



CANADA

Debates of the Senate

3rd SESSION

•

40th PARLIAMENT

•

VOLUME 147

•

NUMBER 67

OFFICIAL REPORT
(HANSARD)

Thursday, November 18, 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 18, 2010

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

Prayers.

[Translation]

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

November 18, 2010

Mr. Speaker,

I have the honour to inform you that the Right Honourable David Johnston, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 18th day of November, 2010, at 9:10 a.m.

Yours sincerely,

Sheila-Marie Cook
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills assented to Thursday, November 18, 2010:

An Act to establish National Seniors Day (*Bill C-40*, Chapter 13, 2010)

An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime) (*Bill S-9*, Chapter 14, 2010)

[English]

SENATORS' STATEMENTS

THE SENATE

FINANCIAL AUDIT

Hon. David Tkachuk: Honourable senators, last spring I had the honour of tabling the audit of the Senate's statement of financial position, conducted by PricewaterhouseCoopers as of March 31, 2009. The audit prepared the foundation for an

audit of our financial statement, which was conducted for the first time ever this year. The first annual external audit of the Senate's complete financial statements for the year ending March 31, 2010, was conducted by KPMG, which has been retained on a three-year contract through a competitive process.

Honourable senators, I am pleased to report that the resulting opinion was that the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Senate of Canada. These financial statements presented by the Clerk and the Director of Finance fulfill the requirements in the *Senate Administrative Rules* that, "The Clerk of the Senate shall prepare and lay before the Senate annually a statement of the accounts of the Senate."

While the financial statements are presented in a format recommended by the Treasury Board Secretariat of Canada's accounting standards, the Senate actually chose to use generally accepted accounting principles for the public sector as the basis for the financial statements. Generally accepted accounting principles are felt to be more acceptable to the general public, as they are prepared by an independent party, the Canadian Institute of Chartered Accountants, and respect rigorous corporate standards.

KPMG praised the Senate Administration for the culture of diligence that has been established in its financial processes, noting that their audit went extraordinarily well for a first-ever audit of financial statements.

The auditors did not find any errors during the audit that required them to recommend any adjustments to the financial information they reviewed, nor were there any unadjusted differences that might suggest control deficiencies. In fact, the auditors did not need to prepare a management letter to our Clerk, as they did not uncover any control deficiencies that would require them to recommend corrective actions to our financial controls.

I invite all honourable senators to join me in thanking the Clerk, the Director of Finance and the finance team for their excellent work in producing the Senate's first-ever financial statements.

Hon. Senators: Hear, hear!

MIGRANT AGRICULTURAL WORKERS

Hon. Mobina S.B. Jaffer: Honourable senators, I rise before you today to speak about the rights of Canada's temporary migrant workers. This past September, I visited an agricultural workers support centre in Surrey, British Columbia, where support is provided to migrant workers who come to work in Canada under temporary work visas. Unfortunately, most of these temporary migrant workers suffer in silence, which is why I am compelled to rise today and give them a voice.

During my visit at the centre, I heard numerous stories of mistreatment by employers. One story in particular stood out for me. This story is about a Mexican man named Benigno who works on a farm in British Columbia.

Benigno was tasked with emptying up to 10 25-kilogram sacks of pesticide powder into the hose irrigation system for almost five hours a day, without any safety equipment or training. This was a job reserved for supervisors who were equipped with the appropriate safety respirators and training.

This prolonged, constant and unprotected exposure to toxic chemicals has had significant respiratory health implications for Benigno. When he was sent to the doctor by the employer's liaison, who also acted as a translator, he communicated that he was having difficulty breathing. Not surprisingly, the incident was filed as a private visit and completely unrelated to his work duties. He was prescribed two types of inhalers and was sent on his way.

After enduring this dangerous work for a few more months, he returned to Mexico and once again reported to the Mexican doctor in charge of assessing whether he was fit to return to the Seasonal Agricultural Workers Program. The doctor informed him that he should no longer work because his lungs were so compromised by the pesticide that he could not continue to meet the physical demands required of a farm worker.

Benigno had no choice; he had to continue working. He had originally come to Canada to find a way to support his family and he wanted to continue working in Canada. Benigno continued to work and he suffered until he was not able to walk anymore.

• (1340)

Honourable senators, hundreds of thousands of workers like Benigno come to Canada each year with temporary work visas. These workers contribute significantly to the Canadian agricultural industry. We eat better and cheaper fruits and vegetables because of their work.

Honourable senators, the temporary farm workers are an important part of our great country. We need to hear their voices.

THE LATE HONOURABLE MICHAEL STARR, P.C.

Hon. A. Raynell Andreychuk: Honourable senators, I rise today to note another milestone in Canada's history, the achievements of the Honourable Michael Starr.

Born on November 14, 1910, in Copper Cliff, Ontario, Michael Starchewsky was one of seven children in a family of Ukrainian immigrants. There were many barriers facing Mr. Starr's family; and all new Canadians, from time to time, have faced the same issues. He even found it necessary to change his surname from "Starchewsky" to "Starr" to open more doors for his future.

Over the course of his distinguished and prolific career, Mr. Starr was a Rotarian, an alderman and a mayor. He was the first Canadian of Ukrainian origin to be Mayor of Oshawa — in fact, the first to be mayor of any large Canadian city. He was a

member of Parliament, Conservative house leader and Minister of Labour, the first Canadian of Ukrainian origin to be appointed to the federal cabinet. He was appointed by the then Prime Minister Diefenbaker.

Mr. Starr recognized the devastating impact of unemployment on individuals, families and communities. He used his cabinet post to address such issues. Some of his major accomplishments as Minister of Labour include the Winter Works Program, the minimum wage legislation and, notably, the creation of the community college system, which enabled the establishment of over 880 technical schools across Canada in less than two years.

Until his passing on March 16, 2000, at the age of 89, Mr. Starr was dedicated to promoting engagement in the political process, volunteerism and workplace equity. In honour of his commitment to such endeavours, "Michael Starr Week" is currently under way in Oshawa, Ontario.

Today, I acknowledge Michael Starr's significant contribution to Canada, and especially to Oshawa. Thus, 100 years after his birth, we honour the milestones of this great Canadian.

THE LATE HONOURABLE DAVID GORDON STEUART

Hon. Pana Merchant: Honourable senators, I rise to honour the life of the Honourable David Gordon Steuart.

"Davey" was a long-time family friend. He sat in the Saskatchewan legislature with both my mother-in-law, Sally Merchant, and with my husband, Tony.

We remember his humour, wit and colourful comportment; but most of all, we remember his dedication and service to the city of Prince Albert, to the province of Saskatchewan and to our country in time of war. As a navigating officer who flew a full cycle of missions in a dangerous duty, he tried to identify submarines in the English Channel, and in a navigation box, up to Norway — and subs versus the planes of the day was a pretty even fight. Many of his comrades died, as he might have.

Dave took all of this in stride and returned to Prince Albert, to his family business, where he became an accomplished alderman, the mayor and, in 1962, was elected in a by-election to the Saskatchewan Legislative Assembly.

He was re-elected in 1964, 1967, 1971 and 1975 — and always by slim margins, which earned him the reference of "Landslide Steuart."

Dave held many high-profile portfolios, including Natural Resources, Health and Finance, all at difficult times when the province was trying to turn the corner from an entrenched 20-year Cooperative Commonwealth Federation-New Democratic Party anti-business approach and reputation.

He became leader of the Saskatchewan Liberal Party in 1972. He did not form the government in 1975, but he was effective as leader.

Dave was summoned to this chamber on December 9, 1976. Unlike some, he was forthright about wanting to come to the Senate. He retired in 1991.

Dave was a passionate Liberal. He was the best of what liberalism is — political democracy, market economy and defence of individual rights — and Dave focused on the “little guy” because he was not a patrician.

He is quoted as saying:

If everyone does not take it upon himself to work his own special way to make our society a little better, then we have failed not only our country, but ourselves as well.

Sincere condolences go to his son, Bob; daughter, Lynne; and grandsons, Matthew, Graham and Owen.

REMEMBRANCE DAY

Hon. Yonah Martin: Honourable senators, on November 11 and 12, 2010, Prime Minister Stephen Harper stood on the world stage in Seoul, Korea, at the G20 summit. The government of the Republic of Korea planned and executed the global forum with precision and success, with the blessing of her citizens and the contribution of countless volunteers.

During the same week, Kim Yang, Minister of Patriots and Veterans Affairs, and his dedicated team also hosted the eleventh revisit program for hundreds of Korean War veterans of 21 countries that contributed to the United Nations force during the war, including 12 Canadian veterans and their spouses.

As Canadians, we can take immense pride in how our Prime Minister and Finance Minister Jim Flaherty demonstrated once again strength and leadership at the G20 summit. We can also be proud of the Republic of Korea's success — the fact that in only six decades Korea has transformed from an aid recipient to an aid-giving nation; and that her present day success is possible, in part, due to the sacrifice of tens of thousands of Canadians who fought, and 516 Canadians who died on Korean soil during the war.

On the morning of November 11, I had the honour of attending the Remembrance Day ceremony at the National War Museum in Seoul with Prime Minister Stephen Harper, Laureen Harper, Minister Jim Flaherty and member of Parliament Barry Devolin to commemorate Canadian and Allied soldiers who fought to defend South Korea against the North Korean Communist invasion from 1950 to 1953.

Colonel Jacques Morneau, Canadian Defence attaché, presided over the ceremony under a clear blue sky. Draping us in a semi-circle, our Canadian flag and flags of the 20 other nations waved in the wind — with hundreds of Korean War veterans, Korea's living heroes from Canada, the United Kingdom, Australia and France in attendance. It was a perfect ceremony to mark the sixtieth anniversary of the outbreak of the Korean War.

It was a memorable and most meaningful ceremony indeed. For the 12 veterans “revisiting” Korea for the first time in nearly 60 years — namely Paul Rochon, Bob Maginn, Ralph McKay, James Hallack, William Atchison, Mike Melnik, James B. Palmer, Cecil E. Hamm-Roy, Larry John Smith, Arsene Dubé, Donald W. Tremblay, Augustus Eugene Bince, Jean Pierre Van

Eck, Robert Lavoie, Garry E. Johnson and Edward C. Petrony — this day was all the more meaningful as Prime Minister Harper and Laureen Harper met privately with them prior to the ceremony.

After the ceremony, the Prime Minister laid a wreath in front of the Canadian plaque at the Gallery of the Monuments of Those Killed in Action. In the words of Prime Minister Stephen Harper:

Today we honour and remember those members of the Canadian Forces who fought in one the toughest wars in our history, to defend South Korea against an oppressive communist invader. Our forces fought bravely alongside our Allies to defend South Korea and played a pivotal part in ending the hostilities.

Of the 26,791 Canadians who served in Korea; 7,000 were active in the theatre between the ceasefire and the end of 1955; 516 Canadians made the ultimate sacrifice; 378 are buried in the United Nations cemetery in Busan, Korea; and countless Canadians have defended the freedoms and rights of people, past and present. We will remember them.

Lest we forget.

• (1350)

THE LATE HOWARD ANDERSON

Hon. Lillian Eva Dyck: Honourable senators, I rise today to pay tribute to Mr. Howard Anderson, a veteran of World War II and an Aboriginal veterans activist, who passed away on Friday, November 12, 2010. I attended his funeral on Tuesday this week. It was a moving ceremony combining military, Christian and Cree traditions. Hundreds came to pay their respects to Mr. Anderson, who was the last surviving World War II veteran from the Gordon First Nation.

Mr. Anderson was only a young 16-year-old when he signed up to fight in World War II. He fought alongside his fellow Canadians with courage and love of country. Upon returning to Canada, Mr. Anderson led the fight for just compensation to First Nations veterans over the past 50 years. Through his position as Grand Chief of the Saskatchewan First Nations Veterans Association, Mr. Anderson brought the issue of veterans' compensation 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, awarding \$20,000 to eligible First Nations veterans who faced discrimination upon return from war. This was not a completely fair settlement, so Mr. Anderson continued to lead the fight for equal compensation for First Nations veterans. Over the past year, I was honoured to be working with him in his noble pursuit. His passion for educating us all on the contributions of First Nations veterans and soldiers was motivating, and he will be deeply missed.

Mr. Anderson had a lovely sense of humour. He said that when they found out the war had ended, they celebrated, they celebrated, and they celebrated. He is said to have charmed everyone that he met, myself included.

Howard Anderson also had a love of sports and was very active in minor sports throughout his life. He was awarded the Tom Longboat Award for his efforts for excellence in contribution to Aboriginal sports.

It is fitting that the day before his passing he combined these two passions. During the day, he attended the Remembrance Day ceremony on Gordon First Nation reserve and in the evening, he attended the Regina Pats First Nations and Metis Awareness Night.

Howard leaves behind his loving wife, Denise Anderson, his 12 children, 26 grandchildren and 28 great grandchildren.

I am truly saddened that he did not live long enough to see his dream of fair compensation for Aboriginal veterans come true. However, we will not forget. We will remember Howard and continue his work on behalf of Aboriginal veterans. His spirit lives on.

REMEMBRANCE DAY

Hon. Elizabeth (Beth) Marshall: Honourable senators, on November 11 last week, I had the honour and privilege to represent the Government of Canada at the Remembrance Day ceremony held in the town of Conception Bay South, Newfoundland and Labrador.

The ceremony included a memorial service, as well as the unveiling and dedication of two beautiful bronze statues. One statue depicts an old comrade from the Blue Puttees of World War I in quiet repose, while the second statue depicts a current-day soldier on patrol. This ceremony marked the first time in more than 80 years that a bronze statue has been dedicated in Newfoundland and Labrador to the famous Royal Newfoundland Regiment, a regiment that earned itself the reputation as one of the best fighting forces of the war to end all wars. It is also the first time that a contemporary Royal Newfoundland Regiment soldier has been cast in bronze.

The Blue Puttee statue depicts an original “first 500” soldier looking back years after the end of the war. He stands in quiet reflection on the loss of many of his friends and comrades with whom he served.

The present-day statue depicts a female soldier of the Royal Newfoundland Regiment on patrol. She represents all the Newfoundland soldiers who are currently facing life-or-death situations in armed conflicts around the globe. This statue is unique in that it is the first female soldier depicted on active service and dedicated in all of Canada, not just in Newfoundland and Labrador.

These two statues symbolize the sacrifices that our women and men in the military have made to protect our rights and freedoms as we know them today in this great country of Canada. When completed, this Monument of Honour will serve to remind all of us of the ultimate sacrifice that many of our men and women in uniform have made for their country, province and the people they served.

Honourable senators, before I conclude I would like to thank the Monument of Honour Committee and all those who contributed to make this memorial to our men and women in uniform a reality. I especially would like to thank Chairperson Mr. Wayne Miller, a retired military veteran, and his committee who, through dedication, commitment and hard work, have reached a major milestone toward the completion of the new memorial site. I also recognize Mr. Morgan MacDonald, a local Newfoundland artist, who created and sculpted these two magnificent works of art.

This memorial has been erected at a prominent site in the town of Conception Bay South and will become a major landmark in the province of Newfoundland and Labrador. This beautiful monument will always ensure that the words “lest we forget” are etched in our minds today and for generations to come.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I would like to draw the attention of all honourable senators to the presence in the gallery of Councillor Bev Dubois, a distinguished member of the municipal council of the City of Saskatoon, Saskatchewan.

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

Hon. Senators: Hear, hear.

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SEVENTH REPORT OF COMMITTEE TABLED

Hon. David Tkachuk: Honourable senators, I have the honour to table, in both official languages, the seventh report of the Standing Committee on Internal Economy, Budgets and Administration.

STUDY ON ISSUES RELATED TO NATIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

FIFTH REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. Nancy Ruth: Honourable senators, I have the honour to table, in both official languages, the fifth report of the Standing Senate Committee on Human Rights, entitled: *Women, Peace and Security: Canada Moves Forward to Increase Women's Engagement*.

[Translation]

**BILL RESPECTING THE REORGANIZATION
AND PRIVATIZATION OF ATOMIC
ENERGY OF CANADA LIMITED**

FIRST READING

Hon. Céline Hervieux-Payette presented Bill S-225, An Act respecting the reorganization and privatization of Atomic Energy of Canada Limited.

(Bill read first time.)

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

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

[English]

CANADA'S ENGAGEMENT IN AFGHANISTAN

NOTICE OF INQUIRY

Hon. Pamela Wallin: Honourable senators, I give notice that, two days hence, I will call the attention of the Senate to:

The efforts and accomplishments of Canadian military members, diplomats and aid workers in Afghanistan over the past ten years, which has included significant milestones in security, basic services, economic development, diplomacy and humanitarian assistance;

The Government of Canada's plans for continued assistance to that country to build on this progress through a new non-combat role for Canada's engagement in Afghanistan until 2014 by training Afghan security forces so that Afghanistan can progressively take control of its own security and future; and

The fact that the Canadian Government will persist with its successful education and health initiatives for children, promotion of regional diplomacy and delivering humanitarian assistance to the Afghan people.

[Translation]

QUESTION PERIOD

FOREIGN AFFAIRS

SUDAN

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate.

In 2005, the Government of Canada was very involved in the peace process in Sudan. The Prime Minister at the time had sent a team of two senators and an ambassador to present Canada's position and increase the African Union's involvement in the fight against what President George W. Bush called the genocide in Darfur.

• (1400)

Since then, our capacity in Sudan, in Darfur, has been significantly reduced; barely 45 people are left. Funding has been provided for humanitarian aid, but with the referendum on Southern Sudanese independence to be held shortly, we anticipate conflict, friction and major humanitarian catastrophes because of the displacement of a significant number of Darfurians.

Does the Government of Canada have an action plan to help the United Nations, to set out a diplomatic position and ensure that this transition goes smoothly? Does the government have observers on the ground, or is it planning to let events take their course and pick up the pieces later by injecting new funds, as it has done in the past?

[English]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I am well aware of the activities of the previous government and of the two senators and, the honourable senator was one — who were part of the group that participated in the deliberations.

Honourable senators, the situation is of great concern to the government. With regard to the honourable senator's question, I will be happy to refer this question to my colleague and ask, at the appropriate time, that when the government makes its decisions on how it will proceed in this area, the honourable senator be fully informed.

Senator Dallaire: Honourable senators, the referendum will happen in January. The United States have been calling north, east and south to ask countries to show their hand to demonstrate to Khartoum that we expect that referendum to be done in the proper process as per the peace agreement; that the minorities within the northern part of the Sudan would not be targeted; and that there would be no increase in friction along that new border that would be created. However, there have been massive redeployments of Sudanese forces along that border, all equipped, by the money of the oil from the southern part, with arms bought from China.

If we have a diplomatic corps and we are a leading middle power, we would be working there already to ensure that the rules are being followed properly and that enough resources are being deployed to ensure that it happens.

Can the leader tell me whether the Canadian government has been engaged or will become engaged, as I think will happen, when it will be too late to influence the situation?

Senator LeBreton: I think the honourable senator understands that the government is fully engaged in monitoring the situation. I am certain the honourable senator understands that we are working with our allies to ensure that when the referendum takes place, proper procedures are followed.

As I have already indicated, honourable senators, I do not have the information in front of me nor have I been part of any discussions on the actual engagement in the Sudan. However, as I indicated to the honourable senator, I would be happy to ask my colleagues to provide me, and therefore the Senate, with an update on all of our activities in the Sudan.

Senator Dallaire: Honourable senators, we are aware that there are over 300,000 Darfurians right on that border, also with the intention, as has been described by NGOs, of moving into that new country, should it come to fruition.

Would we, either from CIDA or from our diplomatic corps, anticipate being of service in that humanitarian catastrophe, should it happen, for those 300,000 people? It may be only the front end of the other nearly 2.2 million Darfurians who are also in displaced camps let alone the refugee camps in Chad.

Senator LeBreton: As the honourable senator indicated, this is a serious situation. I am confident that the officials in Foreign Affairs and in CIDA are doing everything possible to assist and to monitor the situation and stand ready to do whatever is necessary to improve the situation. I do not have that information. I have not been party to any discussions, but I will be happy to seek updated information and provide it to the honourable senator as soon as I receive it.

HEALTH

TOBACCO PRODUCTS

Hon. Pana Merchant: Honourable senators, last week the U. S. Food and Drug Administration announced its intention to use, within the next two years, graphic and strong label warnings to cover one-half of the cigarette package. At the same time, our Conservative government, at a closed-door meeting of territories and provinces, announced it has abandoned a six-year project to update with more graphic photos what has been effective scare tactic advertising on Canadian cigarette packages.

In a *Globe and Mail* article of November 9, entitled, “Did Ottawa bow to tobacco industry pressure on warning labels?” the Canadian Medical Association questions Health Canada’s “senseless” reversal on warning labels. Another article on November 11 asks again, “Did Ottawa bow to industry pressure?”

Smoking is the leading cause of preventable deaths. Canada was the first country in the world, in 2001, to adopt strong health warnings on cigarette packages and tobacco products designed to inform Canadians about preventable disease with the reported result of a 28 per cent reduction in cigarette smoking in Canada over this period.

Honourable senators, I have three questions for the Leader of the Government in the Senate. First, why was there a closed-door meeting between Conservative officials and territories and provinces? Second, are the Conservatives, by hiding their true intentions, bowing to tobacco industry pressure? Third, we know from within the department that the new warnings were ready to go and that they included links to 1-800 help lines.

Was it political will that stopped this updated advertising, and why is the political will in opposition to the interests and health of Canadians?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, it is absolutely insulting to suggest that because *The Globe and Mail* asks the question did we bow to the lobby or pressure from the tobacco industry, then it must be true. That is an outrageous statement that does not even warrant a response.

Honourable senators, with regard to tobacco, we have committed \$15.7 million annually through our grant contributions under the Tobacco Control Strategy to help people stop smoking, prevent youth from starting to smoke and to protect Canadians from second-hand smoke. Health Canada continues to examine the renewal of health warning messages on tobacco packaging. Obviously, there are varying opinions. We have strong warnings on our tobacco packages now. Some people think that people are getting used to them. There is a debate about that.

I think I heard the honourable senator correctly. To suggest that the meeting that the Minister of Health had with her provincial and territorial counterpart was, a backroom, closed-door meeting with Conservative officials is bizarre in the extreme. The last time I looked, while there are some Conservatives at the federal and territorial government level, all the other parties are involved as well.

Hon. James S. Cowan (Leader of the Opposition): If I can follow up on that, honourable senators, with respect to the cancellation of the updated labelling, I think the evidence is clear that these labels get stale over a period of time. People become used to seeing these pictures and they become less effective. That is the reason the labelling and the warnings are updated. The study to which my colleague referred, which has been continuing since 2004, as I understand it, resulted in updated labelling, which was all ready to go.

Why did that updated labelling not proceed?

• (1410)

Senator LeBreton: Again, that is not what I said. I said that Health Canada continues to examine the renewal of health warning messages on tobacco packaging. I think the honourable senator, in his question to me, said something about the cancellation. I do not believe that I have seen any documents anywhere that the Government of Canada cancelled health warning labels on cigarette packages.

I did say that the government will continue to monitor and examine the renewal of health warning messages on tobacco packaging. I also believe, and I think it is backed up by evidence, that the money that is committed by the government through grants and contributions under the Federal Tobacco Control Strategy is working. It has helped people to stop smoking. The advertisements warn young people about the serious consequences of smoking. I believe that the government is, and will always be, fully committed to preventing people from smoking.

Senator Cowan: Honourable senators, I do not dispute the commitment of the government to these other programs. My question related specifically to the study that has been ongoing since 2004 with respect to the label. It is my understanding — and I may be incorrect; if I am, perhaps the leader can check with her officials and advise me — that the study had been completed and the updated labels were ready to go. For some reason, the mandating, if that is the correct word, of these updated labels was cancelled.

The labelling is not paid for by the Government of Canada. It is not a diversion of any funds from any other tobacco control strategy. It is paid for by the tobacco companies themselves. If there is no effect on these other programs that the leader spoke about, why would the government not update the labelling in Canada as the U.S. government has done with respect to its labelling?

The ironic thing is that at least some of the updated labels in the U.S. feature the photograph of a Canadian anti-tobacco use activist. There is an irony there. I appreciate that the leader may not have the answer today. I ask the leader to check with her officials and return to me with an answer. This matter is serious and there is real concern. My colleague referred to the fact that the Canadian Medical Association and the Canadian Cancer Society have been critical of it, and if the information upon which I and she and these two societies have based our questions is incorrect, perhaps the leader would check and advise us.

Clearly, all of us are agreed that we need to do everything we can to control tobacco use, particularly amongst these vulnerable portions of our population. There is a lack of understanding as to why this action has not been taken, if I can put it that way.

Senator LeBreton: Honourable senators, I am aware of the situation in the United States and the fact that a Canadian woman will be featured on one of their advertisements. It is also well known, and I happen to be aware personally of this fact because my sister was working in Health Canada as part of the tobacco cessation program, that we are well ahead of the United States in posting warnings on the dangers of tobacco.

We are proud of Bill C-32, which amends the Tobacco Act to ban flavoured cigarettes to keep younger people from smoking.

With regard to the study, the honourable senator is right. There seems to be a divergence of views as to what this study said, and what the decisions or non-decisions were. I will inform myself of its status and, of course, notify the Senate at the same time.

Senator Cowan: I draw the attention of the leader to, and ask for her comment on, a report that was issued on Monday by the Canadian Cancer Society of a meeting of 171 countries, including Canada, that had signed the World Health Organization's Framework Convention on Tobacco Control. This report found, and I think it is contrary to what the leader said a moment ago, that Canada has dropped from first position in 2001 to eighth in 2008, and is now down to fifteenth. Uruguay is now the world leader in compliance with the Framework Convention on Tobacco Control. We are tied for fifteenth place with Iran, Brunei, Egypt and Albania. I hardly would suggest we have made significant progress since 2001. I ask for her comment.

Senator LeBreton: Honourable senators, I am aware of the report. I can share with the honourable senator that the Minister of Health and our own government have taken many measures in support of, and funding for, the Canadian Cancer Society.

I will obtain the comments of the Minister of Health on the report and also update the honourable senator on our future plans to convince people to cease smoking.

Senator Merchant: Honourable senators, I was in the U.S. last week. That is precisely the point. In their newscasts, and I watched two or three of them, they held up Canada as a shining example for having been the first country in the world to have used these graphic, powerful messages. Their point was that there would not be any company that would carry on with the same sort of advertising for ten years, because people become desensitized, and that we need to be more graphic and aggressive. That is a sad thing. I ask the leader if she agrees that we have fallen behind so many other countries. I ask, why the reversal; why have we found ourselves in this position?

Senator LeBreton: I repeat that the government has committed \$15.7 million annually through our grants and contributions program under the Federal Tobacco Control Strategy. As honourable senators know, this program is designed to help people stop smoking, to prevent youth from ever starting to smoke, and to protect Canadians from the dangers of second-hand smoke, which we know are real.

To say that the government is not taking this issue seriously is incorrect. I acknowledge that there are some who believe that advertisements on tobacco packages lose their shock value after a time, but as I said as well, Health Canada is monitoring, and continuing to examine, the effectiveness of these advertisements and the warning messages on tobacco packaging.

The government has not reversed the position. They have not cancelled the program. Health Canada is, I am sure, assessing all the things we do in terms of the tobacco industry in protecting our public and our children, in particular. That is why the government introduced Bill C-32.

My answer is the same. We are committing a significant amount of money to our Federal Tobacco Control Strategy. Health Canada may use different avenues in their programs. I will be happy to refer this matter to them and ask them for an update on all the things they are doing to prevent people from smoking.

Hon. David P. Smith: In the leader's answer, she said that some of the officials thought that these advertisements lose their impact after a while. Was that not the very reason why the officials came up with new, presumably hard-hitting advertisements to hammer away and give a new message so the advertisements will not lose impact? Is that not the rationale of what they were recommending?

• (1420)

Senator LeBreton: Honourable senators, I do not believe I said "officials." I said it is acknowledged there are some — and I am talking about generally — people who believe that the shock value

of advertisements wears out after a while. I am confident that Health Canada is well aware of this issue and is monitoring the situation.

Hon. Jane Cordy: We certainly understand Bill C-32 and the government bringing forward the bill to do away with flavoured tobacco is a positive thing. I spoke to the bill as I was critic on this side and I spoke in favour of that bill. I thought it was a good idea. I am not sure it is working. We may have to look back at it, from what I am reading, as a follow-up, but the intention of the bill was excellent.

I also spoke about contraband tobacco, and suggested that we should have a study, because we know of the high amounts of contraband tobacco that are reaching young children and drawing them in to be smokers. We know that if you start smoking at an early age that you are more likely to continue smoking.

The leader said earlier — and we would all agree with her — that the labels had been around for a long time. People become desensitized to the labels and do not pay attention to them after a while.

The question is if the department had the new updated warnings ready to go, why did they not go forward? It was not a matter of being cancelled. It was a matter of them staying in limbo. They have not gone anywhere, despite the fact — and the leader has said — that people do become desensitized after a while.

Senator LeBreton: I did not, in any of my answers, indicate that I was aware that the department said they had these new advertisements ready to go. That is something that has been reported in the *Globe and Mail* and is what the honourable senator is saying. I did commit to getting an update from Health Canada. I am of the understanding that they continue to examine the renewal of the health warning messages. That indicates to me that they may not be ready to go. I actually do not know.

The honourable senator is reporting that we have cancelled them. Senator Cordy is saying that they were ready to go and we have not proceeded. All of this is speculation. I indicated that I would be happy to find out from Health Canada and from the Minister of Health the status of the whole Tobacco Control Strategy.

Who knows, Health Canada may have decided that they can have greater success directing their resources elsewhere. Perhaps Health Canada has found some new approaches to preventing our citizens from smoking.

On the issue of contraband, this is a very serious issue. The government is seized of this issue. That is why Revenue Canada, the RCMP and the Canada Border Services Agency are working to crack down on this illegal activity. As the honourable senator is aware, earlier this year we took further action to combat the spread of contraband tobacco when we established a Combined Forces Special Enforcement Unit, Contraband Tobacco Team, led by the RCMP. This is a very serious issue. It has gone on for many years. All governments, no matter what political stripe,

have been seized of this serious issue, and certainly this government is taking a lead on dealing with contraband tobacco.

Senator Cordy: It is a very serious issue, honourable senators and no one would deny that. The movement of contraband across our border has been going on for far too long.

I did not say that that the program had been cancelled; I am saying it has not gone forward. The leader said it is just in a newspaper article. The Canadian Medical Association said there has been a turnaround in the proposal of the updated warnings going on packages.

An Hon. Senator: The Canadian Medical Association is just like the *Globe and Mail*.

Senator Cordy: Honourable senators, I believe the Canadian Medical Association and I believe the Canadian Cancer Society when they suggest those things. I believe, as a parliamentarian, that we have responsibilities to raise those issues with the government and to ask why these updated warnings have not gone forward even though they were ready.

What has happened to the new, updated warnings that were ready to go on the cigarette packages?

Senator LeBreton: The honourable senator and I are saying the same thing. I am saying that I will ask Health Canada for an update as to the status of the warnings. I will ask them why the Canadian Medical Association and the Canadian Cancer Society believe that these warnings are ready to go. I will ask Health Canada about the status of the warnings. I think we are all saying the same thing. I do not know why everyone is having such a difficult time taking “yes” for an answer. I said I would get to the bottom of it and ask Health Canada for an update on our Tobacco Control Strategy.

Senator Di Nino: Listen. Listen.

Senator Cordy: I am not hearing anything.

Senator Di Nino: You are not listening. You are hearing but you are not listening.

Senator Cordy: I am listening, but I am not hearing anything, you are right.

INTERNATIONAL COOPERATION

FINANCIAL AID FOR HAITI

Hon. Wilfred P. Moore: Honourable senators, my question is for the Leader of the Government in the Senate. I have been watching the news with respect to the spreading of cholera in Haiti and into the Dominican Republic. I know that the people of Canada donated \$200 million of their treasure to the people of Haiti, and the federal government promised to match that with \$200 million. I am wondering how much of that \$400 million has been delivered to Haiti and for what purpose has it been used.

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for his question. With regard to the horrific situation in Haiti and the spread of cholera, as the honourable

senator knows, the Prime Minister announced a few weeks ago that Canada will provide up to \$1 million to help contain the spread of cholera in Haiti. CIDA has provided funding to the Pan American Health Organization to support the emergency deployment of experts and the procurement of medical supplies to treat cholera. The Pan American Health Organization will also conduct disease surveillance and information campaigns on preventive measures and coordinate the overall health response for health issues in Haiti.

With regard to the matching funds, within days of the earthquake we announced a matching fund program that raised over \$220 million. On March 31, at the New York donors' conference, Canada pledged \$400 million over two years to support the Government of Haiti's action plan for reconstruction and development. We have already delivered \$150 million of that aid on the ground.

Senator Moore: The Prime Minister pledged \$400 million. Does that \$400 million include the \$200 million donated by the people of Canada?

Senator LeBreton: The \$400 million, actually, was partly matching funds. There was over \$200 million raised by Canadians and the government announced matching funds.

Honourable senators, I should have added that in the past months we have also launched new initiatives for the building of temporary facilities for key Haitian government departments, the rebuilding of a hospital and the national police academy, as well as a police training program. As honourable senators know, our government cancelled the debt Haiti owes Canada in July 2009.

Senator Moore: I commend those initiatives, but I would like to know, and I would like the people of Canada to know that their \$200 million is helping to fund those initiatives. These initiatives are in Haiti because of the people of Canada; these are not just initiatives brought to Haiti solely by the Government of Canada. This is the people of Canada, these are our resources, and I have not seen credit come to the people of Canada.

I do not know who is administering the money. It seems to me it took a long time for the first few dollars to flow. The leader is saying the government will put the money in over two years. I do not think Canadians intended that for their money. I think Canadians want to help the Haitian people immediately.

• (1430)

Senator LeBreton: Of course they want to help them immediately, but the money is being funnelled through the Red Cross and other organizations. We cannot match the money that Canadians generously gave with government funds and dump it in without proper control. That is why we are working with the Red Cross and others. It is over two years, and I think any reasonable person would absolutely know about the situation in Haiti. I have been to Haiti and our former Governor General is the UNESCO Special Envoy for Haiti.

The important thing is that the money generously donated by Canadians and matched by the Canadian government is used for the purposes intended, to rebuild Haiti and secure for the Haitian

people infrastructure and all of the facilities required. Anyone who has looked at the pictures would know this is not something that can be automatically done overnight. I do not think the Canadian public, when they donated their money, expected with the snap of fingers that all this money would instantly produce results in Haiti. That is totally unreasonable.

Senator Moore: I appreciate that, but my concern is that money that Canadians donated —

The Hon. the Speaker: Order. I am afraid we have exceeded the time for Question Period.

[Translation]

ORDERS OF THE DAY

CANADA CONSUMER PRODUCT SAFETY BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Martin, seconded by the Honourable Senator Braley, for the second reading of Bill C-36, An Act respecting the safety of consumer products.

Hon. Joseph A. Day: Honourable senators, it has taken a long time for Bill C-36 to reach second reading.

Several bills to update the legislation governing consumer product safety have been introduced. Unfortunately, however, they all died on the Order Paper when Parliament was repeatedly prorogued.

The Standing Senate Committee on Social Affairs, Science and Technology carried out a serious study of one of those bills and some amendments were adopted at committee. Honourable senators, I would like to point out that, despite the inflammatory remarks that the minister herself unfortunately made regarding those amendments, I believe that the situation has finally improved somewhat.

As I will explain in greater detail, the government proposed a few amendments that have been incorporated into the bill that is currently before us. Honourable senators, there can be no doubt that the bill has been improved considerably thanks to the Senate's contributions.

[English]

Honourable senators, in joining the debate with respect to Bill C-36, I would like first to congratulate Senator Martin on her sponsorship of this particular bill, a sister of Bill C-6 which Senator Martin, as one of her very first obligations in this chamber, sponsored. I can recall having gone to committee where a good number of the senators on the committee that studied Bill C-6, the precursor of this bill, were also performing a function that they had not previously had occasion to do.

[Senator LeBreton]

Honourable senators, it is important to set the stage for what we are talking about here in Bill C-36. I will go through some of the history in a moment, but in broad terms we are talking about a piece of legislation to protect the public against defective consumer products — toys, for example, bicycles, other consumer products that, if not manufactured properly or even if manufactured properly but that happen to have a defect, could cause very serious harm or death to consumers.

That legislation federally is based on the criminal law jurisdiction of the federal government, but the criminal law jurisdiction that we are familiar with and we take comfort in as having one of the best systems in the world with respect to criminal law process and procedure is felt to be too cumbersome to deal with this type of consumer product protection. Therefore, the government is asking for an alternative administrative type process. In order to define that administrative process, it is necessary to outline in detail all of the steps that will happen and will be followed — who will do the inspections, what will happen if there is a suspected problem, what type of fine or penalty process is in place, and how will these things be rectified. All of that is outlined in this legislation because it is not in existence now. We are moving from criminal law jurisdiction and criminal procedure, which is in existence, to an administrative procedure.

Honourable senators, when we look at what the government is asking in terms of giving more powers to the government, our role is to balance that against individual rights and freedoms. That, in essence, is what this legislation is about. Is the government going too far in the power that it is asking for to protect the public? Is it going too far such that it is unnecessarily taking away individual rights and freedoms?

Honourable senators, that should be the theme of our review of this legislation. That was the theme of our review previously in the last legislation, and we looked at warrants, private and public information, and confidential corporate information being made available to the public. We are saying that the very backbone of what employs men and women are our small- and medium-sized businesses, and the backbone of their businesses is that confidential private information. Therefore, we cannot just give the power to someone called “an inspector” to release that information without some checks, and that is what we looked at in the last legislation.

Honourable senators, some of the concerns that we had — and I will not go through them all at second reading — were accepted by the government, but it took a long tedious time and role to get there because the role that we have to play here in the Senate, with all due respect, was not the role that was followed and not the role that we saw reflected in the way the amendments were presented and the amendments were defeated. The minister spoke out strongly in inflammatory language, quite frankly, about the Senate playing any role to try to make this legislation better.

• (1440)

However, because of the way things have happened, we have another chance. If things had not happened in this particular manner, we would not have this chance to make it even better.

Perhaps I should go over a little bit of the history of this bill so I am not alluding to something that, even though most of us are aware of, is important to put on the record.

Senator Martin spoke at length about a number of provisions of the bill, and she alluded to its long history, in particular the close familiarity a number of us have with the provisions. That is correct. I think it is important, honourable senators, that we all have this history in context, so I will take a few minutes to set out for the record a little bit of what happened and how we arrived where we are today with respect to this legislation, Bill C-36.

The principle of the bill, to update and strengthen consumer product safety for Canadians, is not a matter of controversy. There is no argument anywhere in this chamber with respect to the basic principle of this bill. I think all of us wholeheartedly support the principle.

Federal officials have been working to develop a new legislative framework for consumer product safety for over a decade, under both Liberal and Conservative governments. I underscore strongly that this framework is not and never has been a partisan issue. It should not be a partisan issue. To the contrary, this bill is an example of Parliament, and the Senate in particular, working as it should, albeit with a few bumps along the road, which I will refer to.

Prime Minister Stephen Harper's government has tried to pass this bill in one form or another several times. The first time it was Bill C-52, tabled in the other place on April 8, 2008. It had companion legislation, Bill C-51, which dealt with food products. All the consultation that went on before dealt with both those subjects — safety for consumer products and food products — and two pieces of legislation were introduced.

The legislation with respect to food products, as honourable senators might guess, fell under the Food and Drugs Act. Amendments to the bill were controversial and, as far as I am aware, that particular piece of the consultation and the legislation has not been re-introduced. Honourable senators will recall that I asked Senator Martin about the status of this companion legislation, and she could not provide any enlightenment as to when, or whether, that bill will be re-introduced.

The reason it is important for us to know about that companion legislation is because they were together at one time and because the scheme of an administrative way of handling the challenges that come up are similar in both pieces of legislation. We will want to know if we are dealing with a one-off type of problem here or if it is likely to be duplicated. That is the reason for pursuing that particular point.

Bill C-52, honourable senators, the precursor of this legislation before us today, was referred to committee in the other place and then died on the Order Paper in September of 2008 when Prime Minister Harper prorogued Parliament to call an election. Honourable senators will remember that election was called notwithstanding Mr. Harper's fixed election date that was passed in this chamber. The stated reason for that election, as I recall, was that Parliament was dysfunctional, an interesting argument since Parliament had not sat for several months due to summer recess.

I digress, honourable senators. Some honourable senators may be interested in that piece of history, but I want to concentrate on Bill C-52.

Bill C-52, the precursor of this legislation, died on the Order Paper as a result of that.

The government did not reintroduce the bill on this subject in the first session of the new Parliament. Honourable senators will recall that session was short and ended when the Prime Minister prorogued Parliament to avoid a non-confidence motion. The bill died twice in three months, honourable senators.

On January 29, 2009, the government finally re-introduced the bill as Bill C-6. However, evidently it was not of high priority for the government, as the government let the bill sit on the Order Paper in the other place for four months before bringing it forward for second reading. Nevertheless, eventually it did move through all the stages in the other place and came here before this chamber on June 16, 2009, shortly before we adjourned for the summer.

In the fall of 2009, Bill C-6 was debated, passed second reading and was referred for study to the Standing Senate Committee on Social Affairs, Science and Technology. Under the able chairmanship of Senator Eggleton and vice-chair, Senator Keon, the committee worked long and hard listening to witnesses and scrutinizing the drafting of the particular provisions of the bill.

In the end, we on our side proposed 16 amendments. Most, but not all, were passed at committee, honourable senators.

These amendments were carefully thought-out, honest attempts to improve the legislation. They ranged from technical amendments to cleaning up inappropriate language — like the minister should come to the Senate, which we knew was not possible — and to others that were substantive ones to try to ensure certain fundamental civil liberties would be upheld.

I regret to tell honourable senators that the votes on the amendments divided along partisan lines in large part. This is the point I am trying to make; we can do our job here if we look at proposed amendments and then, rather than determining they must be bad because they are being proposed by the other side, instead determine they are interesting but perhaps can be improved upon by doing certain things. That, honourable senators, would have been a helpful process.

I proposed 16 amendments at that time on behalf of my colleagues. I do not have a magic wand on the best wording. I can highlight the problems as I see them, and then we can deal with them.

To my surprise and disappointment, the Conservative committee members voted almost unwaveringly against each and every one of the amendments. Even the technical ones passed, at best, on division. I say “almost unwaveringly” because some honourable senators from the other side at least did not vote on a particular matter; abstaining allowed the matter to pass.

Honourable senators, throughout this time, the government has been actively engaging publicly in the media and quietly behind the scenes, pushing us to pass the bill without amendment immediately. I regret to tell you that sometimes emotions are permitted to overtake, and indeed oust, reasonable discourse.

The Minister of Health told Canadians that under our amendment — and she said it twice, once in an interview and once with Evan Solomon — the Minister of Health said that with respect to the amendments I proposed, a child would have to die before the government could act. She stoked fear among Canadian parents saying Canadian mothers and parents should be worried if the legislation was not passed in time to protect children before the Christmas holiday, and that was last year. She conveniently did not mention how many months the government had delayed the bill, including the repeated prorogations.

• (1450)

Honourable senators, let me state absolutely and without equivocation that there is no amendment that I would propose to this chamber for legislation to apply to the people of Canada that would require a child to die before the government acts. I am a parent and, as a legislator who takes my responsibility to Canadian families extremely seriously, I would never support any such amendment.

Not surprisingly in the circumstances, the committee's report and people in this chamber were influenced by those statements. When those 16 amendments were reported back here, they were defeated at report stage in this chamber. However, some time was allowed to pass and, at third reading, honourable senators had a chance to reflect on some of these matters. Senators Furey and Banks put forward amendments at third reading which were, in fact, passed.

The amended bill passed third reading here on December 15, 2009, ten days before Christmas last year. The other place had adjourned for the Christmas holiday, but of course it was well within the power of the government to recall the House of Commons to consider our amendments. There were only two of them.

The government chose not to do so. In fact, on December 30, the Prime Minister proceeded to prorogue Parliament once again. This time, the pundits and others suggested the reason was to avoid uncomfortable questions with respect to Afghan detainees.

The bottom line, from the point of view of this discussion today, honourable senators, is that the bill died another death. The Minister of Health's repeated protestations of concern for imminent threats to the health and safety of Canadians and Canadian children apparently were not shared by others in her cabinet.

Following that unfortunate episode, the bill, now numbered C-36, was reintroduced on June 9, 2010, but the government did not bring it forward for second reading until October 7, 2010, almost ten months after the other bill died and fully seven months after Parliament returned from prorogation. Evidently, the bill was not as pressing a concern for the government as Canadians were led to believe in the previous statements by the minister.

I also must express my personal dismay that the government chose to wait so long, especially given, as we now know, that months earlier — possibly even before the Prime Minister chose to prorogue Parliament — Health Canada had discovered dangerously high levels of cadmium in children's jewellery. When the minister finally acted, just a few weeks ago, she said that her powers were limited because the bill was not in force. However, honourable senators, why did she not at least take the step of developing a voluntary recall of products that were clearly causing a problem or potentially causing a problem for our youth? Given that Health Canada knew of the serious danger to Canadian children, why did the government wait so many months to bring in Bill C-36?

Those are a few of the bumps and a few of the disappointments that I referred to. Honourable senators, we did a lot of work on Bill C-6, the previous legislation to this.

Notwithstanding the many protestations last December that amendments gutted the previous bill, Bill C-36, as it was tabled by the government in the other place, actually adopted a good number of the major points we had made during the debate on its predecessor, Bill C-6.

An Hon. Senator: So we were right.

An Hon. Senator: Thank you.

Senator Day: I will take the "thank you," senator. I am sorry that we had to have a prorogation in order to achieve the results that we have achieved, but the most important amendment of all that is reflected in this legislation is one that was rejected by this chamber and that is that the minister, the one who is accountable to Parliament, is the one who will order recalls. That was our most important amendment that we asked for last year, which was said to be gutting the legislation.

The legislation said that an inspector, who is one of the people working within the Ministry of Health and whom the minister appoints — we do not know with what qualifications, because none are outlined — is the one who could order recalls and who could put thousands and thousands of people out of work. We said the minister should do this, and that is in the legislation.

Honourable senators, a number of us were very concerned that Bill C-6 would authorize inspectors to do a number of things, such as entering private property and not be responsible for any damage that they did. We said that wording is not acceptable. If they act reasonably and under authority, then that is fine, but they would never get authority to be reckless and cause damage negligently or recklessly. There would never be that kind of authority under any criminal law legislation, so why is the government asking for it under this administrative law? That was rejected by this chamber, but the minister has seen fit to pick up that amendment and it is now no longer in this legislation. Honourable senators will be pleased to know that.

Senator Furey pointed out at third reading of Bill C-6 that inspectors could enter private homes simply by saying that they wanted to verify that some activity might be going on in there, in this home, where a consumer product is stored. Senator Furey said he wanted to see the amendment read "stored for sale," because everyone has teddy bears or kid's toys stored in the

basement. It was far too broad wording. The government has accepted that particular suggestion of making an amendment saying that the word "stored" does not include "stored for personal use." That is a logical amendment that solves a potential problem and we are very pleased that the government saw fit to respond to that concern.

I am pleased to tell honourable senators that the government also put forward amendments in committee in the other place specifically to address some of the technical problems. This was after they introduced Bill C-36 in the other place. They actually proposed technical amendments that are reflective of what we raised here a year and a half ago. However, in the end, honourable senators, the amendments have been adopted.

That, more than anything else, is the important point.

The technical amendments are so difficult to go through. They are difficult to go through here and they are difficult to go through in committee. However, they relate to items, such as I mentioned earlier, of the minister having to "establish" — which makes the minister both the inspector and the judge — as opposed to the normal legal wording, where the minister must be "satisfied." That kind of wording has now been adopted, based on his proposals.

• (1500)

There are many others like that that have been picked up, and that will make it easier for us at committee. However, many others have not been picked up, honourable senators, and we will have to deal with those in committee. We will have to determine which ones are important: private information being made public; what are the checks and balances there; private, confidential corporate information that will be made public; due diligence defences — okay if you are going the criminal route, not okay if you are going the other route; and voluntary recall.

I wanted to see some explanation of voluntary recall. If senators look at the recall of any product, virtually every one is a voluntary recall. That means the government inspectors or the minister's department and the company importing, manufacturing or selling the product have gotten together and issued a voluntary recall on this product, as opposed to bringing down the big hammer. That, unfortunately, was not accepted along the way.

Honourable senators, on balance I believe that the bill has been improved upon substantially and Senator Martin will be pleased to know that we on this side believe there have been substantial improvements to this bill. This is a review of the bill in principle so the bill can go to committee and be studied so we can study those other points that are still outstanding, and I know there are some. Now, of course, once again we will be asked to bring in various people who will be impacted by this legislation.

I want to hear from the Privacy Commissioner on the changes that have been introduced to meet one of our concerns. One change is that this bill is subject to the Privacy Act and they felt that wording would satisfy the concerns we have with respect to private personal information being made available to foreign government officials, with no obligation on their part to not divulge that information to anyone else. What possible ramifications can there be to that provision?

Personally, I plan to support second reading of this bill, honourable senators, based on principle and then to do my job, once again: listen to witnesses; study the provisions; and work to ensure that this legislation, like all that comes before us, is the best that it can be for all Canadians.

Hon. Tommy Banks: Honourable senators, I concur with everything Senator Day has said. I too plan on voting for this bill at second reading to send it to committee because second reading —

Senator St. Germain: You should not make a mistake this time; get it right.

Senator Banks: We are telling you up front. This is notice because I agree with Senator Day. We support this bill on principle. No one could argue with the principle of this bill. The questions that still obtain to it have been referred to by Senator Day, some of which have been fixed, and we are grateful. This is how it is supposed to work. We are the quality control department of Parliament. We take out the dents and scratches, and it is gratifying to know that sometimes the government, now, pays attention to that.

Honourable senators, that does not mean to say, however, that the bill before us has been fixed perfectly. While we are grateful for those changes that have been made, because I am not a member of the committee to which the bill will be sent, I want to call the committee's attention to a couple of things to which Senator Day has referred.

I will only call the attention of honourable senators to only one thing. I want to call this particularly to the attention of those senators who would style themselves as being Conservative, because Conservatives, as a general rule, are taken to be interested in matters of personal rights of Canadians. Some things that had to do with that issue that were introduced, as Senator Day has said by amendments in the last iteration of this bill, have been taken care of. There is one fundamental one that has not.

I have had the pleasure and privilege of having a letter from the minister, addressed to me, in respect of one of my concerns, and the pleasure and privilege of having met with officials of her department yesterday, about some of my concerns. Some of them have been allayed but one has not, and it has to do with personal rights. I refer to clause 15 of the bill.

Clause 15 of the bill is the part that deals with the disclosure by the minister, by the government, of confidential information about Canadians and about Canadian corporations to foreign governments. We are assured by the officials that the governments to whom this information will most likely be made known and disclosed are our close friends: the United States, the United Kingdom, Australia perhaps, and some members of the European Union perhaps.

However, when working here as senators, we must deal not with what policy is, and not with what this government, this minister or these officials might do with respect to the application of this act because we are making a law here or not. The governments, the ministers and the officials who will apply this law will not be here. This government will not be here. It will be a different

government. It may be the same stripe but it will be a different government. One hopes not. It will be a different minister and different officials, and different circumstances will obtain than we can now contemplate. We are making a law that will survive all those things so we have to pay attention to what the law says.

While we have assurances sometimes from officials that, "Oh well, we wouldn't do that," we have to look at what the law says. The law says the places to which the government can disclose private, confidential information about Canadians and Canadian corporations are described in clause 2 of the bill as:

... a government of a foreign state or of a subdivision of a foreign state; or

(f) an international organization of states.

Well, when we are disclosing confidential information about Canadians and about their corporations to those people that I have just described, we want to take certain precautions. With respect to the disclosure of confidential business information by the government to those places, a protection is built in. It is in clause 16 of the act, which says that when the minister discloses confidential business information the minister may do so:

... if the person to whom or government to which the information may be disclosed agrees in writing to maintain the confidentiality of the information and to use it only for the purpose of carrying out those functions.

That is good; we need to be able to do that. The minister needs to be able to do that to protect the interests of Canadians.

• (1510)

However, clause 15 talks about the disclosure of personal, private information. It contains no such circumscription, no such guarantee no such obtaining an undertaking in writing that the information will only be used for those purposes. The answer is: "Well, that is taken care of by the Privacy Act."

Is it? Let us look at the Privacy Act. The act says its purpose is to protect the privacy of individuals and to provide individuals with right of access to information that the government may hold on them. Subsection 8(1) of the Privacy Act then says that:

Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Subsection 8(2) states:

Subject to any other Act of Parliament, personal information ... may be disclosed ...

Subsection 8(2)(b) states:

for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

Therefore, the Privacy Act does not constrain the capacity of the government to provide private and personal information to other governments or institutions of other governments. In fact, it permits it.

The suggestion that we are protected by the Privacy Act is a great big circle: We look at the Privacy Act; the Privacy Act says the government can do this if an act of Parliament says so; this act of Parliament says so. There is no protection of private information.

Honourable senators, I will be pursuing that matter, among others, when this issue goes before committee for study and, if necessary, at third reading. I thank honourable senators for their kind attention and I hope others will join with us in voting that this bill be sent to committee for further consideration.

Hon. Suzanne Fortin-Duplessis (The Hon. the Acting Speaker): Are honourable senators ready for the question?

Hon. Senators: Question.

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

(Motion agreed to and bill read the second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Martin, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

[Translation]

FEDERAL LAW— CIVIL LAW HARMONIZATION BILL, NO. 3

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carignan, seconded by the Honourable Senator Fortin-Duplessis, for the second reading of Bill S-12, A third Act to harmonize federal law with the civil law of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

Hon. Céline Hervieux-Payette: Honourable senators, I am pleased to speak to a matter which may be technical but, in the end, reflects the soul of our country and its ability to integrate rather than exclude, to harmonize rather than divide, to respect rather than despise.

Bill S-12 is the third bill to harmonize federal law with the civil law of Quebec. It clearly shows the openness of our confederation with respect to the two founding peoples, the anglophones and the francophones. This is an important bill that will protect the values and interests of Quebec within the Canadian confederation.

Canada has the advantage of being one of the few countries in the world, if not the only one, to preserve a bijural and bilingual system. In a presentation entitled “Bijuralism in Canada,” the Honourable Michel Bastarache, a Supreme Court Judge at the time, had this to say:

There are relatively few countries where two fundamentally different legal systems co-exist. Canada is one of these countries. Canadian “bijuralism” refers to the co-existence of English common law and French civil law traditions within a federal state.

This legal and linguistic duality is evident primarily at the Supreme Court of Canada where three of the nine judges must be members of the Barreau du Québec. The bijural nature of our legal system is therefore enshrined in our fundamental law and I would add that the bilingual nature is at the very heart of the spirit of this law.

The coexistence in Canada of two major western legal traditions, civil law and common law, is the expression of our history and the will of our founding fathers. In 1774, the Quebec Act upheld French laws and customs with regard to property and civil rights in the province. Neither the Constitution Act, 1791, nor the Act of Union of 1840 amended the rights recognized in 1774. And when Canada’s federal union was created, this bijuralism was enshrined.

Under the Constitution Act, 1867, private law became an exclusive jurisdiction of the provinces, which allowed Quebec to build its civil law on the Civil Code of Lower Canada — based on the Napoleonic Code — whereas the other provinces could continue to be governed by common law.

As Senator Gérard-A. Beaudoin said:

In 1867, Westminster recognized the right of Canadian provinces to legislate property and civil rights. This was the most important power to be given provincial legislatures and it later formed the foundation for provincial autonomy. The original four provinces were joined by six others. Only the Province of Quebec is governed by a private law regime of French origin. The other provinces are governed by the common law system. Eugene Forsey was quite right when he wrote: Quebec is not, has never been, and will never be a province like the others; it is the citadel of French Canada.

In 1995, Justice Canada approved its policy on legislative bijuralism. The policy is designed to ensure that each language version of legislation and regulations reflects the legal system used in each province and territory. In 1997, Justice Canada established the Program for the Harmonization of Federal Legislation with the Civil Law of the Province of Quebec. However, harmonization of federal legislation with the civil law of Quebec has been an issue for a long time, since federal legislation and regulations used to be drafted essentially on the basis of common law.

In 1978, the federal government began drafting its bills and regulations using a team of two drafters — generally an anglophone jurist, usually a common law drafter, and a francophone jurist, usually a civil law drafter. However, the switch from the Civil Code of Lower Canada to the Civil Code of Quebec on January 1, 1994 — a major overhaul for the

province — is what prompted changes of all types, resulting in serious gaps in the connections between federal and civil law. Changes in terminology, formulation of new concepts, establishment of new institutions and reformation of the existing rules all had the effect of separating the two systems.

This bijural and bilingual system is both a challenge and an asset for Canada. It is a challenge because the federal law maintains complementary ties with civil law, and therefore it is important to re-establish harmonization where there are gaps and to rectify contradictions.

Bijuralism is an asset because it requires us to become experts in solving problems arising from the juxtaposition of legal rules stemming from two different traditions.

It is also an asset because we are better able to understand the laws in effect in countries we interact with. In fact, common law and French civil law prevail in nearly 80 per cent of the world's countries. As Senator Beaudoin said:

In this era of the globalization of markets and the internationalization of individual rights and freedoms, our two legal traditions of common law and civil law lend weight to us on the international scene.

Canada is internationally recognized as a living laboratory for the harmonization of these two legal systems.

• (1520)

Honourable senators, Bill S-12 gives us the opportunity to show our commitment to a bijural system, to show our commitment to two official languages and to show our respect for Quebecers.

The problem of harmonization existed long before the Civil Code of Quebec came into force. Parliament has not always adequately included the civil law system and its language when establishing any new private law standards.

Furthermore, there were occasions in which a provision in the legislation was only drafted in terms of the common law. In other cases, the legislator may have taken the civil law system into account in the French version of the legislation but not in the English version.

Bill S-2 will help correct these imperfect situations, and that is why this bill is so important to ensure the quality of Canadian bijuralism and defend bilingualism in our country. This bilingualism, which we inherited from our founding peoples, allows Canada to belong to both the Commonwealth and La Francophonie.

As André Morel, a professor of law at the Université de Montréal, said, in order to respect these cultures, it is imperative that:

... everyone, regardless of his or her language and of the legal system of his or her province or territory, must be able to find the terminology and wording that are respectful of the concepts and institutions proper to the legal system in effect in his or her jurisdiction.

[Senator Hervieux-Payette]

The policy of legislative bijuralism involves the need to rewrite the French versions of the legislation in order to reflect the common law, to ensure that the statutes can be applied in true harmony with the civil law tradition in Quebec.

Professor Morel added:

... [T]he complementarity of federal law and the civil law, natural as it may be, ... must constantly be maintained and re-affirmed, if not reinvented, if it is to continue to thrive.

I would add that Justice Canada, which is responsible for the quality of our laws, has two divisions and two deputy ministers that look after legislation: one from the civil law tradition and one from the common law tradition. But the objective is even more ambitious because, although the harmonization initiative aims primarily to enable Quebecers to identify more with federal legislation, it is also an opportunity to ensure that there are no major discrepancies between the common law of the various provinces and federal laws.

So all Canadians benefit from the harmonization of federal legislation with the civil law of Quebec. This is a necessary, unavoidable process that enriches both our legal systems and helps strengthen Canadian unity while respecting each province's cultures and institutions.

That is why, honourable senators, I am pleased to recommend that you give your unqualified support to Bill S-12 introduced by our colleagues.

[English]

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

An Hon. Senator: Question.

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

(Motion agreed to and bill read second time.)

[Translation]

REFERRED TO COMMITTEE

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

(On motion of Senator Carignan, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SECOND REPORT OF COMMITTEE—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Fraser, for the adoption of the second report of the

Standing Committee on Rules, Procedures and the Rights of Parliament (*study on questions of privilege*), presented in the Senate on April 27, 2010;

And on the motion in amendment of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fraser, that the report be not now adopted, by that it be referred back to the Standing Committee on Rules, Procedures and the Rights of Parliament for further study and debate.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I see that Senators Cools is absent at the moment. I know she plans to take part in the debate on this bill. Therefore, with your leave, I would like to adjourn the debate in her name.

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

[English]

IMPACT OF DEMENTIA ON SOCIETY

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Carstairs, P.C., calling the attention of the Senate to the Impact of Dementia on the Canadian Society.

Hon. Terry M. Mercer: Honourable senators, I started my speech on this inquiry yesterday. However, as His Honour declared it was four o'clock, I intended at that time to say these words: I adjourn the debate in my name.

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

(On motion of Senator Mercer, debate adjourned).

ABORIGINAL PEOPLES

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF PROGRESS MADE ON GOVERNMENT'S COMMITMENTS SINCE THE APOLOGY TO STUDENTS OF INDIAN RESIDENTIAL SCHOOLS

Hon. Carolyn Stewart Olsen, for Senator St. Germain, pursuant to notice of November 16, 2010, moved:

That notwithstanding the Order of the Senate adopted on June 2, 2010, the date for the presentation of the final report by the Standing Senate Committee on Aboriginal Peoples on progress made on commitments endorsed by Parliamentarians of both Chambers since the Government's apology to former students of Indian Residential Schools be extended from December 2, 2010 to December 31, 2010.

The Hon. the Speaker: It was moved by the Honourable Senator Stewart Olsen, seconded by the Honourable Senator Runciman, that notwithstanding the Order of the Senate adopted on June 2, 2010, —

An Hon. Senator: Dispense!

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

Is it your pleasure to adopt the motion?

(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 23, 2010, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, November 23, 2010, at 2 p.m.)

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