senator alluded to it, when this bill was before the Senate last year, I raised concerns about the power of inspectors to enter our homes. I thank the honourable senator, the minister and the departmental officials for addressing those concerns and making the changes. It is comforting to know, honourable senators, that on occasion sober second thought actually works.

As Senator Martin knows, when I raised these concerns, many of her colleagues here in the Senate opposed the amendments that I proposed. As well, there was quite an outcry from some of the Conservative members in the other place with respect to the amendments. In fact, some of her colleagues were quoted as saying Liberal senators were trying to gut the bill.

Given the changes that the honourable senator has made, is she satisfied that her colleagues will not accuse her and department officials of gutting the bill now?

Senator Martin: Senator Raine says it takes a lot of guts. I like that.

I thank the honourable senator for his comments and question. I want to again commend our Minister of Health who took into account the serious suggestions made here in the Senate. As honourable senators know, she considered every point, and all of the concerns were addressed to a certain extent. What the minister has explained and the officials have confirmed is that the amendments that were made in fact address the concerns but do not in any way dilute or compromise the integrity and intent of this bill.

I hope that my honourable colleagues who will be studying this bill in committee, and others who look at it, will see that those amendments do clarify and that the intent and the importance of the powers and tools needed by Health Canada are indeed intact, and understand that this bill is needed at this time to modernize our outdated system.

Senator Furey: As I said before, the changes to the bill are quite good and I commend the honourable senator for them. I thank the officials from the department and the minister for doing that.

On a more serious note, I refer to sections 15 and 16, which address the disclosure of information. Honourable senators will note that section 15 concerns the release of personal information and is governed by what I consider a very appropriate standard, the standard of serious danger to human health or safety. Section 16, however, which concerns the release of corporate information, has no such standard.

I realize that before information is released by the minister, the receiver of that information must enter into an agreement with the minister. However, in the absence of any standard, I would not expect a full reply now before the legislation is studied in committee. I would ask her to raise this particular issue at committee.

Senator Martin: I will definitely bring that to the attention of our committee at the time.

The Hon. the Speaker: Continuing debate?

Hon. Joseph A. Day: Honourable senators, I wonder if the honourable senator would entertain a couple of other questions for clarification purposes.

Senator Martin: Yes.

Senator Day: Honourable senators, the history of this particular bill is that it started as one of two bills and was to run parallel with that other bill which relates to food and health products. Could the honourable senator let us know if we should expect the twin to this bill with respect to food and health products to be forthcoming in the near future?

Senator Martin: I thank the honourable senator for that question. I would not even begin to speculate. This bill does exempt health products. It is focused on consumer products safety and the necessary strengthening of the statutes that are so outdated. I cannot speculate on what will follow. However, this bill has been studied well and has come back to us. I do hope we will get the full support of senators in this chamber.

Senator Day: The reason I asked the question relates to the administrative aspects. The bill is based on the criminal law jurisdiction of the federal government. However, there is an attempt to move all of the administration and sanctions away from criminal law and into administrative activities. It is that particular aspect that I expect will be the same in both bills, and it would be helpful for us to know if we are dealing with two separate pieces of legislation or one. That is the reason for the question.

If the honourable senator is able to determine where the sister bill is and whether it is likely to be forthcoming, that would be helpful for us to learn perhaps at committee stage.

The second point is that I thought I heard the honourable senator say the minister would be doubling the number of inspectors. As I understand the bill, it does not provide for that. Is Senator Martin making a statement on behalf of the minister that the number of inspectors will be doubled?

Senator Martin: To date, I do know that at least 20 or more inspectors have been added to the system, and we did hear from witnesses as well as Health Canada officials that in order to implement the provisions of this legislation we must strengthen the resources. I have been told that there is an effort to increase the number of inspectors. We will have to wait to see the exact numbers, but there have already been efforts made to increase the number of inspectors in Canada.

• (1440)

Senator Day: It is an increase and not a doubling. Am I to understand the honourable senator correctly?

Senator Martin: I did say "doubling," so I will double check on that.

Senator Day: Yes, please do. There is a double-double.

Subclause 19(1) of the bill states:

> The Minister shall decide on the number of inspectors sufficient for the purpose of the administration and enforcement of this Act and the regulations.

Would the honourable senator contemplate an amendment to that clause to make it a little bit more clear that the minister's exercising of that discretion in the past has not been sufficient and, as the honourable senator indicated, doubling the number of inspectors is likely to happen or some increase? Could we tighten up this clause so we know more inspectors will be appointed?

Senator Martin: It could be doubling or tripling. I am not entirely 100 per cent sure of the exact numbers. Leaving it as is is probably more appropriate. Perhaps it will be more than doubled. However, I did say "doubled" and I will double-check on that.

Senator Day: Finally, is it possible to have an announcement or some comfort from the minister recognizing that the main reason for the ineffectiveness of the Hazardous Products Act has been the lack of qualified inspectors? We need the updated legislation, and I agree with the honourable senator in that regard, but we also need many more qualified and capable inspectors. If we could have some comfort from the minister, when she receives this updated legislation in whatever form it might finally pass here, that more inspectors will be appointed to do the job that needs to be done to protect Canadians, that would be helpful.

Senator Martin: Thank you.

Hon. Tommy Banks: Would the honourable senator accept another question?

Senator Martin: Yes.

Senator Banks: Honourable senators, I join Senator Furey and Senator Day in complimenting the government on making the changes it made. Good for the honourable senator and good for the government. I also want to say that most of us on this side, if not all of us, subscribe to the objects of this bill, as the honourable senator set out. They are urgently necessary. We all want them to happen. We all want protection of consumers. However, the devil is in the details of how we will go about that. I am sure we will be taking up this matter in committee.

I would like to ask the honourable senator one question in the meantime and, if she cannot answer, then I would let her, as sponsor of the bill, know that I will be asking this question in committee. It is in reference to clause 59 on page 31 of the bill. Honourable senators, this is under the heading "Rules of Law about Violations." Subclause 59(2) is lovely. It states:

> (2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

I am concerned about this because of the question of common law and I am wondering if the honourable senator can tell us the reasons for the exclusion of common law. The bill now provides, in clause 59(1):

> (1) A person named in a notice of violation does not have a defence by reason that the person
>
> (*a*) exercised due diligence to prevent the violation; or
>
> (*b*) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

These two provisions are common law. I am wondering if the honourable senator could tell us why they are specifically excluded as defences under this act.

Senator Martin: I thank the honourable senator for the question. In terms of the point raised about due diligence being excluded in this clause, I can distinguish for all honourable senators that there is a prosecution of an offence in the criminal courts and there due diligence is a reasonable defence. If the Crown has established that an offence has been committed, the person or business has the right to defend itself and use due diligence as one of the reasons for that defence.

The clause that the honourable senator pointed out is the other penalty branch, which is the administrative monetary penalty system or AMPS. In these situations, due diligence is not a viable defence because by the time a notice of violation has been given to a business, there would have been sufficient communication in writing to the business to correct whatever situation it may be and to try to comply with the potential violation. Thus, there has been reasonable communication in writing as well as an opportunity for this kind of corrective measure. By the time a notice of violation is given, clearly due diligence would not be a reasonable defence in that all along there has been communication with Health Canada. Health Canada will not just come in and give notice of violation without any warning. In that case, there should be due diligence as a defence mechanism. However, in the case of violations, there has been correspondence and time has lapsed, so the business has time to correct whatever violation might be taking place. By the time the notice is given, due diligence or even reasonable honest belief are not viable defences in these circumstances.

Senator Banks: Is it possible for the honourable senator to show me in the bill, because I cannot find it, where it says that? I ask the question — and I have been saying this a lot to people lately — because in this place, unfortunately, we do not determine policy. We can deal only with proposed law. We are constrained to dealing with what is in this proposed law. I cannot find in the proposed law where it states there will be lots of correspondence before a notice of violation is issued. It may be there. Perhaps we could do this in committee and the honourable senator can point it out to me then.

Senator Martin: I will look for the clauses that speak to that issue. This is something we will definitely study at committee.

Hon. Wilfred P. Moore: Will the honourable senator take a further question?

Senator Martin: Yes.

Senator Moore: In the honourable senator's remarks, I think she said that the regulations made under this act would not be subject to review, and I assume that would mean review by the Standing Joint Committee for the Scrutiny of Regulations. If that is so, why would that be? All other regulations are examined by that committee. It is the public forum where Parliament meets jointly, the two houses, and examines regulations. I think that is what the honourable senator said. If that is correct, then I would like to know why.

• (1450)

Senator Martin: I am trying to remember the exact point. It would follow regulatory procedures. I will check on that and report back to the honourable senator.

Senator Day: Honourable senators, although this is the third time that we have seen legislation similar to this bill, as we have heard from the Honourable Senator Martin, there are significant changes in this legislation, which are reflective of concerns we have expressed here. I think it is important for us to have an opportunity to review the bill before responding on the principle.

Therefore, I move the adjournment of the debate.

(On motion of Senator Day, debate adjourned.)

[*Translation*]

SUSTAINING CANADA'S ECONOMIC RECOVERY BILL

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUBJECT MATTER

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of November 3, 2010, moved:

> That, in accordance with rule 74(1), the Standing Senate Committee on National Finance be authorized to examine the subject-matter of Bill C-47, A second Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures, introduced in the House of Commons on September 30, 2010, in advance of the said bill coming before the Senate.

(Motion agreed to.)

THE ESTIMATES, 2010-11

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of November 4, 2010, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2011, with the exception of Parliament Vote 10.

(Motion agreed to.)

OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Mahovlich, for the second reading of Bill S-220, An Act to amend the Official Languages Act (communications with and services to the public).

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I am pleased to speak today at second reading stage of Bill S-220. I want to congratulate the Honourable Maria Chaput on her very important initiative, which consists in proposing amendments to Part IV of the Official Languages Act.

Modernizing the Official Languages Act is a realistic and very timely objective. It is high time we took into account the reality that is shaping official language minority communities today, by proposing amendments and adjustments to the Official Languages Act. That is what Bill S-220 is proposing to do by addressing Part IV of the act.

Honourable senators, the justification for this bill seems quite obvious given the many demographic and sociolinguistic changes that have taken place in the country since the Official Languages Act was passed in 1988. The statistical calculations, as established by the regulations, do not reflect these new realities. They leave no room for the new demographic, sociolinguistic, legislative and legal context and hence for consideration of those who are likely to ask to be served in the language of the minority.

Official language minority communities are being affected by increasingly variable demographic change. We see that a growing number of rural communities are experiencing an exodus of their residents, who are moving to urban centres. As a result, the minority language population in these rural areas is becoming less dense. However, these people still require public services in the minority language.

[*English*]

Immigration is another important socio-demographic factor to consider. Over the past decades, immigration has made large contributions to the Canadian population. For many new immigrants, neither French nor English is their maternal language. They have the choice of integrating into either French or English communities across Canada.

In Alberta, according to the 2006 Census of Canada, francophone immigrants make up 15 per cent of Alberta's total francophone population. However, with a growing trend of African immigrants arriving in the Prairie provinces, this number

is expected to rise. French-speaking Africans represent 26.9 per cent of new immigrants to Alberta, with Saskatchewan and Manitoba presenting similar numbers at 25.3 per cent and 27.8 per cent respectively.

Another sociolinguistic factor that comes into play is the increasing number of exogamous marriages. We see, for example, an increase in the number of couples whose first official language is not the language primarily spoken at home. However, these situations should not impede people's desire to use their first official language regardless of whether they are in the minority when seeking public services.

Also, let us not forget, honourable senators, the ever-increasing number of students enrolled in French immersion programs across the country who continue to participate in activities in French and who contribute to those activities.

I had the pleasure last weekend of attending the provincial annual general meeting of the Alberta branch of Canadian Parents for French. These students who become proficient in French are part of the 225,000 Albertans who identified themselves as being able to communicate in the French language and who can benefit from services and communication offered in French.

[*Translation*]

In light of these realities, certain provisions of the Official Languages Act concerning communications with and services to the public must be improved immediately.

Part IV of the Official Languages Act has not been reviewed since the act was passed. In 2005, Part VII was amended to require that federal institutions take positive measures to enhance the vitality of English and French minorities.

The current legislative context and recent court decisions support new changes to the Official Languages Act. Senator Chaput summarized the intent of her bill well during her speech before this chamber on June 15, and I quote:

> Canada has made much progress since the Official Languages Act was passed in 1969. It is time to take stock of the current state of this fundamental law, to reflect on future challenges, and to take the action required to ensure, among other things, respect for English and French as official languages, their equality of status and the equal rights and privileges as to their use in federal institutions.

The existing provisions in Part IV of the Official Languages Act are not well suited to the new reality of official language minority communities. The Honourable Michel Bastarache, a former Supreme Court justice, made this point when he testified before the Standing Senate Committee on Official Languages on October 26, 2009, and I quote:

• (1500)

> I believe that on the occasion of the fortieth anniversary of the Official Languages Act, we need to take a step forward and act positively by giving ourselves the means to go further in service delivery and to ensure that these services are genuinely accessible and adapted to the needs of communities . . .The government has the obligation not only to communicate with the individual in his or her language, but to provide service that is adapted to needs, as is done for the majority requesting service in the majority language.

That, honourable senators, is the context surrounding Bill S-220 and the reason for its existence.

Bill S-220 aims to make amendments that apply to regulations, offer of service, the rights of the travelling public and consultation.

Let us take a closer look at these amendments. First, with respect to regulations, it is important to note that the only regulations that have come out of the Official Languages Act so far regarding communications with and services to the public were adopted in December 1991. The regulations clarify the language obligations of federal organizations and specify the circumstances in which Canadians may expect to be served in the official language of their choice.

Under the current provisions of Part IV, services in both official languages must be offered to the public when there is "significant demand" for either of the languages or the "nature of the office" justifies it.

What constitutes "significant demand" is based on statistical data taken from Statistics Canada censuses and the technical calculations defined in the 1991 regulations. This means that certain regions of the country do not have access to services in one official language because they do not meet the criterion for "significant demand."

In recent years, many stakeholders, including the Commissioner of Official Languages, representatives of the francophone and Acadian communities, as well as witnesses in parliamentary committees, have pointed out flaws in the application of the regulations. They are critical of the complexity of the regulations and the fact that they do not take into account qualitative criteria, such as community of identity, in order to determine the real needs for services in either of the official languages.

This is what the Honourable Michel Bastarache said before the Standing Senate Committee on Official Languages on October 26, 2009, regarding these regulations:

> The danger with a regulatory framework is that people might think that facts can be appreciated in a mechanical way. For example, section 20 [of the Charter of Rights and Freedoms] states that the federal government must provide services at head offices, but only where there is sufficient demand . . . They refer to 3,000 people, or 5 per cent of the population, and list exception after exception. I am not sure that was the intended objective . . . If the objective is to support a community, will the numbers truly determine this issue or should there not be a more qualitative assessment? . . . Is there a community life, institutional infrastructure that the government should help maintain?

Honourable senators, there can be no doubt that the existing mathematical, mechanical process for determining demand for service is not in line with the fundamental goal of the Official Languages Act, which is to promote the development of francophone and anglophone minorities and the full recognition and use of French and English in Canadian society.

This bill amends the criteria used in determining whether there is a significant demand for service. In addition to purely mathematical criteria, Bill S-220 sets out qualitative criteria, such as institutional vitality and knowledge of the official languages, to refine the method by which significant demand is calculated.

First, the importance of institutional vitality is illustrated in the November 2009 report of the Fédération des communautés francophones et acadienne du Canada entitled: *A New Approach—A New Vision*, which states:

> If in any given region, there is a French-language school, cultural centre or community centre, it is inevitablybecause there is a community supporting institutions. The Regulations should take the notion of French-language community life into account in determining where federal services and support should be offered.

Second, the knowledge of official languages criterion would enable the government to take into account the reality of a portion of the population that often tends to go unnoticed under current regulations. Taking this criterion into account would enable the government to better assess immigration and exogamy rates and the number of people with knowledge of French in determining demand for service in either official language.

The legal definition of a francophone, as set out in the current regulations, is incompatible with section 20 of the Canadian Charter of Rights and Freedoms and the Official Languages Act, which provides for access to services in both official languages for all members of the public, not just members of linguistic minorities.

Therefore, including qualitative criteria to determine the circumstances under which the public can expect to receive services in either official language would comply with the objectives set out in Part VII of the act, which covers the development of official language communities and the promotion of linguistic duality.

Let us now turn to the changes that Bill S-220 would make to the offer of service.

May I ask for five more minutes?

The Hon. the Speaker *pro tempore***:** Yes. Five more minutes.

Senator Tardif: Bill S-220 introduces the notion of "equal quality" in order to better reflect recent Supreme Court of Canada rulings recognizing the need for equal access to services of equal quality for members of both official language communities in Canada.

For example, in the rulings handed down by the Supreme Court in the *Beaulac* case in 1999 and the *Desrochers* case in 2009, the applicable standard was that of substantive equality, which requires that official language minorities be treated differently, according to their particular circumstances and needs, so that their treatment is equivalent to that of the official language majority.

The exercise of language rights must not be considered a request for accommodation.

Let us now consider the amendments Bill S-220 would make regarding the rights of the travelling public.

Bill S-220 would impose a number of obligations on carriers designated by regulation in the area of services and communications. I would like to draw your attention to two important changes the bill would make in that regard. One would require that carriers provide services in the language of the minority community where there is significant demand, regardless of whether or not the carrier was once a Crown corporation. The other change would impose obligations on the Royal Canadian Mounted Police on those portions of the Trans-Canada Highway served by its detachments.

Bill S-220 also contains provisions on consultation.

• (1510)

The bill requires federal institutions and designated carriers to conduct consultations on the quality of the communications and services offered to the public in each of the official languages. Furthermore, the bill adds the requirement to consult when certain communications or services offered to the public are eliminated or the institutions are relieved of the requirement to communicate with the public in either official language.

Part VII of the Official Languages Act requires federal institutions to take positive measures including, among others, consultation. In its report published in June 2010 on the implementation of Part VII of the Official Languages Act, the Standing Senate Committee on Official Languages indicated that federal institutions must consult communities when developing or implementing policies and programs. In his recent report presented a few days ago, the Commissioner of Official Languages reaffirms that it is important for federal institutions to consult official language communities about their needs.

In closing, honourable senators, this is another key opportunity for the government to show leadership and commitment to official language minority communities. The Official Languages Act must be amended to accurately reflect the vitality of all official language communities across the country. I urge you to support this important bill, which is essential in the circumstances.

[*English*]

Hon. Terry M. Mercer: Would the honourable senator permit a question?

Senator Tardif: Yes.

Senator Mercer: In the past, many services offered to minority language groups across the country were determined by the questions asked on the long-form census. We know that the government did capitulate a bit and add a couple of questions to the standard form in its upcoming census. Should we not be concerned about the other information we are not gathering? By not having a mandatory long-form census we will be limited in the future in providing proper services to English-language or French-language minority groups across the country.

The honourable senator said 26.9 per cent of the immigrants to Alberta are coming from French Africa, with similar numbers in Saskatchewan and Manitoba. If we are not out there asking all the right questions, the quality of our services to minority language groups across the country will deteriorate, not get better.

Senator Tardif: I thank the honourable senator for that question. I am very concerned, as are members of the official language minority groups, that the obligatory long-form census is to be removed. It provides vital information. That information forms a proven basis by which services are provided to official language minority communities. We are concerned that this important data will be lost.

(On motion of Senator Comeau, debate adjourned.)

[*Translation*]

STUDY ON USER FEES PROPOSAL

INDUSTRY—FIFTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Banking, Trade and Commerce (*User Fee Proposal for Services under the* Canada Not-for-profit Corporations Act), presented in the Senate on November 3, 2010.

Hon. Céline Hervieux-Payette: Honourable senators, at the request of my colleague, Senator Meighen, and as Deputy-Chair of the Standing Senate Committee on Banking, Trade and Commerce, I recommend that the committee's fifth report, on the user fee proposal for services under the Canada Not-for-profit Corporations Act, be adopted.

(Motion agreed to.)

STUDY ON USE OF ELECTRONIC ASSISTIVE VOTING DEVICES FOR PERSONS WITH DISABILITIES

TENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE—DEBATE CONCLUDED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs, entitled *Report on the Use of Assistive Voting Device for Persons with Disabilities*, tabled in the Senate on October 21, 2010.

Hon. Joan Fraser: Honourable senators, even though we do not have to adopt this report, I feel it is appropriate to provide a brief explanation.

This report is the result of an initiative by the Chief Electoral Officer of Canada, Marc Mayrand, who wrote to the Standing Senate Committee on Legal and Constitutional Affairs in July, asking that he be invited to appear before the committee in order to discuss a pilot project. I will read one of the paragraphs from his letter:

> Section 18.1 of the *Canada Elections Act* authorizes the Chief Electoral Officer to conduct studies respecting alternative voting means, including electronic voting, and allows the use of such means in a general election or by-election with the "prior approval of the committees of the Senate and of the House of Commons that normally consider electoral matters."

I must say, Mr. Mayrand's desire to run a pilot project on the use of an "assistive voting device for persons with disabilities" is highly commendable.

[*English*]

Honourable senators, if I stumbled a little bit on that phrase in French, it is no less cumbersome in English. This is a pilot project on the use of assistive voting devices for persons with disabilities. What that means essentially is a device, mechanical and electronic, to assist people who have various disabilities — motor disabilities, visual disabilities, hearing disabilities — to vote in a more autonomous fashion than they can now.

Mr. Mayrand wished our agreement to do a pilot project in the coming by-election in Winnipeg North or, should a general election intervene, in that riding during a general election. We, of course, approved the pilot project.

I quote from the report:

> The right of all citizens to participate in the affairs of their government, through voting, is one of the cornerstones of democracy, and the committee is in favour of assisting all Canadians in exercising their franchise as equitably as possible, and with all possible secrecy.

I think every Canadian would agree with and strongly support that principle.

However, having heard Mr. Mayrand and having also welcomed in committee hearing the manufacturers of the device in question, who gave us a demonstration of it, the committee had some concerns for the future. We recommended a couple of small changes before the by-election, things like ensuring that for people with visual disabilities the machine actually read the whole list of candidates on the ballot to them before they be allowed to vote.

For the future, we also asked for a few more things. We asked Mr. Mayrand to report to us on the results of the Winnipeg North by-election or general election within three months. We want to know whether other devices or voting methods comparable to the one he is testing in Winnipeg North exist. If they do, we would like to see an evaluation of them so that we can have a comparison on cost and efficiency.

• (1520)

We want to know how well this device that he will use has performed in jurisdictions that have used it in the past, and the metrics that those others jurisdictions used to evaluate this device, because it has been used in other jurisdictions, notably in municipal elections in New Brunswick and in Ontario, but we were not able to access the statistical evaluation.

We want to know more about costs, about the numbers of individuals with disabilities who have used this device, about the number who used it in Winnipeg North, details of the communications strategy of Elections Canada to reach out to the voters who might benefit from using this device, and whether the pilot project is deemed to be a success.

We want to have any research or statistics that will allow the committee to understand further how strong the need is for this device and how many people are likely to use it.

In an ideal world, honourable senators, we would spend unimaginable amounts of money, if that were necessary, to help one single Canadian cast a vote in privacy and secrecy. In the real world, everyone, including the director of elections, has to juggle with priorities.

So strongly do we support the desire to help Canadians with disabilities that we want to know what we are talking about here in terms of numbers and costs. Costs include not only the costs of buying and using the technology but also the communications plan, training, variable costs as between urban and rural ridings, and the general implications of using this technology over the next five years, a period during which technology itself will evolve, as it always does.

The bottom line is that we have many questions. We strongly support the project in principle. The law will require that before any general introduction of such a device or a comparable device, Parliament will have to approve it, and the matter will come back, therefore, to our committee. In the meantime, we asked Mr. Mayrand to report on the results of this pilot project.

The Hon. the Speaker: Are there further comments? If not, the matter is considered debated.

(Debate concluded.)

EROSION OF FREEDOM OF SPEECH

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Finley calling the attention of the Senate to the issue of the erosion of Freedom of Speech in our country.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Senator Cools had intended to speak on this subject. She does not happen to be in the chamber at this time, so I wonder if I can continue the adjournment in her name.

(On motion of Senator Comeau, for Senator Cools, debate adjourned.)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMMITTEE AUTHORIZED TO STUDY POLITICAL AND ECONOMIC DEVELOPMENTS IN BRAZIL

Hon. A. Raynell Andreychuk, pursuant to notice of November 3, 2010, moved:

> That the Standing Senate Committee on Foreign Affairs and International Trade be authorized to examine and report on the political and economic developments in Brazil and the implications for Canadian policy and interests in the region, and other related matters; and
>
> That the committee submit its final report to the Senate no later than December 22, 2011 and that the committee retain all powers necessary to publicize its findings until March 31, 2012.

(Motion agreed to.)

[*Translation*]

ADJOURNMENT

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, November 16, 2010, at 2 p.m.

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

(Motion agreed to.)

(The Senate adjourned until Tuesday, November 16, 2010, at 2 p.m.)

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