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OFFICIAL REPORT
(HANSARD)

Tuesday, December 7, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

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THE SENATE

Tuesday, December 7, 2010

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of family and friends of former Senator Atkins, including his beloved partner, Mary LeBlanc; his sons, Peter, Geoffrey and Mark; and other members of his family and friends.

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

Hon. Senators: Hear, hear.

SENATORS' STATEMENTS

TRIBUTES

THE LATE HONOURABLE NORMAN K. ATKINS

The Hon. the Speaker: Honourable senators, I have received a notice from the Leader of the Government in the Senate, who requests, pursuant to rule 22(10), that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Norman Atkins, who passed away on September 28, 2010.

I remind honourable senators that pursuant to the *Rules of the Senate*, each senator may speak once and for three minutes only; however, is it agreed that we continue tributes to Senator Atkins under Senators' Statements for up to a maximum of 30 minutes?

Hon. Senators: Agreed.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will keep my remarks to three minutes, but I could speak for hours on the life of Senator Atkins.

Honourable senators, I rise today to pay tribute to our former colleague, the Honourable Senator Norman Kempton Atkins, who passed away on September 28. Senator Atkins was a dear friend for many years, and he is greatly missed.

Norman's lifetime in politics began as a teenager under the tutelage of his eventual business partner and brother-in-law, Dalton Camp, who recruited him in 1952 to work on the New Brunswick provincial election. This election was a great victory for the Progressive Conservatives led by Hugh John Flemming, who later came to serve in Ottawa as a cabinet minister in the government of the Right Honourable John George Diefenbaker. That was when I first met Hugh John Flemming. It was the first in a long string of campaigns for Norman. Most of them resulted in great successes, although as Senator Meighen can attest, not all of them did.

Honourable senators, it is impossible to hear the words "Big Blue Machine" and not think of Norman Atkins. He was National Campaign Chair for former Prime Minister the Right Honourable Brian Mulroney, who produced two majority governments in 1984 and 1988. He also brought his considerable talents to the campaigns of the Right Honourable Robert Stanfield, former Ontario Premier William Davis and former Manitoba Premier Duff Roblin. As well, he worked as President of Camp Associates Advertising Limited and as Director of the Institute of Canadian Advertising.

In June 1986, Prime Minister Mulroney recommended that Norman Atkins be summoned to the Senate of Canada, where he proudly represented the people of Ontario. I well remember that happy day as I toiled away in the Prime Minister's Office when Norman was named to the Senate. It was a great celebration. I know his family still has the cartoon that signified that great day. Norman Atkins served as the Progressive Conservative national caucus chair and Senate caucus chair.

During the two decades that followed, the Senate of Canada greatly benefited from his wisdom, good humour and keen political insight. Though our political paths diverged in recent years, we remained good friends, and I have personally benefited more than I can say from his guidance and help over the course of several decades.

Senator Atkins was tremendously dedicated to his duties in this chamber, even as he experienced serious health issues in recent years. Although he was a member of numerous Senate committees during his time here, Senator Atkins' committee work particularly focused on the Standing Senate Committee on National Security and Defence and its Subcommittee on Veterans Affairs. Norman was a fierce advocate for the men and women of the Canadian Forces, our veterans and their families. This dedication no doubt reflected the intense pride that he felt for the service of his father, George, as a gunner in the Battle of Vimy Ridge.

Honourable senators, when Senator Atkins said goodbye to the Senate of Canada a year and a half ago after serving nearly 23 years and spending a lifetime in politics, he had every reason to believe and expect that he had earned and deserved a long retirement. Sadly, that was not to be the case.

• (1410)

On behalf of all Conservative senators, I extend sincere condolences to his beloved Mary; his three sons, Peter, Geoffrey and Mark and their families; and many of Norman's friends, and our friends, who are in the gallery today. I want them to know that all honourable senators feel their loss too and miss the Honourable Norman Atkins very much.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I want to add my voice to the tributes paid to our late colleague, Senator Norm Atkins, a man whom so many of us on both sides of this chamber counted as a good friend and mentor.

It was a year and a half ago, as Senator LeBreton has said, on June 30, 2009, that many of us rose on the occasion of Senator Atkins' retirement to pay tribute to his long career and many accomplishments. We spoke of the great impact he had on so many of us, as well as on the political life of this country.

There was also, as I recall, a fairly boisterous party in the chambers of Senator McCoy that night in his honour, when many stories were told and much laughter shared. We all anticipated a long and happy retirement, and relished the thought and the anticipation of the lively and insightful memoirs we were confident he would produce. Instead, here we are, 18 months later, mourning his loss.

Senator Atkins was many things, but above all, he was a man of politics; a consummate politician in the best sense of the word. As we know, politics is not universally regarded as the high calling to public service that many of us believe it can and should be. Senator Atkins understood politics in all of its aspects, high and low. He loved ideas, the stuff of serious public policy debate, and he loved, and was a master of, the game of politics but he never forgot that the game cannot be an end in itself. He was a true man of principle and conviction.

In preparing these remarks, I happened upon a eulogy written by William Safire, honouring an American senator who was also a consummate politician. Mr. Safire took the opportunity to try to put into words what it means to be a politician in the finest sense of the word. He wrote:

> A politician knows that more important than the bill that is proposed is the law that is passed.
>
> A politician knows that his friends are not always his allies, and that his adversaries are not his enemies.
>
> A politician knows how to make the process of democracy work, and loves the intricate workings of the democratic system.
>
> A politician knows not only how to count votes, but how to make his vote count.
>
> A politician knows that his words are his weapons, but that his word is his bond.
>
> A politician knows that only if he leaves room for discussion and room for concession can he gain room for manoeuvre.
>
> A politician knows that the best way to be a winner is to make the other side feel it does not have to be a loser.
>
> And a politician —

— and certainly colleagues, a politician in the tradition of Norman Atkins —

> knows both the name of the game and the rules of the game, and he seeks his ends through the time-honoured democratic means.

Honourable senators, I think we can recognize in these words our friend and colleague. They reminded me of the excellent speech he gave here on his retirement. I could quote a number of sections from that speech, but I will content myself with quoting the following:

> One question that I always used as a gauge of my time in the Senate is: Have I made a difference and has my time in the Senate contributed in some way to make the life of Canadians better?
>
> That is the key to our role in this house. We are here to serve Canadians. . . .

Honourable senators, I think we all agree that Senator Norman Atkins succeeded in this role, the greatest standard anyone can set for themselves. He made an extraordinary difference to the lives of so many Canadians, and he left an indelible mark in the Senate, which he loved and respected so much. He did so with grace, intelligence, humour and basic good sense.

I did not always agree with him, but I can say confidently there was never a time when I did not respect and admire him. He truly represented the best of political life in Canada. He will be sorely missed.

Hon. Lowell Murray: Honourable senators, I had the honour to be among the eulogists at the funeral of our late friend in St. John the Evangelist Church on October 5. My purpose today in this chamber, following upon the excellent speeches of the Leader of the Government in the Senate and the Leader of the Opposition, is to offer a brief appreciation of Norman Atkins as senator.

Norman Atkins loved this place. Over time, he became the unabashed and uncontested champion of the Senate as the Fathers of Confederation created it — appointed with tenure; empowered to reject abuse of prerogative, whether by the executive government, the elected house or both; sworn to give sober second thought to legislation; and in recent times to offer original and more coherent approaches to national policy.

This was the Senate he defended and believed in with all his heart and soul. The only Senate reform Norman Atkins would countenance was one in which we carried out our responsibilities more bravely and were less reticent about doing so.

Like most of us, Norman Atkins came here from a partisan political background. It may seem paradoxical that in this place, which is withal an adversarial forum, he so seldom sought partisan advantage. However, just as it was his collegiality that made him so successful as a party organizer, it was this same quality that enabled him to work across party lines and become such a good senator.

[*Translation*]

When I think about the speeches he made here, I think about how he passionately defended the causes he held dear: members of our Armed Forces, veterans, post-secondary students, children living in poverty. This concern for others was most admirable in a man who was afflicted by many illnesses in the last decade of his life.

Norman withstood this pain with astonishing calmness and good humour. His response to any kind of sympathy was always the same: "Old age is not for sissies."

[*English*]

A day came when Norman chose to sit as an independent senator. He had been, as we know, the quintessential party man. He understood better than most how political and parliamentary life is a team sport and no one was ever better suited to it.

Still, there were principles more important to him, and he chose to bear witness to them by remaining a Progressive Conservative, even after the party had disappeared from Parliament. I know, and it needs to be said, that he had not a moment's hesitation about the course he should take at that juncture and, to his dying day, he had not a moment's regret for having taken it.

He engaged as enthusiastically as ever in his work as a senator. He encouraged his colleagues and valued their friendship, as they did his. Norman Atkins was a man of principle, patriotism and partisanship, always in that order of priority.

Hon. David P. Smith: Honourable senators, I rise to pay tribute to the late Senator Norman Atkins, and I want to focus on one particular aspect of his personality.

He came to the Senate in 1986. He had chaired, and been involved in, numerous federal and provincial campaigns before coming here — the same seems to be my lot in life at the federal level. He had worked with Premier Davis, in particular, also with Premier Roblin, and we heard that he was close to former leader Robert Stanfield and Prime Minister Mulroney.

When he came here, he became a friend of former Senator Keith Davey, who came here in 1966. When I was 22 years old — I had finished university and was about to go to law school — he said, "You come and be my right-hand man in Liberal headquarters. You will be the national youth director and go coast to coast every month." This was in preparation for the 1965 election.

• (1420)

I like it when gentlemen like Senator Davey and Senator Atkins make democracy work, and they are on opposite sides. They became friends, then close friends. I am sorry if I become emotional. It is important to say these things.

It is fine to have all the policy differences we want, but never become nasty or personal. Make democracy work. I cannot think of any two gentlemen who lived that more than former Senator Keith Davey and his good, good friend Norman Atkins.

Hon. Senators: Hear, hear!

Senator Smith: To the family, to Mary and their sons, I want to say it was a moving service. I thought to myself, "Boy, it would be nice if my three kids would get up and speak about me like that when my time comes." That is the best tribute I can give them. Mary, thank you very much for being here today.

Hon. Kelvin Kenneth Ogilvie: Honourable senators, Senator Atkins, or "Senator Norm" as some of us called him, was a true friend to me and my wife. Our enjoyment of his friendship arose out of his love of his alma mater, Acadia University, and due to his interest in family history and especially the history of Nova Scotia and New Brunswick during the Age of Sail.

Senator Norm made a major contribution to Acadia University as an unabashed supporter wherever he went; as a sponsor of events from Wolfville to the Hill; and through direct involvement with the School of Business, the alumni and athletic programs. He was personally involved, committing his time, effort and personality to events and issues where he saw the opportunity to help make a difference.

I also want to speak personally about the wonderful, warm and easy friendship that Roleen and I shared with Senator Norm. He often came to our home by the Bay of Fundy, where we talked through his interests in current political issues, issues facing our country, events at Acadia, but most especially the history that has unfolded on the very bay we overlooked and our shared ancestors in the Spencer's Island area across that bay.

My testimonial today is not one to list his many organizational and business accomplishments but rather to tell of a great and generous personality, one filled with warmth — one where we teased, joked and explored so many issues of mutual interest.

We miss our Senator Norm. We cannot quite believe he is physically gone from us, but we salute him and we treasure our memories of the happiness we shared over nearly three decades.

Hon. Wilfred P. Moore: Honourable senators, I wish to be associated with remarks made by so many honourable senators here this afternoon. Senator Norman Kempton Atkins was a steadfast Canadian and a consummate senator. He always strove for the good of Canada, seeking the common ground and reaching across the aisle when that was deemed to be the wise thing to do.

As Senator Ogilvie mentioned, there was his devotion to Acadia University — the blue, white and garnet that he played for, bled for and constantly supported. How I savoured my hearty discussions and conversations with him about the rivalry between his Axemen at Acadia and my Huskies at Saint Mary's University.

I shall miss him. I shall miss the dinners we enjoyed at his and Mary's home, his wisdom, his advice and his friendship. My thoughts go out to his family members, the boys and Mary. I shall miss him very much. I miss him now.

I remember when Senator Cowan, Senator Munson and I went to an Acadia University event about two or three years ago when they inducted Norman into their special hall of fame. The tributes that filled that night were absolutely deserved and he was so proud of that university and his work with it — with the School of Business and on the board. Many schools would be well served to have an alumnus like Norman Atkins.

Hon. Elaine McCoy: Honourable senators, I rise to echo the sentiments of the honourable senators and to say that coming to grips with the sudden loss of a good friend is never easy. I think it is particularly hard when that good friend is Norman Kempton — or "Kemp," as some called him, or "Norm" — Atkins, a man whose great soul embodied the very spirit of the Canada we all love and cherish.

He was generous, as many honourable senators have said, and he had a love of people so vast that he made room for everyone within his enormous embrace. Norman always found ways to bring us together, even when we did not share the same point of view. What could be more Canadian than that?

We are a country built on conversations — countless conversations — with one another, and that is what Norman did. Day after day, he reached out by telephone to his immense network of friends, new and old. He talked to us. He would gentle us along and weave this magical space in which we could come together and happily work as well as play, as Senator Cowan reminded us.

He set boundaries, of course, but they were easy to live within. As has been mentioned, he held to four profound values: friendship, loyalty, principle and commitment. Although he expected others to live up to his values, he never rushed to judgment; he simply carried us all along in his heart, lightly and lovingly, believing that ultimately we would act as honourably as he inevitably did.

He left us far too soon. His friends, family and also our country are in dire need of his wise and generous counsel in this increasingly fractious, factional and selfish world we live in.

We will continue to try to live up to Norman's expectations of us, but I cannot tell honourable senators how often in the last few weeks I have suddenly stopped and wondered, "What would Norman say?" I would go to ask him and realize that he was not there to give me his counsel directly anymore.

Now all we have left are one another and a cherished role model for how to keep the spirit of Canada alive. I think the best tribute we could give to Norman Kempton Atkins is for each and every one of us to make a commitment in our hearts to model ourselves after him, especially in this chamber. We owe it to him. I urge every honourable senator to take that commitment deeply to their hearts and to live up to his expectations.

Finally, I will say to Norman: Thank you so very much for showing us all the way.

Hon. Senators: Hear, hear!

Hon. Joseph A. Day: Honourable senators, I rise today to join in paying homage to our former friend and colleague, the Honourable Senator Norman Atkins, who passed away September 28, 2010.

It was such a short time ago that we had tributes here in this chamber for our colleague when he retired from this place on June 27, 2009. Senator Atkins sat in this chamber for more than 23 years. Throughout his life, he gained a reputation as a thoughtful and prospective senator, whose advice and observations were always appreciated by other honourable senators and the staff here in the Senate.

He was always ready to help other senators on either side of this chamber if ever asked to do so.

• (1430)

One needs no better example of the character of the man than his decision to sit as an independent Progressive Conservative senator after the merger of his Progressive Conservative Party with the Canadian Alliance Party in 2003. He was a man of principle and he was a man of courage.

I had the great privilege of getting to know Senator Atkins during the nine years we served together on the Standing Senate Committee on National Security and Defence and the Subcommittee on Veterans Affairs. In those years, I developed a great respect for him.

Norman always seemed to be at his best when travelling throughout Canada and on our visits to Washington and throughout the world. A trip of particular importance to him was a visit on the ninetieth anniversary of the Battle of Vimy Ridge and the re-dedication of the restored Canadian National Vimy Memorial in 2007. This was a special visit for Norman as his father fought at Vimy Ridge. Many of us have had the privilege of reviewing the diaries that his father had written during that campaign. Through those diaries, we gained some insight into the life of a soldier in the First World War. Senator Atkins' dedication and passion for serving and retired military personnel and their families was truly inspiring.

Honourable senators, before he was appointed to the Senate, Senator Atkins had developed quite an extensive resumé in his own right. As we have heard, he was very active in the advertising industry with his brother-in-law, Dalton Camp. He was always very active in charitable matters. He was former president of the Albany Club in Toronto, where many important meetings took place. He used to talk about those meetings, for example, as they dealt with his work in the diabetes area.

When Senator Atkins was not hard at work in Ottawa or in some of his volunteer positions, he would often retreat to his favourite place in the world, his cottage on Grand Lake at Robertson's Point. Honourable senators, those close to him and neighbours on the lake would often refer to him, to his great delight, as the mayor of Robertson's Point.

I extend my sincere condolences to his three sons — Peter, Geoff and Mark — and to Mary LeBlanc.

Honourable senators, this chamber develops its reputation from the work and the actions of those who have the privilege of serving here. This institution is more highly respected today due to the contributions of the distinguished Honourable Senator Norman Kempton Atkins.

Hon. Senators: Hear, hear!

Hon. Hugh Segal: Honourable senators, as we all know, Senator Atkins served the people and the Progressive Conservative parties of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Ontario, Manitoba, Saskatchewan, and Canada. These were the parts of Canada where he deployed his remarkable skills in campaigning humanity.

[*Translation*]

He earned his spurs all across Canada because of his ability to win election campaigns and because of the leadership role he played with the best candidates. We no longer see those types of campaigns, party leaders or strategies these days, but they will always remain at the heart of the desire for an open, competent and humane political commitment.

[*English*]

I use the term "campaigning humanity" not to coin a phrase but to reflect the reality of Norman Atkins' approach. The right mix of humanity, people of all ages, genders, different backgrounds and experiences made every campaign richer in resource and reach. A leader who welcomed this mix was a leader he could trust and one for whom those of us loyal to Norman Atkins could work; a leader or a party interested in the narrow, exclusive and self-reverential was one he and the rest of us would all avoid.

He may have hailed from Montclair, New Jersey, served with the United States Army and the Army of the Rhine and felt more at home at Robertson's Point, New Brunswick, just a few minutes from the metropolis of Jemseg, but he was "all Canadian" in every possible sense of that term.

While I regret that I failed to make my case to him sufficiently well to have him join the Conservative caucus, I admire his tenaciousness on the "Progressive" adjective of one of our federal and historic parties. It was about principle and humanity on his part and from what vantage point these might best be advanced. He and I may have disagreed on that vantage point, but I remained and remain his loyal pupil on the principle and humanity itself.

One always has to weigh the mix of loyalty, principle, efficacy and freedom connected to any circumstance within or without a political party. Senator Atkins did that, as we all should. Disagreement with a colleague may not last forever and should never get in the way of mutual respect or affection.

His legacy: decency, honour, humanity, humour and loyalty. His survivors: a family of three boys, all outstanding successes in their chosen fields; wonderful daughters-in-law and grandchildren; Mary, his life companion and her family; and friends and admirers as far as the eye can reach.

He was the ultimate gentleman, player and politician. Of all the things for which I thank the good Lord, having known, worked with, reported to, supported and learned from Norman Kempton Atkins will always rank among the most important.

Hon. Terry M. Mercer: Honourable senators, it is with mixed emotion that I stand today to pay tribute to my good friend, Norman Atkins.

Norman and I were on the opposite sides of many a political battle over the years; he won most of them. However, it was not until I came to this place that I got to meet Norman Atkins, the man. I quickly came to admire him, and we quickly became friends. As time went on, he and I, my wife Ellen, and Mary spent time together. After a Senate event, we would go out for dinner and discuss the problems of the world. We solved them all; unfortunately, no one took notes.

As Senator Segal and others have said, Norman was the consummate politician. He understood almost every problem, analyzed it, talked about the involvement of people in solving the problems and was willing to be flexible enough to know that the answers did not always come from his side but from good discussion amongst all of us.

I also had the pleasure of working with Norman as a member of the diabetes caucus on Parliament Hill. We worked together in that diabetes caucus to ensure that the position of the Canadian Diabetes Association was kept alive amongst colleagues who have diabetes as an issue. He was a great example of that, and he kept the fight against diabetes alive on Parliament Hill. It was my pleasure yesterday on Parliament Hill to host the Canadian Diabetes Association, where they tested parliamentarians and their staff to see if we were prone to diabetes.

In my opening remarks at breakfast yesterday to the group in the Parliamentary Restaurant, I reminded them of the contribution that Senator Norman Atkins made to the Canadian Diabetes Association and to ensuring the issue of diabetes is at the forefront of discussion on Parliament Hill.

To Mary and to his sons, I give you my love and respect. I can tell you that I miss him very much already.

Hon. Art Eggleton: Honourable senators, I offer a bit of a different perspective on Norm Atkins. Norm lived for quite a number of years in Toronto, and I think we all know of his work for the great Ontario Premier, Bill Davis, in those years. However, in those years also that I spent as Mayor of Toronto, he was both supportive and a good adviser to me.

I think that in addition to all of his contributions through the Senate and to the people of Canada, there are also the contributions to the people of Toronto and of Ontario that I would like to remember.

Of course, when I came to Ottawa following those years as Mayor of Toronto and spent five years as the Minister of National Defence, I heard a lot about his interests and his concerns about the people serving in uniform for our country. I am very happy to join my colleagues today in honouring Norman Atkins and offering condolences to his family.

• (1440)

[*Translation*]

ROUTINE PROCEEDINGS

COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

2010 FALL REPORT TO THE HOUSE OF COMMONS—REPORT AND ADDENDUM TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2010 Fall Report of the Commissioner of the Environment and Sustainable Development to the House of Commons, as well as an addendum that contains copies of environmental petitions received between January 1 and June 30, 2010.

STUDY ON APPLICATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

THIRD REPORT OF OFFICIAL LANGUAGES COMMITTEE—GOVERNMENT RESPONSE TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the government's response to the third report of the Standing Senate Committee on Official Languages, entitled *Implementation of Part VII of the Official Languages Act: We can still do better*.

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE PRESENTED

Hon. David Tkachuk, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, December 7, 2010

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

NINTH REPORT

Your Committee recommends that the current *Taxi Policy*, adopted by the Senate on December 20, 1989 (Thirty-First Report of the Internal Economy Committee) be repealed, and that the repeal of this policy be effective 30 days after the adoption of this report.

Your Committee wishes to inform the Senate that on December 2, 2010, a proposed revised *Senate Taxi Policy* was reviewed and adopted by the Committee.

The *Taxi Policy* applies to all persons in the workplace, including Senators, staff of Senators, and staff of the Administration.

This new proposed policy will take effect on the repeal of the current policy as provided in this report. Copies of the policy will be made available on the IntraSen.

Respectfully submitted,

DAVID TKACHUK
Chair

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

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

GENDER EQUITY IN INDIAN REGISTRATION BILL

SIXTH REPORT OF HUMAN RIGHTS COMMITTEE PRESENTED

Hon. Nancy Ruth, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, December 7, 2010

The Standing Senate Committee on Human Rights has the honour to present its

SIXTH REPORT

Your committee, to which was referred Bill C-3, An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in McIvor v. Canada (Registrar of Indian and Northern Affairs), has, in obedience to its order of reference of November 25, 2010, examined the said bill and now reports the same without amendment.

Your committee has also made certain observations which are appended to this report.

Respectfully submitted,

NANCY RUTH
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 1050*.)

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

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

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

THIRD REPORT OF COMMITTEE PRESENTED

Hon. David P. Smith, Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented the following report:

Tuesday, December 7, 2010

The Standing Committee on Rules, Procedures and the Rights of Parliament has the honour to present its

THIRD REPORT

Pursuant to Rule 86(1)(f)(i), your committee is pleased to report as follows:

Paragraphs 86(1)(b) and (c) of the *Rules of the Senate* provide that there shall be a Standing Joint Committee on the Printing of Parliament and a Standing Joint Committee on the Restaurant of Parliament. No senators have been appointed to these committees since 1984 and the committees have not functioned over this period. The House of Commons removed reference to the Standing Joint Committee on the Printing of Parliament from its Standing Orders in 1986, and they never referred to the Standing Joint Committee on the Restaurant of Parliament. The other place has not named members to the Restaurant Committee since 1980.

Your committee therefore recommends:

That rule 86(1) be amended by:

1. deleting paragraphs (b) and (c), and

2. relettering paragraphs (d) through (t) as (b) through (r).

Respectfully submitted,

DAVID P. SMITH, P.C.
Chair

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

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

[*Translation*]

THE SENATE

NOTICE OF MOTION TO SUSPEND THURSDAY'S SITTING

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, on Thursday, December 9, 2010:

(*a*) if the Senate is sitting at 3:45 p.m. it shall suspend and resume no later than 5 p.m., after a fifteen minute bell;

(*b*) if a standing vote on a debatable motion is requested before 3:45 p.m. and cannot be completed before that time, it shall be deferred until after the sitting resumes in accordance with paragraph (a) and the bells for the vote shall start ringing only after the sitting resumes, with the vote to take place fifteen minutes later;

(*c*) if a standing vote on any other motion is requested before 3:45 p.m. and cannot be completed before that time, the sitting shall be suspended until the time provided for in paragraph (a), and the bells for the vote shall ring in accordance with the provisions of paragraph (b); and

(*d*) the application of rule 13(1) shall be suspended, and the sitting shall continue past 6 p.m. if required.

BILL PROTECTING CHILDREN FROM ONLINE SEXUAL EXPLOITATION

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-22, An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service.

(Bill read first time.)

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

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

[*English*]

IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-35, An Act to amend the Immigration and Refugee Protection Act.

(Bill read first time.)

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

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

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY PROVISIONS AND OPERATION OF THE ACT TO AMEND THE CRIMINAL CODE (PRODUCTION OF RECORDS IN SEXUAL OFFENCE PROCEEDINGS)

Hon. Joan Fraser: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the provisions and operation of the *Act to amend the Criminal Code (production of records in sexual offence proceedings)*, S.C. 1997, c. 30; and
>
> That the committee report to the Senate no later than June 30, 2011 and retain all powers necessary to publicize its findings until 90 days after the tabling of the final report.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF PANDEMIC PREPAREDNESS WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Art Eggleton: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Social Affairs, Science, and Technology be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate its report on Canada's pandemic preparedness, by December 31, 2010, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

• (1450)

THE SENATE

NOTICE OF MOTION TO RECOGNIZE DECEMBER 10 OF EACH YEAR AS HUMAN RIGHTS DAY

Hon. Mobina S. B. Jaffer: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Senate of Canada recognize the 10th of December of each year as Human Rights Day as has been established by the United Nations General Assembly on the 4th of December, 1950.

QUESTION PERIOD

INDUSTRY

LONG-TERM DISABILITY BENEFITS— NORTEL EMPLOYEES

Hon. Art Eggleton: Honourable senators, my question is to the Leader of the Government in the Senate.

I want to read portions of a letter received from Ann Hackett. She says:

> I am a Nortel Networks disabled employee and I am a highly educated individual. When Nortel hired me in 1988, I was told that they highly valued their employees, and consequently they were offering the best benefit coverage to be found. Never the fact that this benefit program was self-insured by the company was mentioned. Thinking that my family and I were fully insured, I declined on many occasions opportunities to get insurance . . . which is now totally impossible in my condition.
>
> I fully paid my contributions into Nortel's benefit plans; Nortel did not pay its share, not to mention that money from the fund was used for other purposes and that unsecured loans were taken against my future benefits. It is Nortel's responsibility to pay for its part of our contract. I am the mother of a ten year old child, I survived from a severe cancer which left me disabled. I fought extremely hard for my life, and now the perspective of losing my long-term disability benefits by December 2010 causes me and my family a tremendous amount of stress and instability.
>
> . . . failure to pass Bill S-216, Canadian taxpayers will eventually have to support the burden of Nortel's despicable actions the day disabled employees become left with no other alternative but to seek shelter from the state. The UK and other western nations have enacted laws to protect their citizens in a situation such as mine.
>
> Employees were Nortel's most valuable asset; we worked hard and had confidence in our company. Most of my RRSP has been wiped out in the Nortel bankruptcy. We now find ourselves in line with bond sharks and speculators to recover money to pay for our own basic needs, and not to reap millions in profit or bonus. There are no other words to describe this injustice.
>
> Nobody wants to be sick or disabled. Constant worry about what will happen when the disability/medical payments stop on Dec 31st, 2010 is a nightmare. Time is quickly running out for us . . .
>
> In this coming Christmas time, I hope that, in your heart, you will find the strength to make the right decision for the sake of all 400 Nortel disabled employees. On Christmas day, when your loved ones will look in your eyes in happiness, only you will remember and imagine what shines from our eyes and the ones we love on the same day, but also for the rest of our lives.
>
> We thus turn our lives in your hands and ask you to save us from this injustice that struck our families in time of illness.

I ask the minister this question: Since the government has made the decision that it does not support Bill S-216, what will the government do to help these Nortel employees before the end of

the year? Will the leader do the right thing in the spirit of this time of year? Christmas is a time of miracles. These people need a miracle. What will the government do?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the letter that the honourable senator read into the record is sad and troubling. All our hearts go out to people from Nortel who are caught in this bad situation.

As a matter of record, I encountered a close friend of mine on Saturday who, of course, is also a Nortel employee. I think, though — and it pains me to say this — the reality is, and the honourable senator knows this, and even people that I have talked to know this, that Senator Eggleton's bill would have done absolutely nothing to help the unfortunate victims of the Nortel bankruptcy. That is a statement of fact.

Senator Moore: How so? That is shameful.

Senator LeBreton: Honourable senators, the government also was in the position of being asked to intervene in a situation that has already been settled in the courts.

At the moment, as we know, Nortel is going through restructuring. It can only be hoped that in this restructuring process, when December 31 arrives, the pensions will not end at that time. We have reason to be hopeful. I am hopeful that is the case.

As the honourable senator knows, at the moment, many other programs are available through the government, not only the federal government but also the provincial government, to assist people with disabilities. It is to be hoped that these and any future programs will continue to help and benefit people who, unfortunately, are faced with long-term disabilities.

No one, including myself, likes to contemplate people spending Christmas in such unhappy circumstances.

Senator Eggleton: I strongly disagree with the minister's assessment of whether Bill S-216 will help people. That assessment does not align with what expert witnesses told us; it does not align with what almost every other country that is a trading partner of ours already does. We can deal with that issue later in the subject of debate, which is still part of our agenda.

The minister said there are other ways that the state can help these people. Sure, there are Canada Pension Plan Disability Benefits, but they have a maximum of about $13,000. These people, on average, have $12,000 in medical expenses alone. Those benefits will not pay the rent or put food on the table. There is also welfare, but one can understand why they would not want to go onto welfare. Why should the government have to pick up the tab when it should be Nortel that does that? They have the assets.

Senator Mercer: Hear, hear!

Senator Eggleton: I want to ask the minister about the Standing Senate Committee on Banking, Trade and Commerce. After the Banking Committee decided against my bill, a majority on a vote of six to five — in fact, it was Senator Greene who moved the motion — voted that we send a letter to the government and ask that they do something to help these people.

On behalf of all the Conservatives who voted on that particular motion, what will the government do? If it is not Bill S-216, then what is it?

Senator LeBreton: The honourable senator talked about the Banking Committee and witnesses. However, senators also heard from witnesses who confirmed that the Nortel long-term disability recipients would not be helped by this bill. Witnesses also warned that endless litigation would result for all those involved.

The fact of the matter is — and this fact is acknowledged by people I have spoken to — this situation is a result of a court-approved settlement among all the parties. It was arrived at under the legislation in effect at that time. As much as the honourable senator would like to wish it so, he knows full well that his bill would not have helped the Nortel pensioners.

• (1500)

As I have mentioned before, the government is concerned and committed to finding solutions to address this serious problem. We acknowledged the seriousness of this matter when we made a commitment in the Speech from the Throne to better protect workers when their employers go bankrupt.

The situation with Nortel has been going on for quite some time. The bankruptcy and the failure of Nortel, I believe, started to develop when the honourable senator was in government. This is a long, sad story. However, the fact of the matter is that, although most of us wish it were not so, the honourable senator's bill would have done nothing to assist the Nortel pensioners.

Hon. Pierrette Ringuette: Honourable senators, I am a member of the Banking Committee and I want to set the record straight. I want to talk about the facts. The witnesses who appeared before the committee, to whom the leader referred, could not prove the issues of cost, litigation or retroactivity, which the leader's colleagues, as members of our committee, have included in their report.

With regard to the issue of cost, how can the leader accept that the seven CEOs of this company that is under bankruptcy are paying themselves $8 million in bonuses only, on a one-year basis, while the people who are on long-term disability, afflicted with MS and so forth, cannot get the proper attention of her government?

Furthermore, with regard to retroactivity, we will soon have before us in this house a bill called Bill C-47. That again is a government bill, but in at least two places in that piece of legislation, there is retroactivity.

Why is retroactivity okay when it comes from this government, but it is not okay with regard to helping the people who desperately need it?

Senator LeBreton: Honourable senators, the retroactivity I am referring to is that this was a court-ordered settlement. The private member's bill introduced in this place by Senator Eggleton would not have helped the people of Nortel. No one derives any joy from any of this. It is a very sad situation.

I cannot answer for Canadian companies as to how they restructure themselves. Those matters are for others to comment on.

All I can say is that the government has made a commitment, as I have said before, and we made a commitment in the Speech from the Throne to address the issues in order to better protect innocent victims of companies that go bankrupt.

Again, since I am an optimist by nature, and since I do know that Nortel is going through restructuring, I am hopeful that this restructuring will in fact be such that come December 31, people who are receiving their pensions and disability pensions will continue to receive them under the restructured Nortel plan.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I want to return to the last point the leader made and also to the answer she gave in response to Senator Eggleton's first question.

Last week, the leader suggested that in some way, Senator Eggleton was holding out false hope to these Nortel pensioners by introducing this bill, which she alleged was not the answer to this problem. The leader has now suggested that she is hopeful. Leaving Bill S-216 aside, both in response to Senator Eggleton and just again at the tail end of her response to Senator Ringuette, the leader has suggested that, as a result of the restructuring this company is now undergoing, she is hopeful that by the drop-dead date of December 31, this issue must be solved. We understand that.

No one would suggest that the leader is holding out any false hope, but can she explain to me and to the members of this house the basis upon which she is hopeful that, as a result of the restructuring, this issue will be solved?

Senator LeBreton: Returning to Senator Eggleton's bill, and others, we know from all the information that this was a court-ordered settlement. Senator Eggleton's bill had a long road ahead of it and it would not have solved the Nortel pensioners' issues.

With regard to my own comments, I am reflecting my own hope. There has been some comment in the media that Nortel is going through a restructuring, so I am holding out some hope for this deadline of December 31. This is not a government-driven comment; it is just me, as a person, trying to put myself in the position of these individuals. Since Nortel is still undergoing restructuring, I believe that there is some reason to hope that people who are receiving pensions and disability pensions from Nortel will not have their pensions cut off.

Perhaps it is wishful thinking on my part, but I am trying to be optimistic for these people. I know exactly what they are going through. As I mentioned, I have friends who were employees of Nortel.

If we are dealing specifically with the private legislation and not other issues that are going on, the legislation does not and will not help the employees of Nortel, principally because we are dealing with a court-ordered settlement that the Nortel pensioners participated in.

Senator Cowan: We are not talking about Bill S-216. The leader has already made it clear that the government will not support that bill. It is clear that bill is dead, although we would like to see it brought to a vote so that we can have that made absolutely clear. Let us assume, however, for the purposes of this discussion, that that bill is dead.

The leader spoke here not just as an interested, concerned citizen. She is the Leader of the Government in the Senate and she speaks in this chamber on behalf of the government, so this is not an idle comment by an ordinary senator. The leader is speaking in this chamber during Question Period on behalf of the government.

When the leader expresses a wish and a hope that out of this restructuring will emerge the answer to the problem that Senator Eggleton has tried to address, and when she says that Senator Eggleton's bill does not address that issue, let us accept that for the moment. The leader expressed a hope, as Leader of the Government in the Senate, in response to questions in this chamber. This is not just an idle comment. I ask the leader, so that no one would ever suggest that there was any false hope being held out to people who are in serious jeopardy, what is the factual basis of the hope she expresses in this chamber as Leader of the Government in the Senate?

• (1510)

Senator LeBreton: Honourable senators, there are reports that Nortel is going through restructuring and my comments were based on that information. If I am not allowed to show any sympathy for these people at all, then I apologize for doing so.

I would like to think that while Nortel is going through this restructuring they will take into consideration the pensioners and those on disability.

Senator Cowan: We have had this kind of discussion before with the leader expressing faith in people and hoping that things will happen. However, if as a result of this restructuring no action is taken by December 31, what will the government do?

Senator LeBreton: Honourable senators, I must first point out that Senator Eggleton's bill would not have addressed this problem. Second, as the honourable senator knows, only 10 per cent of pensions in Canada fall directly under the purview of the federal government. The case of the Nortel pensioners actually falls more under provincial jurisdiction. Quite a number of people have rightly expressed concern for Nortel. I am simply saying that there are programs already available at various levels of government to assist the disabled.

In the Speech from the Throne, the government did commit to find means by which we can better protect workers who become unfortunate victims of the bankruptcies of their employers. We made the commitment that we would look at ways to deal with this situation.

Honourable senators, I have said before that this is a very complex issue. It involves many jurisdictions and many departments of government. The government is seriously looking at ways to better protect employees in the event of bankruptcy, and we will continue to seek out options to provide such protection.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, giving the private sector the responsibility for finding a solution to a problem that could have been subject to an agreement in September is risky.

We should remember that Nortel received hundreds of millions of dollars for research and development. The government invested heavily in this company to ensure growth that, in the end, did not materialize, not because of the employees we are talking about, but because of the employees in general.

It was the management of this company that failed. It is this management that will compensate these employees by using monies that are owed for the most part to financial institutions. Does your government have a responsibility in this matter? What does the government plan on doing to solve the problem, besides expressing empty wishes?

[*English*]

Senator LeBreton: Honourable senators, Senator Hervieux-Payette's question is similar to that of Senator Ringuette. Nortel is a private company. The honourable senator is right that it was the previous government that put a significant amount of money into Nortel. We have privately-run companies.

The situation that developed with Nortel has been a long time coming. We have lived with this for about 10 years. I could ask Senator Hervieux-Payette or Senator Eggleton what they did when it was obvious that Nortel was in serious financial difficulty and their employees would suffer as a result.

I cannot answer for the management of Nortel, a private Canadian company. As I pointed out earlier, only 10 per cent of Canada's pensions fall under the jurisdiction of the federal government because of the way pensions are set up in Canada.

The honourable senator talked about laws that are in place in the United Kingdom and the United States. It is true that there are laws in place. When our government studies this matter to seek resolution, I am quite certain that our officials will look at examples in other countries.

I cannot answer for the executives of Nortel. There are many stories about the management problems at Nortel. I am, perhaps, dismayed like any other ordinary citizen, but there is nothing more that I can say to answer the honourable senator's question.

[*Translation*]

Senator Hervieux-Payette: I believe that the leader has forgotten to answer the question. We are facing a unique problem involving disabled people who will not receive pensions or medical treatment because, in Canada, there is no law requiring corporations to fund these programs. Given that Nortel accounted for one third of the transactions on the Toronto Stock Exchange, it was not a small corporation.

As for the issue of leaving private businesses to their own devices, I would like to point out that the leader's government invested $9 billion to save a private American company. At this point, I do not believe that we have lessons to learn from this government about whether government money can be invested to save jobs. We supported that measure, but do not turn around later and tell us that the government is at arm's length from this company.

When will the government introduce a bill to ensure that no employee in Canada experiences such difficulties and that Canada will join the OECD countries that currently provide better protection for their employees?

[*English*]

Senator LeBreton: The honourable senator completely overlooked the very large responsibility that the provinces have with regard to pensions.

On the question of disabilities, the government has done a number of things to help people who suffer from disabilities. For instance, in March, Canada ratified the UN Convention on the Rights of Persons with Disabilities. We created the Registered Disability Savings Plan in September and over 35,000 Canadians have these plans. Last year's budget provided $75 million for housing for people with disabilities. Our Working Income Tax Benefit provides an extra supplement for persons with disabilities. We have labour market agreements with persons with disabilities to help them prepare for or return to work. We have also increased the number of eligible medical expenses from a tax point of view for people with disabilities. The government has already taken some significant steps to improve the lives of the disabled.

I know that we are dealing here specifically with a group of people who were, unfortunately, employed by Nortel, but the government has programs to assist the disabled. As I have mentioned many times, in our Speech from the Throne we committed to looking at ways to better assist workers with companies that go bankrupt. There is nothing more I can add at this point.

Hon. Sharon Carstairs: Honourable senators, I know that the honourable senator has received numerous emails, as have I.

I hope the leader can help me, because I would like to respond to the particular individual who writes:

• (1520)

> Dear senators:
>
> Nortel disabled employees like me never had a vote on the settlement and there was no evidence supplied that there was majority support from disabled employees, who were not, in any case, in a position to give informed consent without fear of Nortel cutting off their essential medical benefits within weeks of the first settlement, and hours of the revised settlement. I did not agree to the settlement as Minister Clement —

— and this honourable minister has said —

— implies when he says the lawyers for the parties agreed.

> The Nortel disabled employees never voted for a court representative. Nortel disabled employees were not democratically involved in the process to select the court appointed lawyers. . . .

What do I respond to this individual?

Senator LeBreton: Honourable senators, I have received the same emails. The fact is we can only deal with what we know. There are many people now who say they did not agree with the settlement. However, the fact is people representing these individuals went to court and agreed with the settlement. That is a question that that individual will have to direct to the people who were representing them directly in the court proceedings.

I do not know what else we can say to these people. When people go to court, like all of us if we are part of a court action, they have people representing them and there is a court settlement. When, after the fact, they say, "Well, I did not agree with it," I do not know what Senator Carstairs, I or anyone could possibly say that would be of help to that individual. I do not know what anyone in the government or any individual senator could say to a person who has been part of a legal court action. It is one of those situations. We are now getting those emails. Nortel and their employees were part of a court action. The court decided and now, after the fact, the senator is asking us to do something that is not legally possible.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed response to an oral question raised by Senator Callbeck on November 4, 2010, concerning Indian Affairs and Northern Development, Canadian Polar Commission.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

CANADIAN POLAR COMMISSION

(Response to question raised by Hon. Catherine S. Callbeck on November 4, 2010)

> The appointment of the Board of Directors to the Canadian Polar Commission on November 3, 2010, signals the Government's recognition of the importance of the Commission and its role in advancing the Northern Strategy. The Chairperson, Bernard Funston, the Vice-Chairperson, Nellie Cournoyea, and the eight new members bring tremendous diversity of experience and expertise to the Commission's Board of Directors.
>
> The Government has enlarged the Board of Directors from the previous seven to ten members. The larger Board provides for both Northern and Southern perspectives on polar research and knowledge (including traditional knowledge) while balancing across Aboriginal, academic, not-for-profit, and business sectors.
>
> During the time that the Commission operated without a Board, it focused on fulfilling the ongoing responsibilities outlined in its mandate and completing the work dictated by the previous Board. It is the Government's expectation that the new Board of Directors will chart a course for the Commission that builds on past successes, strengthens the Commission's connections to Northerners, and increases its relevance to all Canadians at this time of great interest and importance for the Canadian Arctic.

ANSWER TO ORDER PAPER QUESTION TABLED

ATLANTIC CANADA OPPORTUNITIES AGENCY— FOUR HUNDREDTH ANNIVERSARY OF THE FOUNDING OF CUPIDS

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 34 on the Order Paper—by Senator Downe.

[*English*]

ORDERS OF THE DAY

THE SENATE

NOTICE OF MOTION TO CALL UPON CHINESE GOVERNMENT TO RELEASE LIU XIAOBO FROM PRISON

Leave having been given to revert to Notices of Motion:

Hon. Consiglio Di Nino: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Senate of Canada call upon the Chinese Government to release from prison, Liu Xiaobo, the 2010 Nobel Peace Prize Winner.

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS— AMENDMENTS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-215, An Act to amend the Criminal Code (suicide bombings), and acquainting the Senate that they had passed this bill with the following amendments, to which they desire the concurrence of the Senate:

> 1. *Page 1, clause 1*: Replace line 7 in the French version with the following:
>
> "(1.2) Il est entendu que l'attentat suicide à la bombe"

2. *Page 1, title:* Replace the long title in the French version with the following:

"Loi modifiant le Code criminel (attentats suicides à la bombe)"

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

CANADA CONSUMER PRODUCT SAFETY BILL

THIRD READING—DEBATE ADJOURNED

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

She said: Honourable senators, I am pleased to rise in support of Bill C-36, the proposed Canada consumer product safety act. This is an important piece of health and safety legislation that is long overdue.

Honourable senators, this is not the first time we have studied and debated this bill in the chamber. We have heard from many stakeholders, both in committee and through email. We have spent a fair amount of time studying this legislation between this iteration, Bill C-36, and its previous incarnation, the former Bill C-6.

When we last studied this bill, we looked at the scope of inspectors' powers and the concern that there were insufficient constraints on what inspectors might be authorized to do. At committee, the Minister of Health and Health Canada officials spoke to us about how they carefully considered the suggestions made and subsequently made a series of amendments to address these concerns.

Bill C-36 was changed so that the minister, not an inspector, is now authorized to order product recalls and the taking of other corrective measures. This makes the minister expressly accountable for such actions.

Bill C-36 was also amended to add a specific time frame for a review officer to complete a review of orders for recall and other corrective measures.

Bill C-36 now defines "storing" to clarify that consumer products stored by an individual for their personal use are excluded from the act.

The provision regarding an inspector's ability to enter onto or cross over private property during an inspection has also been modified.

Bill C-36 was also amended to clarify that the act does not affect the provisions of the Privacy Act.

The provisions for laying foundational regulations before both houses of Parliament were updated.

Clause 60 was amended to address concerns about the role of the minister in reviewing notices of violation.

Finally, the amendment of clause 60 necessitated a technical amendment in the French version of subclause 56(1) to maintain consistency in the language used.

Honourable senators, I believe the changes we have seen between Bill C-6 and Bill C-36 acknowledge the hard work and efforts of the members of this chamber.

In that vein, I would like to take a moment to thank the critic of this bill, Senator Day, and all the members of the Standing Senate Committee on Social Affairs, Science and Technology for their thoughtful study of this bill.

• (1530)

Honourable senators, you may recall that Bill C-36 evolved from the government's Food and Consumer Safety Action Plan, which was announced by the Prime Minister in December 2007.

The intent of this action plan was to modernize and strengthen Canada's safety system for food, consumer and health products. The action plan implemented a three-pronged approach emphasizing active prevention, targeted oversight and rapid response. This means that we can avoid many problems before they occur. It means that the government can keep a closer watch on products that pose a higher risk to the health and safety of Canadians, and it means that we can take action more quickly and effectively to address problems when they do occur.

The proposed Canada consumer product safety act reflects this three-pronged approach to improve Canada's product safety system. The influx of new products from around the world has been without precedent, and this influx has proven that our consumer protection legislation, while effective in the past, needed to be updated to keep pace with today's new marketplace.

In the past, when unsafe consumer products were found in the marketplace, the government had to negotiate with industry to have them voluntarily recalled. With Bill C-36, the government will continue to work in partnership with industry. However, when voluntary measures are not successful, Bill C-36 will give the government the power to order a mandatory recall.

Bill C-36 also introduces a general prohibition against the manufacture, importation, advertisement and sale of consumer products that pose an unreasonable danger to human health or safety. This prohibition, combined with increased fines of up to $5 million for non-compliance in certain circumstances, or more where non-compliance is done knowingly or recklessly, will be an effective prevention tool.

Bill C-36 also requires industry to report, on a mandatory basis, serious health and safety incidents with their consumer products. It also gives the minister the authority to request that industry provide test results in order to verify compliance with the act. These provisions will allow a focus on products that pose higher risks and which thereby demand greater attention.

Finally, Bill C-36 will strengthen the government's ability to respond rapidly when required. In keeping with measures used by our international partners, Bill C-36 includes new authorities to permit the government to take action when product safety

concerns are identified. New requirements for industry to retain documents on their products will facilitate tracing one step up and one step down in the supply chain.

Bill C-36 will also enable the government to take action to address an unsafe consumer product if a business fails to comply with a recall or other corrective measure. Non-compliance could result in monetary penalty or criminal charges.

Honourable senators, these are the main elements of Bill C-36. The improvements it offers means that Canadians will be better protected and the protection provided will be more in keeping with legislative improvements already implemented in other countries.

Bill C-36 will bring about the change we need to modernize and strengthen our safety system and better protect Canadians. This is why I am confident that all honourable senators will appreciate the benefits of the proposed legislation and will support its passage.

Hon. Jane Cordy: Will the honourable senator take a question?

The Hon. the Speaker *pro tempore***:** Honourable Senator Martin, will you take a question?

Senator Martin: Yes.

Senator Cordy: Honourable senators, I agree with Senator Martin that the Standing Senate Committee on Social Affairs, Science and Technology, both the current committee and the committee that dealt with Bill C-6, have done a tremendous amount of work in trying to make this bill a better bill. Of course, honourable senators, we all want all Canadians to feel sure that the products they buy are safe.

A number of the amendments brought forward last year by Liberal senators are now part of the new Bill C-36. A number of Liberal amendments are part of the bill despite the fact that some senators on the other side said that it would gut the bill. I am glad to see that the minister had second thoughts about the amendments and that she actually implemented, not all but some of them into Bill C-36.

My question concerns a question that I asked during committee hearings, for which I was not able to get an answer. It concerns clause 14(1)(*d*)(i). Does the honourable senator have the bill in front of her?

Senator Martin: I do.

Senator Cordy: For those senators who do not have the bill in front of them, clause 14 is entitled, Duties in the Event of an Incident, and sets out who can initiate an incident. Clause 14(1)(*d*)(i) reads:

> (*d*) a recall or measure that is initiated for human health or safety reasons by
>
> (i) a foreign entity,

We had four panels of witnesses, and I asked the only non-government panel to define what a "foreign entity" is. Perhaps the honourable senator could clarify that phrase because it makes me a bit nervous.

Senator Martin: I thank the honourable senator for that question. Yes, I do recall the senator asking that question.

With regard to the amendments that were made to strengthen Bill C-36, I acknowledge the good work of our critic, the senators in the committee and, of course, the minister. I want to credit the minister with openness and careful consideration, in that what she adopted and included in strengthening the bill did not dilute and weaken the intent. That was something I was able to confirm with her. We had a good conversation about that as well last week on her way to Vancouver.

With regard to "foreign entity," I wonder if, for instance, other jurisdictions have counterparts to Health Canada and there are commissions or regulatory bodies that may work in partnership with Canada, such as the U.S. Consumer Product Safety Commission. We have a global market and the products on the shelves in stores come from various jurisdictions, whether it is the EU, the United States or other places. These counterparts, regulatory bodies and organizations work with Health Canada to ensure the safety of products coming into Canada.

Senator Cordy: I have no problem with federal governments. The honourable senator mentioned the U.S. Consumer Product Safety Commission; I have no problem with that. She also mentioned federal regulatory bodies. It is great that they talk to the Canadian government and can say, "Red-flag this; be aware of this." My concern is that it seems to be pretty open. Definitions are actually given in the bill for many of these terms that are used, but there is no definition of "foreign entity." The concern that was raised by the people who appeared before the committee was whether this means private business. Does this mean that a company in China, for example, for whatever reason could initiate a recall of a product that is made in Canada?

Senator Martin: I can say in response, honourable senators, that Health Canada officials, on a daily basis, are working closely with all stakeholders as well as their counterparts in jurisdictions where Canadian products are exported and products are imported.

In terms of the process that is followed, as honourable senators know, there is great scrutiny at all levels. We heard from many different consumer organizations and organizations that represent Canadian families, businesses and stakeholders who all say that they have seen Health Canada working clearly and transparently over the course of many years of developing this bill to strengthen our system, and that there has been consultation. The processes are outlined and much of the information is available on websites for the public. In terms of the regulatory process, policy and guidance, these steps will be taken carefully. We will be able to ask these questions along the way.

• (1540)

Senator Cordy: I want the question to be answered before we have a vote on the bill. I have no problem with Health Canada, as I said earlier, working with government agencies in other countries. That is positive action.

The honourable senator talked about consultation. I have received thousands of emails asking that Mr. Shawn Buckley appear before the Senate committee. However, when I brought that motion forward at committee, it was voted down unanimously by the Conservative members of the committee. To say that there was consultation is an exaggeration.

My question is not related to other government organizations, with which I have do not have a problem. The difficulty I have was expressed at the committee: The recall can be initiated by a foreign entity.

The honourable senator has not given me a good definition of "foreign entity." When I asked her specifically if a foreign entity includes private businesses in another country, the honourable senator did not address that question in her answer. Perhaps she can tell the house whether a private business in another country is considered a foreign entity under the bill.

Senator Martin: A "foreign entity" is one that is not in Canada, which will include governments and regulatory counterparts.

This bill governs what happens in Canada when there is a recall. Any information is shared only with persons or governments that carry out functions related to the protection of human health, safety or the environment in relation to these consumer products.

Senator Cordy: My question is: Does it include private companies?

Senator Martin: I do not know about private companies. That is something I cannot answer at this time. In terms of the process and the act that is governed in Canada, it includes the regulatory counterparts and government departments in other jurisdictions.

Hon. George Baker: Honourable senators, I have one observation. Perhaps the honourable senator wishes to comment if she has any knowledge of it, or any other senator with knowledge of it may wish to comment.

First, I congratulate the senator for her excellent work on government bills since she has come to this place. Let us hope that it continues, although at times I imagine it is difficult to justify proposed legislation that some of us feel is not suitable.

His Honour will know what I am about to mention. I have not examined this bill since the amendments were made. I thought that all the concerns on this side of the house had been addressed in the amendments. However, I asked for a copy of the bill only now. I notice that under the bill, search warrants of homes can be issued only by a justice of the peace. That strikes me as being a bit strange. Section 2 of the Criminal Code defines a "justice" as being either a justice of the peace or a provincial court judge. There is a separate distinction for a judge of a superior court. This bill specifically says, at clause 22(2) in respect of a search warrant for a dwelling house:

> A justice of the peace may, on *ex parte* application . . .

Ex parte means a private application. *Inter parte* means that lawyers from each side are represented in the discussion.

The unusual part is that a justice of the peace may issue a warrant authorizing the search of a dwelling house. I do not know whether that point has come up, but I know of only one other piece of federal legislation — the Fisheries Act — in which it says that a justice or a justice of the peace may issue a warrant for entry to a dwelling house for the purpose of investigation.

Closer examination of clause 22 shows that the reason for entry is in search of something defined under the previous clause as being evidence of, or documents relating to evidence of. It says "reasonable grounds to believe," which is in conformity. Inspectors would have to believe and not only suspect if they plan to enter a dwelling house. I notice that wording was changed, which is good.

However, the search warrant is in the hands of the justice of the peace. I realize that the Fisheries Act also has that wording in respect of investigating someone's home. However, it is of concern to me that to enter someone's home, inspectors do not require the normal constraints on the search warrant of going before a judge and having the police seek the warrant.

Senator Martin: Thank you, Senator Baker, for the question. When a dwelling house is also a place of business, it would be clearly established. In today's globalized marketplace, many businesses are in homes or dwelling houses. When such is the case, and it is established and known, an inspector may enter as the inspector would enter a business in a mall or other location.

The inspection of a person's home where a business is being conducted is regulated under the bill. The inspector performs the inspection in the same way the inspector performs an inspection in another business location. To level the playing field because there are businesses in dwelling houses and in traditional business locations, the inspector, at times, will need to enter and inspect.

In the case where there is not consent to enter the dwelling house, an inspector will require a warrant, which will be issued by an officer of the court or a justice of the peace. As the honourable senator noted, the Fisheries Act contains similar provisions, which can be found in other modern health, safety and environmental statutes.

In this modern age, many businesses are located in homes. Where a business is located in a home, it is important that inspectors have access to check for compliance and non-compliance, as they have in other business locations.

Senator Baker: I appreciate the answer; and that is correct. Although it does not say it here, clause 22(1) states:

> If the place mentioned in subsection 21(1) is a dwelling house, an inspector may not enter it without the consent of the occupant except under the authority of a warrant issued under subsection (2).

It then says that a justice of the peace may issue a warrant.

• (1550)

The reason I brought this up is because in other statutes, such as the Income Tax Act, if someone has a business that is in their dwelling house, then one can get a warrant. However, the Income Tax Act states in section 222 that the warrant can only be issued by a judge. That is the concern that I have.

As the honourable senator pointed out, it is already in the Fisheries Act and she is absolutely correct. However, I think its proliferation into other legislation is to be frowned upon.

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

Hon. Joseph A. Day: Honourable senators, I have a question for the honourable senator as well, if she would accept it.

Senator Martin: Yes.

Senator Day: I was intrigued by her comment that the minister acknowledged that the amendments that were adopted from the earlier iteration of this particular bill were adopted because she was convinced that they did not dilute the intent of the bill. Some of those amendments were passed by this chamber, but the majority of them were rejected by this chamber about a year ago. The minister then had until June and came forward with another bill, which is this particular Bill C-36, and which has adopted some of those amendments.

Obviously, during that six-month period, the minister had an opportunity to look at those amendments and determine that they were not in fact diluting the bill but were, as we had said, improving the bill. Am I correct in that regard?

Senator Martin: Yes, honourable senators. I wanted to commend Senator Day and others in that some of the proposed amendments that the minister did consider were where we achieved more clarity or ensured that the French and the English were exact. So, for those kinds of amendments, and to remove certain language to ensure that there was that real strengthening and clarity achieved, I thank the honourable senator.

Senator Day: Thank you very much. I appreciate that comment.

In view of the fact that we presented several amendments last week and they were voted down, but that the minister has not yet had the six months to consider those amendments, if we delay passage of this bill for six months, I was wondering if perhaps the minister would have an opportunity to see that these particular amendments are appropriate.

Some Hon. Senators: Hear, hear.

Some Hon. Senators: Oh, oh.

Senator Martin: Judging from the response, I am sure that the honourable senator also agrees on the importance and urgency of this bill, the fact that it has been several years in the making, that the stakeholders are waiting, and that all honourable senators have already given their support in principle.

Senator Day: The difficulty with the response that I heard from the other side is that they are the same people who the last time voted against the amendments which the minister later saw the wisdom of accepting.

(On motion of Senator Day, debate adjourned.)

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore*: Honourable senators, I wish to draw your attention to the presence in the gallery of Admiral James A. Winnefeld, Jr., Commander of the North American Aerospace Defense Command and United States Northern Command, who is accompanied by His Excellency, the distinguished Ambassador of the United States of America, David Jacobson.

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

Hon. Senators: Hear, hear!

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—ELEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED—MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wallace, seconded by the Honourable Senator Duffy for the adoption of the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-10, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts, with an amendment), presented in the Senate on November 4, 2010;
>
> And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Merchant, that the Eleventh Report of the Standing Senate Committee on Legal and Constitutional Affairs be not now adopted but that it be amended:
>
> (*a*) in the opening paragraph, by replacing "following amendment" with "following amendments"; and
>
> (*b*) by adding amendment N^{o} 2 as follows:
>
> "2. *Page 6, clause 6*: Add after line 14 the following:
>
> "(6) A court sentencing an aboriginal person who is convicted of an offence under this Part is not required to impose the minimum punishment for the offence if the court is satisfied that
>
> (*a*) the minimum punishment would be unduly harsh, having regard to the circumstances of the aboriginal offender; and
>
> (*b*) another sanction that is reasonable in the circumstances is available.

(7) If, under subsection (6), the court decides not to impose a minimum punishment, it shall give reasons for that decision." ".

Hon. John D. Wallace: Honourable senators, I would like to respond today to the comments and the amendment that was proposed by Senator Watt to the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs that relates to Bill S-10. Before doing that, I believe it might be helpful to honourable senators if I briefly summarize Bill S-10 and its key elements and objectives.

First, Bill S-10 has been brought forward because there is, to varying degrees throughout the country, a serious drug problem that involves trafficking, production, importation and exportation of drugs. The involvement of organized crime in illicit drug offences is well recognized by all of us. These drug offences involve violence and weapons. They disrupt neighbourhoods and have created serious problems throughout our country.

The focus of Bill S-10 — and I want to be clear about this — is serious drug offences. It focuses is on the trafficking of illicit drugs, the production of illicit drugs, the importation of illicit drugs and their exportation. It does not cover and relate to all drug offences.

For example, although I hesitate to call it "simple" possession as there is nothing simple about it, it does not relate to possession offences. It is those four key serious offences that are targeted by the bill.

Bill S-10 is not an isolated piece of legislation. It is part of a comprehensive approach to addressing the illicit drug problem in the country. It arose, along with the work that supported it, as a result of discussions and urging from the provinces and various departments of the federal government — Health, Justice, Public Safety. When I say it is "comprehensive," it is also part of the National Anti-Drug Strategy, of which Bill S-10 is one key element.

The National Anti-Drug Strategy has three particular action plans that deal with prevention, enforcement and treatment of drug-related issues. Those plans would be hollow if they were not supported financially by the government and, indeed, they are.

At present, there is a total of $232 million that is provided for this National Anti-Drug Strategy. If Bill S-10 is passed into law, there would be a further $68 million, making a total of $300 million available to support the National Anti-Drug Strategy.

Honourable senators are aware that a significant element of Bill S-10 is the mandatory minimum sentences which would apply to certain serious drug offences that form part of this bill.

There has been a lot of discussion around mandatory minimum sentences not only in the context of this bill but others that have been before us recently. I remind honourable senators that mandatory minimum sentencing is not a new concept. It has existed in this country since 1976. There are approximately 44 offences in the Criminal Code that prescribe mandatory minimum sentences. Of those 44, 10 arose from 2006 to date.

• (1600)

Honourable senators, the mandatory minimum sentences only apply to and are targeted at certain serious drug offences; for example, the trafficking of illicit drugs and the importation, exportation and production for the purpose of trafficking.

There is also relief — and encouragement, I would say — provided in Bill S-10 for offenders who fall under the dictates of this bill. If they submit to drug court, or provincial or territorial drug treatment programs, then they are exempt or do not have to comply with the mandatory minimum sentencing. It is an encouragement for them to rehabilitate and not necessarily remain incarcerated for the period of the mandatory sentence.

There is another important thing to point out, and it has come up a number of times when we talked about mandatory minimum sentencing. Mandatory minimum sentencing is entirely consistent with the principles and objectives of sentencing set out in the Criminal Code.

I refer you to section 718 of the code, which provides that the fundamental purpose of sentencing is to create:

". . . respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: —"

When I refer to these objectives, I want honourable senators to think of them in the context of mandatory minimum sentencing.

(*a*) to denounce unlawful conduct;

Clearly mandatory minimum sentencing does that. It says clearly that these drug offences involve behaviour that is not to be accepted in our society. It is a clear denunciation. To continue:

(*b*) to deter the offender and other persons from committing offences;

(*c*) to separate offenders from society, where necessary;

That objective is important to protect our neighbourhoods and, if necessary, to take those offenders off the streets. It also interrupts the organized crime activities that we may find associated with the offences and serves to assist in rehabilitating offenders. As I pointed out, there is the provision in Bill S-10 that enables those charged and convicted to receive drug treatment rehabilitation services and not be subject to the mandatory minimum sentencing.

I refer honourable senators to Senator Watt's proposed amendment, presented on November 17. Briefly, I understand the thrust of the amendment to be that it will enable the court, in cases only of Aboriginal persons, to not impose the mandatory minimum punishment in certain circumstances. Once again, it will apply to Aboriginal persons.

In Senator Watt's November 17 statement to this chamber, he suggested that the bill ignores a vital tradition established in the Criminal Code known as the Gladue principle, which comes from the Supreme Court of Canada decision by the same name. It makes reference to paragraph 718.2(*e*) of the Criminal Code. Senator Watt has also concluded effectively that the bill will be contrary to the sentencing principles set out in section 718.2(*e*) of the code.

Honourable senators, I respectfully disagree with both of Senator Watt's conclusions.

Section 718.2(*e*) of the Criminal Code says that courts will take into account the following principles in sentencing: They will look to "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."

That principle applies to all offenders, not simply Aboriginal offenders. That said, however, Aboriginal offenders and the unique circumstances they sometimes find themselves in are flagged.

Senator Watt, in his November 17 statement, said that section 718.2(*e*) does not give preferential treatment to Aboriginal offenders. I completely agree with him. It applies to all offenders. However, the amendment proposed by Senator Watt will grant an exemption from mandatory minimum sentencing potentially only to Aboriginal persons.

It is clear from the Supreme Court of Canada decision in *Gladue* that Aboriginal persons include those on and off reserve and those who live in large cities and rural areas. While I realize Senator Watt is thinking of the North, his amendment will apply to all Aboriginal persons. It will not be limited only to those in the North.

Once again, it is important to keep in mind that Bill S-10 applies only to serious drug offences. The four offences are trafficking, production, importation and exportation, when the aggravating factors are present. It does not apply in all cases; the aggravating factors must be present. Those factors include violence, the involvement of criminal organizations, the use of weapons or when youth are involved in the drug crime.

With Bill S-10 focusing on serious drug offences, I thought it would be helpful to consider some of the statements that appear in the leading case, the Supreme Court of Canada *Gladue* case. At page 45 of that decision, the court said:

> In some circumstances the length of the sentence of an aboriginal offender may be less and in others the same as that of any other offender. Generally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing.

Again, there is that emphasis on the seriousness of the offence. I then draw honourable senators back to my previous comments about Bill S-10.

At page 54 of *Gladue*, the court said:

> Section 718.2(*e*) is not to be taken as a means of automatically reducing the prison sentence of aboriginal offenders; . . .

Again, at page 45:

> . . . we do not mean to suggest that, as a general practice, aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation. It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of these latter goals, and even if they do not, that such goals must not predominate in appropriate cases. Clearly there are some serious offences and some offenders for which and for whom separation, denunciation, and deterrence are fundamentally relevant.

Statements have been made that Bill S-10 will remove judicial discretion as it relates to Aboriginal offenders. I disagree. It will limit judicial discretion somewhat, as it would the judicial discretion that exists with all offenders. However, the judges will have complete discretion between the limits of the minimums and maximums provided for in the code and judges can use that discretion in the case of Aboriginal offenders.

• (1610)

With respect to this issue of judicial discretion, I will remind honourable senators of the exemption that is available to be granted for those offenders, Aboriginal or otherwise, who submit to rehabilitation through drug courts or territorial-provincial drug treatment programs.

Senator Watt, for whom I have great respect, speaks forcefully and well. I understand where his heart is in this issue, and I would say that all our hearts desire to provide for all Canadians, including our Aboriginal brothers and sisters. However, I have heard it said that since drug courts do not exist in the North, somehow that should provide an exemption from the provisions of mandatory minimum sentencing. I point out to honourable senators that drug courts do not exist, for example, in the Atlantic provinces or Quebec.

The Hon. the Speaker *pro tempore***:** I am sorry to interrupt, but I must advise that the honourable senator's time has expired. Is the honourable senator asking the chamber for more time?

Senator Wallace: Yes, if I could.

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

Senator Wallace: Thank you. The fact is that drug treatment courts are not present in the Atlantic provinces or Quebec, but there are certainly provincial treatment facilities that are available so the relief that can be granted to offenders in those provinces can be obtained through provincial and territorial treatment facilities, as it could be with Aboriginal offenders.

There are a number of drug treatment programs available for Aboriginal offenders. I will obviously not have time to go through all of them. There is the National Native Alcohol and Drug

Abuse Program. There is also the Aboriginal Justice Strategy, which provided an additional $40 million for that purpose and which will increase funding to $85 million by 2012. That will affect some 400 Aboriginal communities.

In conclusion, honourable senators, there is no question and we would all acknowledge that the special needs of our Aboriginal communities must be recognized, and I would say to you that they have been recognized and will continue to be recognized by this government. Again, under the National Anti-Drug Strategy, increased funding will be provided to Aboriginal communities for treatment.

Judicial discretion will exist between the minimum and maximum levels within the code. In addition, section 718.2(*e*) of the Criminal Code, which I mentioned earlier, will continue to be there to flag and remind us of the significance and unique circumstances of Aboriginal offenders. They will not be forgotten and cannot be forgotten because of what exists in the law today.

As I pointed out earlier, there is the ability to avoid mandatory minimum sentencing by Aboriginal offenders and by all other offenders if they submit to drug treatment and rehabilitation.

Honourable senators, with the greatest of respect to my colleague Senator Watt, I disagree with his proposed amendment, and I would encourage each of you to support Bill S-10 in its unamended form.

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

Some Hon. Senators: Question.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Watt, seconded by the Honourable Senator Merchant, that the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs be not now adopted but that it be amended (a) in the opening paragraph by replacing — shall I dispense?

Some Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** Do the whips have advice as to the time? Have the whips made a decision?

Hon. Jim Munson: Thirty minutes? An hour? He wants an hour so I will take an hour.

The Hon. the Speaker *pro tempore***:** It is now 15 minutes after four. The bells will ring for one hour and the vote will take place in one hour's time.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

• (1710)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker	Joyal
Callbeck	Lovelace Nicholas
Campbell	Mahovlich
Carstairs	Massicotte
Chaput	McCoy
Cordy	Mercer
Cowan	Moore
Dawson	Munson
Day	Pépin
Downe	Peterson
Eggleton	Poulin
Fox	Poy
Fraser	Ringuette
Furey	Robichaud
Harb	Smith
Hervieux-Payette	Tardif
Hubley	Watt—35
Jaffer	

NAYS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Angus	MacDonald
Ataullahjan	Manning
Boisvenu	Marshall
Braley	Martin
Brazeau	Meighen
Brown	Mockler
Carignan	Nancy Ruth
Champagne	Neufeld
Cochrane	Ogilvie
Comeau	Oliver
Demers	Patterson
Di Nino	Poirier
Dickson	Raine
Duffy	Rivard
Eaton	Runciman
Fortin-Duplessis	Segal

Frum
Greene
Housakos
Johnson
Kinsella
Kochhar
Seidman
Stewart Olsen
Stratton
Tkachuk
Wallace—45

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1720)

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

An Hon. Senator: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Wallace, seconded by the Honourable Senator Duffy, that this report be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

The Hon. the Speaker: Carried, on division. When shall this bill, as amended, be read the third time?

Senator Wallace: At this time.

Some Hon. Senators: No.

The Hon. the Speaker: I do not hear leave being granted to read it at this time.

Senator Wallace: At the next sitting.

The Hon. the Speaker: It is moved by the Honourable Senator Wallace, seconded by the Honourable Senator Mockler, that this item be placed on the Orders of the Day for third reading at the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

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

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tardif, for the second reading of Bill S-204, An Act to amend the Criminal Code (protection of children).

Hon. Sharon Carstairs: Honourable senators, let me begin by acknowledging the words of my fellow Manitoban. It was good to hear him in debate, although there were few things in his speech with which I was in agreement.

In response to his brother's surprise that we were wasting taxpayers' dollars on this bill, let me state unequivocally that I consider the protection of our children — the future of this country — to be of the highest priority.

The appearance of section 43 in the Criminal Code is in itself a strange use of the Criminal Code. The purpose of the Criminal Code is to inform citizens of behaviour that is unacceptable in a free and democratic society. The Criminal Code is almost entirely prohibitive. It states that we shall not murder, steal or assault, physically or sexually, our fellow citizens. The Criminal Code, for the most part, prohibits actions. However, in the middle of this code that prohibits actions, we have a section that permits an action. It permits a schoolteacher, parent or person standing in the place of a parent to use force in the correction of a child.

I was interested in Senator Plett's response to Senator Hervieux-Payette's question about a neighbour using force on his child. Senator Plett clearly disapproved of such an action, and I agree, but when we allow a child to play at a neighbour's home or in a neighbour's yard, we are giving that neighbour permission to stand in the place of a parent. We are, therefore, protecting that neighbour if he or she should use force against our child. The neighbour could use the defence of section 43.

Senator Plett clearly takes offence at the state crossing, in his view, a line where government rather than the parent determines how to raise a child, but we cross this line often for the protection of children. Earlier this afternoon in this house, we debated Bill C-36, which seeks to impose rules that will govern the things our children might eat or toys that will be in their possession. Only last week, the government imposed by regulation stronger requirements for baby cribs. The purpose of these bills is to enhance the safety of our children, and I suggest enhancing the safety of our children is exactly what Bill S-204 will do.

Section 43 in its original state also gave us the right to use corporal punishment on midshipmen and the mentally defective, as defined by the bill. Those parts of the section have been repealed. Why — because it became repugnant for us to allow the use of force on midshipmen and the mentally defective. Earlier common law provisions made it possible for men to use corporal punishment against their wives. This use, too, has been prohibited. Why then do we still believe it is permissible to hurt our children?

I enjoyed Senator Plett's personal stories, although I suspect that my interpretation of these stories will differ from those of my Manitoba colleague.

I was interested that his second son is not an advocate of corporal punishment. This is the son whose story he told where clearly, spanking did not work. However, Senator Plett should be congratulated for recognizing this failure. After the second spanking failed to work, Senator Plett chose an alternative strategy. Tragically, many parents do not have Senator Plett's perception.

All too often, what is called a spanking does not work, and it escalates and becomes serious abuse.

There is a court case at this very moment in Toronto where a mother is charged with child abuse. It started as a simple spanking. When the simple spanking did not work, it escalated to a severe beating. Honourable senators, all too often this escalation is the pattern of abuse. It starts with what appears to some to be reasonable punishment and ends in abuse. Not all parents have the control clearly exercised by Senator Plett.

I was particularly struck by the letter from his granddaughter, who wrote:

> Spanking is also a quick way of dealing with a problem and the kid can forget about it and go back and play.

This is clearly a well-behaved child and one who is also bright. She understands cause and effect. However, surely discipline is not supposed to be transitory. I am sure my younger daughter would have far preferred that I give her a spanking rather than denying her access to her horse, which was stabled 35 minutes from our home and required her father, her mother or both of us to take her. When she was denied access to her favourite activity — an activity I might say that at the age of 38 she still engages in five times a week — she understood that the consequences of her behaviour were not short term or transitory.

However, I take great offence at the material presented with respect to Sweden, which is wrong and, unfortunately, the work of a largely discredited and biased researcher. The Swedish story is a success story, and the proof of this success has been that so many other countries — 14 to date — have adopted its policies to similar success.

First, the law in Sweden did not change in 1979. That change was largely symbolic. It was the change in 1957, which made corporal punishment an assault in Swedish law, that resulted in an attitudinal change in Sweden against corporal punishment now reflected in an over 93 percent rate of acceptance by the Swedish people.

• (1730)

The normal Swedish parent, according to Staffan Janson, a professor and pediatrician who has been in charge of the national Swedish studies in child abuse, said in a letter to me:

> Today's parents actually think it is disgusting to beat children.

Second, law reform in Sweden has not resulted in a greater willingness of child welfare authorities to remove children from their homes. To the contrary, few children are removed. In 2004, for example, only 200 children were placed in immediate custody — a very small number.

Third, the people of Sweden have a much greater public awareness of violence against children; and yes, the reporting rate has increased simply because Swedes will not tolerate such actions.

Fourth, studies have shown that Swedes are neither afraid of their children nor unwilling to discipline them. They are simply unwilling to hit them. The aim of law reform in Sweden has been to protect children, not to punish parents. Perhaps the most positive impact has been on the health of Swedish children and their well-being. Sweden has seen a decrease in the number of children turning to drugs and an increase in the number who have turned away from violence. I encourage senators to read the studies by Dr. Joan Durrant, University of Manitoba, 1999; Dr. Ake Edfeldt, University of Stockholm, 2005; Dr. Goran Juntengren, Research Director, Primary Health Care, Southern Alvsborg County, Sweden; Mali Nilsson, Chair, International Save the Children Alliance Task Group on Corporal/Physical Punishment and Other Forms of Humiliating or Degrading Punishment; the work of Staffan Janson, Klackenberg-Larrson and Magnusson, 1998; Kai-D. Bussmann, Claudia Erthal, Andreas Schroth and many others whose work I would be pleased to share with honourable senators.

In the final analysis, colleagues, this is a simple concept. Do I, because I am physically bigger and stronger, have the right to use my brute strength against someone who is smaller and lighter just because I am that person's parent? I simply do not believe I do. Yes, I have the right to teach my child acceptable behaviour and I have the right to discipline when that behaviour is unacceptable. I have the right to use time-outs and denial of privileges.

I want to close by thanking Senator Plett for the story he told about discussing his corporal punishment by his father at his father's dying bedside. His father told Senator Plett that his punishment did not hurt the father as much as it did the son. That, hopefully, has put that myth to bed.

Hitting hurts and it hurts even more when done by someone the child believes loves and cares for them. Children are deeply humiliated by such acts and, although quick to forgive, they are not quick to forget and all too often, as studies show, it teaches them that hitting others is acceptable. I simply believe it is not.

Honourable senators, join me and 400 organizations in this country that support the repeal of section 43.

(On motion of Senator Comeau, debate adjourned.)

BUSINESS OF THE SENATE

COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, it is approaching six o'clock and I wish to indicate that the house will see the clock. Therefore, I seek the unanimous consent of honourable senators for committees to sit while the Senate is suspended until eight o'clock.

The Hon. the Speaker *pro tempore***:** Is unanimous consent granted, honourable senators?

Hon. Senators: Agreed.

(Motion agreed to.)

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker *pro tempore* informed the Senate that a message has been received from the House of Commons returning Bill S-2, An Act to amend the Criminal Code and other acts, and acquainting the Senate that they have passed this bill without amendment.

[*Translation*]

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. Marie-P. Poulin: Honourable senators, I rise to support Bill S-220 in the knowledge that, in the last several decades, great strides have been made in advancing the concept of equality between Canada's two official languages.

Having been at times in the vanguard of French language rights, I am aware of the vast amount of work that is required in order to build a sound case to preserve and enhance the policies and regulations that reflect our bilingualism. In this regard, I would like to express my admiration and gratitude to the Senator Chaput for undertaking such a difficult and time-consuming task to bring before us the matter at hand — an updating of the Official Languages Act. She has done an outstanding job and deserves our appreciation.

Central to Bill S-220 is the concept of "equal quality" in the provision of language services to better reflect today's language duality and, just as importantly, to make the law consistent with judicial decisions. A review of case law over the past two decades shows that the purpose of recognizing language rights must be to enhance the vitality of official language minority communities, taking into account the specific situation of each community and the majority-minority dynamics in each province and territory.

In *Beaulac*, in 1999, the Supreme Court of Canada stated that language rights must be given a large and liberal interpretation to ensure the preservation and vitality of minority language communities. From this ruling a spectrum of new principles were postulated, which I will refer to later.

In *DesRochers v. Canada*, 2009, the Supreme Court of Canada ruled that all services of federal institutions must not only be offered in both official languages, but those services must be of equal quality.

Overall, Bill S-220 contains 10 clauses aimed at improving the quality of language services offered to official language minority communities and the health of bilingualism in those minority communities. Many of the proposed changes are directed at Part IV of the Official Languages Act which deals with communications, with and services to the public, and which has been particularly affected by court rulings and demographic change.

This is the first time since 1988 that a bill to amend this section has been introduced in Parliament. Accordingly — and in keeping with the legal interpretations of our language laws — the proposed changes to Part IV would take not only statistical analysis into account for determining the provision of minority language services, but also qualitative criteria, that is, the characteristics of the minority communities themselves. Factors other than population numbers would be considered. These new criteria would include such matters as whether there is a local minority-language newspaper or school, or whether there is a post office.

As I have indicated, the law at present basically speaks of populations in broad terms, as measured by Statistics Canada. However, people who can communicate in the language of the minority population are left out of the equation.

• (1740)

An example of this would be a child who speaks one official language at home but attends a school that functions in the other official language. That educational aspect is omitted in the calculation of minority language numbers.

As well, there is evidence that some immigrant groups might be overlooked in tabulating language services demand.

The fact that the regulations do not recognize the institutional vitality of a community ignores the sociological nature of communities. In small communities the absence of those elements can make the difference between having minority-language service and not.

As an extra consideration, Bill S-220 proposes that bilingual services would be offered in any areas where they are provided by the provinces and territories.

Furthermore, consultation would be required before any minority service is withdrawn.

In a historical context, this bill is an extension of bilingualism in this country.

The first Official Languages Act was enacted in 1969 as a result of recommendations from the Royal Commission on Bilingualism and Biculturalism. It gave equal status to English and French throughout the federal government system.

The 1982 Charter of Rights and Freedoms expanded the bilingual nature of services within the federal sphere and dealt with minority language education rights.

In 1988, the 1969 Act was scrapped and replaced by a new Official Languages Act that beefed up regulations and established the powers of the Commissioner of Official Languages, the

complaints process and the obligation on the Minister of Canadian Heritage and the President of the Treasury Board to be accountable to Parliament for responsibilities relating to official languages.

In the intervening years, various regulations have been introduced and clarifications issued, particularly regarding where Canadians can expect to be served in official languages. Let me share that list with you: the head or central offices of federal institutions; offices in the national capital region; offices of an institution required to report to Parliament, such as the Auditor General; offices where there is significant demand and that take into account various formulas; offices justifying official language services, such as public health, safety and security; offices serving the travelling public; and third parties offering services to the public on behalf of federal institutions.

In summary, then, the Official Languages Act has made progress to reflect changes at the social, linguistic, demographic and judicial levels.

Earlier, I mentioned the 1999 *Beaulac* case in which the Supreme Court of Canada noted that factors other than numbers should be considered when determining the need for minority language services.

These factors include the language spoken not only at home, but at school, in the workplace and even on the street.

Honourable senators, the Official Languages Act of 1988 enabled the government to adopt regulations specifying how the Act was to be implemented. The only regulations adopted were in 1992, prompting the Commissioner of Official Languages to state in the COL's annual report of 2005-06 that they belonged to a bygone era.

In fact, the commissioner went on to say that the strict application of numerical criteria gave rise to unfair, complex and unequal situations in the delivery of minority language services.

It is in the spirit of addressing those inconsistencies that Bill S-220 is brought before you.

Another item of note is that the bill introduces rights for the travelling public and calls on every federal institution to ensure that language services to travellers are available, including third-party persons or organizations operating on behalf of federal institutions.

When examining the merits of the bill introduced by my colleague, Senator Maria Chaput, do not forget that you are being asked to support the natural evolution of one of our fundamental characteristics, bilingualism, by broadening and making mandatory the criteria currently used to determine the pertinence of providing services in both official languages while giving some latitude to the Governor-in-Council.

To prevent permanent imbalances from being created by the new law, the President of the Treasury Board, or another federal minister designated by the Governor-in-Council, will review the regulations every 10 years to verify whether or not they are effective.

Honourable senators, the amendments proposed by Bill S-220 would modernize the Official Languages Act, clarify the regulations and strengthen the concept of official bilingualism in federal jurisdictions, especially since — let us not forget this important fact — 14,000 federal offices are subject to this law.

(On motion of Senator Comeau, debate adjourned.)

[*English*]

CANADA POST CORPORATION ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Peterson, seconded by the Honourable Senator Lovelace Nicholas, for the second reading of Bill S-219, An Act to amend the Canada Post Corporation Act (rural postal services and the Canada Post Ombudsman).

Hon. Consiglio Di Nino: Honourable senators, this is now the second time that I do this with some apologies to the proposer of the bill. I have not had the opportunity to complete the notes that I wanted to complete. Once again, I ask for your indulgence.

I would ask that we adjourn the debate on this motion for the reminder of my time.

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

(On motion of Senator Di Nino, debate adjourned.)

[*Translation*]

SUPREME COURT ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Rivest, for the second reading of Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages).

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, let me begin by saying that I do not doubt for a moment the good intentions of those who support this bill, who, I am quite convinced, are probably acting in good faith. Unfortunately, the best intentions in the world do not always translate into good decisions on public policy.

Bill C-232 proposes to impose, for the first time in Canadian history, individual bilingualism as a prerequisite for serving in a Canadian federal institution. That is very different from requiring federal institutions to provide the Canadian public with services

in both official languages, a requirement that stems from our constitutionally entrenched language rights, from our federal legislation on official languages and from our linguistic policies.

• (1750)

I remind senators that this bilingualism scenario would not apply to just any institution; it would apply to the Supreme Court of Canada.

No Canadian has ever been refused the right to work in a federal institution, such as the army, the judiciary, the public service, the RCMP, Parliament or any institution because they were not bilingual. They have not been refused.

The Official Languages Act is clear on this subject. Section 2 states:

> The purpose of this Act is to. . .ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions. . .

But "equal rights and privileges" is not a synonym for bilingualism.

Section 34, Part V, of the Official Languages Act states:

> English and French are the languages of work in all federal institutions, and officers and employees of all federal institutions have the right to use either official language in accordance with this Part.

In Part VII, the Government of Canada commits to ensuring that:

> . . . English-speaking Canadians and French-speaking Canadians . . . have equal opportunities to obtain employment and advancement in federal institutions . . .

Unfortunately, Bill C-232 rejects this duality. It rejects the concept of the official languages.

Now, the principle of Bill C-232. According to some of my colleagues, the bill requires Supreme Court judges to understand the "subtleties and nuances" of the laws they must interpret.

In reality, unlike applicants in other federal institutions, potential candidates for the Supreme Court would be required to be bilingual. Of course, wanting every judge in the country to be bilingual is difficult to criticize. Certainly, it would be wonderful if everyone in Canada were bilingual, but that is not the reality in our great nation, which has never required that its citizens be bilingual.

If legislators can argue that Supreme Court justices should be bilingual because they interpret legal principles that emanate from our laws, should they not also argue that those who impose the laws should also be able to perfectly understand the "subtleties and nuances" of the laws they are drafting, amending and voting on?

After all, every time they vote, unilingual legislators are voting on bills they are unable to read in both official languages and relying on professional interpreters to be able to follow the debate on the bills. The unilingual legislators who support this bill are denying others the right to serve their country, but want to keep that right for themselves.

Are these legislators not being hypocritical by imposing on others a condition of bilingualism that they themselves are refusing to respect?

Some senators have made the point that other federal courts give litigants the right to be heard in the language of their choice. That is indeed true.

The Official Languages Act stipulates that the federal courts must give equal access to both official languages. However, no federal court requires potential judges to be bilingual.

As I was saying earlier, no federal institution imposes bilingualism on applicants. Any Canadian who understands one of the two official languages can apply for a position within a federal court.

Bill C-232 is a measure that would set precedents by making the Supreme Court the first federal institution to use federal legislation to deny a unilingual Canadian the right to serve that institution and to serve their country. Some people think the Supreme Court is so important that unilingual Canadians can be denied the right to serve it and sit on it.

Honourable senators, this is a slippery slope. Any justification for refusing to allow non-bilingual Canadians to serve their country paves the way to the possible refusal to respect the official languages rights of all citizens. If it is justifiable and acceptable to deny official languages rights to a Supreme Court candidate, whose rights will be denied next? Could we deny rights to those who want to join the army, the public service, even Parliament?

If we could justify not allowing unilingual Canadians to serve, does that same logic mean that it would be acceptable to refuse a non-bilingual person the right to serve in certain federal institutions?

Linguistic duality would lose all value. Proponents of linguistic duality must ask themselves if imposing bilingualism, other than as it is set out in the Official Languages Act, is a wise linguistic policy.

Linguistic duality is gaining more and more support throughout Canada, as is respect for official language minority communities.

One cannot start cherry-picking their rights. In French, it is a new twist on a familiar saying: *On ne peut prendre les perles et laisser les pierres*.

If we can justify trampling on the official language rights of Supreme Court candidates, does that not imply that we can brush aside the official language rights of ordinary people and attack institutions with less prestige than the Supreme Court?

Do we really want to start studying one-off private members' bills that would impose linguistic requirements on federal institutions?

The Bloc and the Liberals proposed an amendment to Bill C-20 in the other place, under which the CEO of the National Capital Commission would now have to be bilingual. According to the Bloc member who proposed the amendment, he attended a meeting and "realized that [the CEO] was not able to respond to people's questions in French." I find it a bit odd that the Bloc Québécois has now started to support bilingualism. That is quite a novelty. I wonder how the Bloc Québécois will explain that to their Quebec constituents. But I digress. This is akin to rejecting the Official Languages Act.

We should all be proud of our successes that are a product of our official language laws and policies.

I sat in Parliament in 1988, in the other place, when the last amendments to the Official Languages Act were being debated, and I remember the goodwill and attention that exemplified the changes.

We respected the guiding principle that Canada has two official languages and that Canadians would not be denied the right to serve their country. The official language rights of both francophones and anglophones would be protected.

The Official Languages Act has served Canada extremely well. An increasing number of Canadians support its principles, provisions and protective measures. In fact, the courts and many Canadian citizens grant it a quasi-constitutional status, and with good reason.

Canadians can take comfort in knowing that the Official Languages Act guarantees them protection if their language rights are violated. As in the past, they can appeal to the Commissioner of Official Languages to have their rights protected.

The Official Languages Act also set out protective measures for official language minority communities to ensure that federal institutions respected minority rights.

By refusing to respect the right of unilingual Canadians to serve in one of our federal institutions, this bill implies that the Official Languages Act and the principle of linguistic duality are meaningless.

[*English*]

This is why I am particularly disappointed and disturbed with the decision of the Commissioner of Official Languages to lobby for passage of legislation that takes away the language rights of candidates for the Supreme Court of Canada and supports the imposition of bilingualism. Linguistic duality and bilingualism are two entirely different precepts. If there is one person who should know the difference between them, it is the Commissioner of Official Languages. That is the one person to whom parliamentarians should be able to turn to help explain objectively and authoritatively these two different concepts.

This private member's bill has nothing whatsoever to do with the Official Languages Act. In fact, I question how the commissioner, as an officer of Parliament, can use his office to lobby for a bill that clearly goes against the principles of the Official Languages Act and the constitutionally protected rights of Canadians. Nowhere in the Official Languages Act is the notion of bilingualism found. It is my view that the commissioner is wrong and is outside his mandate to downgrade the right to a privilege to serve their country.

Some Hon. Senators: Hear, hear!

Senator Comeau: Part IX, subsection 56(1) of the Official Languages Act describes the mandates of the commissioner as follows:

> It is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of English and French in Canadian society.

I suggest that the commissioner publicly justify how and under what mandate he is using the considerable powers and resources of the Office of the Commissioner of Official Languages to lobby for bilingualism policies that clearly fall outside the commissioner's mandate.

The Hon. the Speaker: It being six o'clock and pursuant to the *Rules of the Senate*, I am obliged to leave the chair to return at eight o'clock.

(The sitting of the Senate was suspended.)

• (2000)

(The sitting of the Senate was resumed.)

Senator Comeau: Honourable senators, the main arguments for the necessity of Bill C-232 is that a judge who relies on professional interpreters will miss the nuances of oral arguments and therefore not render a proper judgment in the interpretation of principles of law.

Senator Tardif referred to Michel Doucet who said that he possibly lost a case because anglophone judges could not understand his oral testimony.

[*Translation*]

However, honourable senators, I would like to say that if such a situation arose, it would be a grave miscarriage of justice. Fortunately, when that happens, the Supreme Court has provided recourse for re-hearing cases in section 76 of its rules of practice. In *Protestant School Board v. Quebec (Attorney General)* in 1989, the Court confirmed the existence of this recourse in exceptional cases of miscarriage of justice. Perhaps Mr. Doucet could have examined that recourse.

Another question remains: if such an exceptional situation were to arise with simultaneous interpretation, is it easy to prove the mistake was made in the interpretation and to appeal for a re-hearing? However, without interpretation, as set out in this bill, if the judge misunderstands something, that would be impossible to prove.

[*English*]

The argument is that professional interpretation does not work, that it is a failure. If such is the case, it logically follows that Parliament itself does not work because a great number of unilingual parliamentarians rely, and have historically relied, on professional interpreters to follow the debates of Parliament on which they base their votes. The United Nations and the European Union would be in terrible trouble if professional interpretation did not work.

Frankly, I greatly admire the work of our professional interpreters, and I see absolutely no cause to question their interpretation skills and the skills that they provide not only to Parliament but also to the Supreme Court and other venues.

This argument also presumes that Supreme Court judges render judgments on facts or evidence presented orally before them. That is not case. The Supreme Court is not there to receive the evidence of a case as it is not the role of the Supreme Court to gather the facts. The facts of particular cases that may make their way to the Supreme Court are the responsibility of the lower courts. The role of the Supreme Court as an appellate court is to adjudicate legal questions and principles, not to reassess or re-weigh the evidence.

As an aside, there is no right to be heard by the Supreme Court, except in criminal cases where there is dissent on a point of law at the Court of Appeal. Otherwise, the Supreme Court decides whether it will hear a case or not, and it does not even need to explain its reasons for refusal.

The argument that a Supreme Court justice who relies on highly trained professional language experts to better understand oral legal arguments would be unable to render a sound legal judgment is simply nonsense.

It has been further argued that a Supreme Court judge should be able to understand the emotion behind the words in the oral arguments. Again, this argument is nonsense. Emotion is the domain of the lower courts where issues of credibility are assessed and adjudicated. Some have suggested that the bill does not require that Supreme Court justices be bilingual, yet these same proponents argue for perfectly bilingual judges. Senator Jaffer clearly summed up the bilingual argument by pointing out that justices have —

> . . . to understand exactly what my client's words meant in both official languages.

Such comments confirm that the Supreme Court candidate would have to be perfectly —

I see that my time is up. I wonder if I might be granted an extra five minutes.

Hon. Senators: Agreed.

Senator Comeau: Some comments confirm the intent that the Supreme Court candidate would have to be perfectly and fluently bilingual to understand fully what is claimed in legal arguments in both languages of both the civil and common law systems without the aid of an interpreter.

To conclude, this bill is based on the premise that Canada is a bilingual country. In fact, Canada is not a bilingual country but a country with two official languages. With the exception of the Supreme Court, federal institutions are required by the Official Languages Act to respect the two official languages.

This bill proposes a new concept of individual or personal bilingualism for candidates to serve in one of our nation's most important federal institutions. Imposing bilingualism without the protections of the Official Languages Act is in my view a dangerous precedent.

Let us stick with linguistic duality, equality of the two official languages, and not fool around with half-baked bilingual schemes. Otherwise, we have to question how safe our language rights are if backbenchers with a slim majority can start messing around with fundamental rights by means of private members' bills. Coalition members in the other place have the legislative numbers to pass such legislation by a slim margin, a vote of 140 to 137, and impose bilingual requirements on the Supreme Court candidates. Majorities can impose such laws, which is why minority language communities should take warning.

Over my 25 years in Parliament, I have fought for the promotion of linguistic duality and the protection of official language minorities. I ask all honourable senators not to be sucked into supporting legislation that takes away individual language rights.

Senator Mercer: Oh, oh.

Senator Comeau: Senator Mercer, you will have your chance.

I move now to the principle of the bill. There are two aspects to voting on this —

An Hon. Senator: Order.

Senator Di Nino: A little respect, please.

Senator Comeau: Your Honour, is my time on this bill being used up by Senator Mercer?

There are two aspects to voting on the second reading principle of the bill, aim and the means. The aim or object of this particular bill is for litigants to be heard by Supreme Court justices without interpretation, whatever that means. Equally important at second reading is the means or mechanism by which the aim is so accomplished.

This aspect is where the real problem arises with this bill. To accomplish the aim, the bill has to take away language rights of Canadian citizens. I suggest to honourable senators that the aim does not justify the means.

• (2010)

If we want to attain the objective of a fully bilingual court, we will have to go back to the drawing board and accomplish our objectives without trampling on the language rights of Canadians.

I want to address my anglophone friends from across Canada who may not be bilingual. I encourage my anglophone friends to go to francophone parts of Canada. You will be amazed at what you will find. I especially invite you to go to Quebec, which is a whole new world. You will learn a new culture, a different language, and you will be amazed at how friendly and great the people of Quebec are; not only the francophones of Quebec but also the francophones throughout Canada. You will meet people you will truly like.

[*Translation*]

I also want to address francophones from across Canada who should in no way be fooled by this type of bill that takes away their rights. I especially want to address the francophones who have worked for decades and centuries to protect their language and their culture. They should not let this type of bill persuade them to stop fighting for their rights. We saw that with the plan for the National Capital Commission, where amendments have been proposed; we are starting to see requirements that members of the other house be bilingual. I want to encourage you by saying that I will never support a bill that will force our Canadians to learn a second language in order to be able to serve their country.

[*English*]

I say this to my anglophone friends as well: I will never support any project or law that imposes upon or forces Canadians to learn a second language in order to serve their country. Learn it because you want to learn it, not because you are forced by parliamentarians to learn it. That is where my thoughts are on this subject.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Serge Joyal: Would the honourable senator accept some questions?

Senator Comeau: Yes.

Senator Joyal: I listened closely to both parts of Senator Comeau's speech and I am disappointed that we were not able to hear it all at once, due to the six o'clock break. However, in the first part of his speech, if I understood his remarks correctly, he said that the Official Languages Commissioner had erred in his interpretation of his mandate in particular and had spoken about his interpretation of the Official Languages Act and the Constitution, which Senator Comeau felt was not in keeping with the nature of his mandate.

Given that he cannot possibly explain this unless he comes to this chamber during a sitting where we give him the opportunity to make his point, or unless he testifies at committee as to how he would answer the senator's questions and counter his conclusions, which of the two forums would the senator prefer for giving him an opportunity to explain his point of view?

Senator Comeau: The Official Languages Commissioner defended his opinions publicly in the House of Commons, during his presentations before the Standing Committee on Official Languages. He defended them publicly in the papers and, if I recall correctly, before the Standing Senate Committee on Official Languages, where he spoke in favour of this bill. He even encouraged committee members to pass the bill. If you listened to my comments carefully, you will have heard me say that this bill has nothing to do with official languages. This is simply not within the mandate of the Commissioner of Official Languages.

This is a bill to impose bilingualism on individuals as a condition of serving a federal institution. It imposes bilingualism and has nothing to do with the Official Languages Act. I believe I have made that very clear. In my opinion, his mandate does not include exploring issues of bilingualism in order to impose new forms of individual bilingualism. In my opinion, his mandate is the Official Languages Act and not some new form of individual bilingualism.

The Hon. the Speaker: I regret to inform honourable senators that Senator Comeau's additional time has expired.

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

[*English*]

BANKRUPTCY AND INSOLVENCY ACT AND COMPANIES' CREDITORS ARRANGEMENT ACT

BILL TO AMEND—SIXTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tkachuk, for the adoption of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Hon. Stephen Greene: Honourable senators, I would like to begin by stating my sincerest sympathies for how difficult this situation is for the 378 Nortel long-term disability claimants. Not only do they have to cope with whatever physical reasons have forced them into being disabled claimants in the first place, they are now drawn into a very complicated and difficult legal and financial circumstance. I have read many of the claimants' letters and emails and have reflected on them.

In any insolvency situation, we are dealing with one constant: There is simply not enough money to go around and difficult decisions must be made. The case before us is perhaps as difficult to solve as anyone could imagine.

Unfortunately, Bill S-216 does not offer a solution for Nortel's LTD claimants. The reason for this is as follows: Bill S-216 attempts to retroactively change the legal framework for creditors, in particular the Nortel LTD claimants, but is not capable of enforcing the solution it wants.

It proposes to put unsecured LTD claims higher on the list of creditors, thus solving or ameliorating the workers' problem. I will admit that, as a policy issue, I am probably not against such a provision. Other countries have this type of priority, and it might be an option that Canada ought to look at in the future. Unfortunately, while future claimants could conceivably be helped by this bill, changing the current legal framework and having those changes apply to the past will not solve the problem for Nortel workers on long-term disability.

Nortel, of course, is subject to proceedings under the Companies' Creditors Arrangement Act, which requires that certain legal procedures must be followed, and they have. In this case, changing the legal landscape after the event will not be enough.

We have heard plenty of arguments as to how the will of Parliament is supreme and that it can legislate retroactivity. This is true. *British Columbia v. Imperial Tobacco Canada Limited,* 2005 confirmed this. This is not a case of simple retroactive legislation, though. The CCAA procedures underline that if any claims are to be paid, Nortel itself must file a Plan of Compromise, by which the remaining funds in the company are divided and paid to creditors.

In the Nortel case this plan has been court approved. There is also a clause in the court agreement that immunizes the agreement from future changes in the law that might affect the plan. All of the creditors are bound by this, including the Nortel workers.

The Ontario Superior Court's decision states very plainly that Nortel can choose to ignore any future legal changes that have a retroactive effect on the order of claims. The judge stated that such compromises, as found in the sad case of Nortel, are final.

In rendering his decision the judge said:

> It is not, in my view, reasonable to require creditors to, in effect, make concessions in favour of the Former and LTD Employees today. . .

— which has occurred —

> . . . and be subject to the uncertainty of unknown legislation in the future.

It is thus highly unlikely that, just because a law has been changed, Nortel would file a new plan without a legal fight, and likely a lengthy and costly one, because there is no requirement for Nortel to do so. We all must recognize this. Retroactivity is not the only issue here. The court agreement allows Nortel to ignore legal changes. Thus, for the LTD claims to be extended, Nortel itself must recognize that the laws have been changed and then must decide to file a new plan in order that Nortel LTD claimants are satisfied.

• (2020)

There is nothing in this bill that can force Nortel to file a new compromise plan, which would be necessary in order for any new claim to be awarded to the LTD claimants. This is unfortunate, but true.

In short, the bill changes the rules under which the previous compromise plan was made, but it is powerless in forcing a new compromise to be made and it is powerless in avoiding the court's decision that Nortel can ignore retroactive legal changes to the priority of claimants. As it is, the bill would simply state that the order of claimants is different, to which Nortel can legally answer, "So what? We have a court agreement that says we can ignore it," and they can, without legal consequences.

We know Nortel will not file a new compromise plan, because they have given no indication that they wish to do so. They are free to alter the compromise plan now.

As it turns out, because of the court agreement, this bill, as it applies to Nortel, is a retrospective piece of legislation, not a retroactive piece. There is a difference.

The Supreme Court of Canada, in *Benner v. Canada*, adopted these definitions to explain the distinction: A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in the future with respect to a past event.

In plain English, a retroactive law has action on previous events, while a retrospective law only looks at previous events. With Bill S-216 — and this is a fact — the law would only be looking at the past and passing a kind of judgment on it. However, it is powerless to force any action. The court settlement states exactly that. This bill will not force any action. Nortel will not file a new plan, as is necessary in any CCAA process. Nothing will change for Nortel LTD employees if this bill is passed, at least not unless Nortel wants change.

The bill can only look at the past, not act on the past. Of course, as senators, and as public servants, which we are, we would all like to help people. However, it is important that we actually help, and not just leave the impression that we are helping. As Senator LeBreton has said in this chamber, we must not raise false hopes with this bill. This goes for both this legislation and us senators: We must be more concerned with action that will help and less with appearances that will not.

Let us not forget that even if Bill S-216 was a magic bullet and actually worked, the money that would end up with LTD claimants would not come out of the pool of money that was used to pay the million-dollar bonuses to executives that my colleagues like to rail about. It would come from monies owed to other creditors, other companies, big and small.

When not discussing magic bullets and other fantasies, when truly discussing action on this file or any other, we must be wary of unintended consequences. We must be wary of unintended consequences whenever we contemplate picking out one group of people and seeking to legislate specifically for them in the context of a law that would apply and operate generally.

Once again, this is all so terrible; it really is. However, the answer is not in this legislation, not by a long shot.

Our committee's report mentions what some of these unintended consequences could be. For example, as some witnesses told us, this bill might cause companies in bankruptcy proceedings to prefer to be liquidated rather than to be restructured.

As several witnesses stated, Bill S-216 would reduce the amount that some creditors would otherwise hope to recover in bankruptcy proceedings. Bill S-216 would also increase the risk for investors and raise, however marginally, the financing costs for bond-issuing companies.

Considering further the cost to business of raising funds, companies that offer long-term disability insurance benefits would find themselves at a financial disadvantage to companies not offering such benefits, both domestic and foreign.

In the case of investors who buy bonds in a Canadian business, a change in the order of priority increases the risk that they will not be able to recoup their investment in the event of a company's failure. This increased risk could mean that investors will become less willing to buy corporate bonds of companies offering LTD, depriving them of financing and hindering their ability to grow.

It could also create a higher risk premium on bonds, making financing more expensive. In effect, higher risk means increased financial costs for businesses financing their operations or expansions. In the grand scheme of the economy, this could lead to reduced economic growth and job creation.

There was lots of testimony at committee that the bill needs amendment before it even has a ghost of a chance to do some good. Senators Hervieux-Payette and Eggleton both mentioned a witness in their speeches, a legal expert by the name of James Pierlot. Both senators mentioned that this legal expert supported the bill. They failed to mention, however, that in his testimony and in his brief, Mr. Pierlot offered 35 amendments to the bill. Thirty-five amendments to a bill with only eight clauses by a supposed advocate ought to raise some flags amongst senators being asked to support a bill.

Do we realize how complex this issue is? There can be so many variables, depending on how generous the employer is to its employees. Each and every corporation may have a different definition as to what constitutes a disability or the length of the benefit term. What if some long-term disability plans are integrated with other programs? There are many variations that need study.

Looking at changing the order of claim priority in bankruptcy law for everyone from the date of Royal Assent onward is something the Senate or the minister might want to explore. I, myself, would be sympathetic to a study of this. However, singling one group out of all the others in our country and making a general and broadly applicable legal change that affects the whole population, but which is actually aimed at one group to solve a particular problem, does not strike me as good law precedent and practice.

I say this with the full appreciation of the difficulties, stresses and heartaches that Nortel's LTD claimants are currently experiencing. We know that Nortel is going through restructuring right now, so there is reason to hope that the benefits for LTD workers will be extended beyond December 31.

In the meantime, the chamber should join my colleague Senator Kochhar's appeal to the current Nortel stakeholders to agree by consensus and in good faith to allow LTD claimants to withdraw their share of funds from Nortel's assets, and we encourage them to do so.

These, then, are the reasons that we must unfortunately adopt the report on Bill S-216 of the Standing Senate Committee on Banking, Trade and Commerce.

Hon. Art Eggleton: Will the honourable senator take questions?

Senator Greene: Yes, of course.

Senator Eggleton: Let me start with the question of retroactivity. The honourable senator cited James Pierlot, who is a pension lawyer, consultant and expert on this subject. He said that retroactivity is not an issue with this bill.

The honourable senator says that Mr. Pierlot proposed amendments. Yes, in fact, he proposed an amendment to clause 8, the transitional clause, which I indicated to the committee that I wanted to put forward. If you look at it in that light, clause 8 would read:

> For greater certainty, this Act applies to a debtor in respect of whom proceedings under the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act have commenced before the coming into force of this section and, notwithstanding any judgment or order by any court during those proceedings.

The honourable senator already cited the Supreme Court decision that says this kind of retroactivity is all legal to do. It is a limited retroactivity, because the matter is not closed yet; it is still before the courts.

I do not understand how the honourable senator can say that this bill would not be successful in terms of retroactivity when the clause that is in the bill, with that amendment, makes it clear that retroactivity applies to this case.

Can the honourable senator explain that?

Senator Greene: Yes, I would be happy to. I am looking for a particular reference. This is from the judgment of the Superior Court of Justice, Ontario, Justice Morawetz, who rendered his decision on the settlement agreement.

He said that he is firmly of the view, and is right in his judgment, that retroactivity is not a subject that can apply to this particular court agreement. He said, as I said in my speech:

> It is not, in my view, reasonable to require creditors to, in effect, make concessions in favour of the former and (disabled) employees today, and be subject to the uncertainty of unknown legislation in the future.

• (2030)

Mr. Justice Morawetz is clear: It is right in the legal agreement that retroactivity cannot apply a change in the law. This particular agreement is immune to changes in the law. All that will result is endless lawsuits.

Senator Eggleton: If I can continue with the questioning; if more time is possible, I would appreciate it.

The Hon. the Speaker: As a matter of order, Senator Greene's allotted time has expired.

Senator Cools: So give him more time.

Senator Tardif: Five more minutes.

The Hon. the Speaker: It is up to the honourable senator whose time we have just been on —

Senator Cools: Ask for time.

The Hon. the Speaker: — to ask for additional time. Should he choose not to ask for additional time, then we continue debate, and I hear no request for extension of time.

Senator Eggleton: Are you afraid of the questions?

The Hon. the Speaker: Continuing debate.

Senator Eggleton: Maybe he is afraid of the questions.

The Hon. the Speaker: Hearing no further debate, are honourable senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: I will put the question.

It was moved by the Honourable Senator Hervieux-Payette, seconded by the Honourable Senator Tkachuk, that this report be adopted now.

Is it your pleasure, honourable senators to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

Hon. Jim Munson: Your Honour, I wish to defer the vote.

The Hon. the Speaker: Pursuant to the rules, the chief opposition whip has the right to defer the vote, which is deferred until tomorrow, Wednesday, at 5:30 p.m.

SUSTAINING CANADA'S ECONOMIC RECOVERY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-47, A second Act to implement certain provisions of the budget tabled in Parliament on March 4, 2010 and other measures.

(Bill read first time.)

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

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

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—STUDY ON CURRENT STATE AND FUTURE OF ENERGY SECTOR—ELEVENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Energy, the Environment and Natural Resources (*budget—release of additional funds (study on the energy sector)*), presented in the Senate on December 2, 2010.

Hon. W. David Angus moved the adoption of the report.

(Motion agreed to and report adopted.)

[*Translation*]

THE SENATE

MOTION TO ESTABLISH NATIONAL DAY OF REMEMBRANCE AND ACTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Dallaire, seconded by the Honourable Senator Robichaud, P.C.:
>
> That in the opinion of the Senate, the government should establish a National Day of Remembrance and Action on Mass Atrocities on April 23 annually, the birthday of former Prime Minister Lester B. Pearson's, in recognition of his commitment to peace and international cooperation to end crimes against humanity.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I see that this item has been on the Order Paper for 14 days. I would like to move the adjournment of debate on this motion in my name for the remainder of my time.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Wednesday, December 8, 2010, at 1:30 p.m.)

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