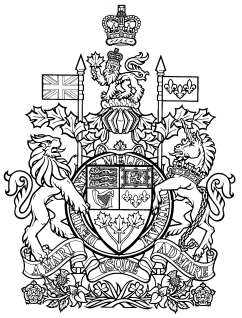

CANADA

Debates of the Senate

3rd SESSION • 40th PARLIAMENT • VOLUME 147 • NUMBER 70

OFFICIAL REPORT
(HANSARD)

Thursday, November 25, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

CONTENTS

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

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

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

THE SENATE

Thursday, November 25, 2010

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

WOMEN IN HOUSE PROGRAM

Hon. Suzanne Fortin-Duplessis: Honourable senators, on November 18, I had the privilege of welcoming to my office Linda El Halabi, a young intern from McGill University who was taking part in the Women in House program. The purpose of this program, which was created by the Faculty of Arts students' association, is to promote equal male-female representation. The program encourages female students to get involved and pursue a career in politics, following in the footsteps of successful female politicians. This year marks the 10th anniversary of the program, and I was very proud to take part in it. I am very happy to have been able to share my political experience with another young woman and help add to her learning.

In 1981, I became the first woman elected to city council in Sainte-Foy, and I have always believed that equal male-female representation is vital to Canadian democracy. Being a firm believer in the benefits of knowledge transfer, I also feel that every generation of women has a duty to pave the way for the generation that follows. The pioneers who came before me gradually improved the status of women in this country. Every step forward shattered conventional thinking, and every victory was hard fought.

Today, we can celebrate with pride the progress women have made. There are 37 women sitting in the Senate, which represents 35.24 per cent of all senators. Sixty-seven of the 302 sitting members of the House of Commons are women. The number of women in the federal cabinet is higher than ever before. This is definite progress, especially when we think about what things were like 50 or 100 years ago. Women still have a long way to go, however. It is more important than ever to work toward male-female parity in politics and in our country's decision-making bodies.

As a society, we need women who are inspired by their own experiences, their achievements and their desire for change to introduce new ways of looking at things and add to the diversity of thought. That is why I want to congratulate McGill University and the coordinators of the 2010 Women in House program. I hope they will continue to inspire these young leaders of tomorrow through this initiative.

[*English*]

HOLY ANGELS HIGH SCHOOL

Hon. Jane Cordy: Honourable senators, Holy Angels High School is the only public all girls school east of Montreal. I am a proud graduate of Holy Angels, and I can attest first-hand to the excellence of the school. It is known in Cape Breton as "the convent" and the students are known as "the convent girls" or "the angels."

Since the school was established in 1885 by the Sisters of Notre Dame, it has been educating generations of young women in Cape Breton. In fact, my grandmother was a graduate of Holy Angels. The "convent" was and continues to be a special place to go to school. It provides a nurturing, safe environment in which to learn. As one student said, "It is a place where young women can go to any teacher and feel trust and comfort." The student experience at Holy Angels gives them confidence to take on life's challenges.

When I was a student at Holy Angels, the principal at the school was Sister Peggy Butts, who was later Senator Peggy Butts. Honourable senators in the chamber who were fortunate enough to have known Sister Peggy will understand what an inspiration and role model she was for the students. The current principal, Theresa MacKenzie, also a Holy Angels grad, believes passionately in the model that allows students to grow from young girls to young women.

Honourable senators, in the 1950s, Holy Angels High School was handed over to the Nova Scotia Department of Education. It was only after this transfer that the sisters who were teachers received a salary. The sisters kept ownership of the building and charged a modest rent to the province that did not even cover the operating expenses of the school.

The Sisters of Notre Dame have made a tremendous contribution to the education of young women in the Sydney area. I want to thank the congregation publicly for all they have done.

Unfortunately, the sisters have made the difficult decision to put the school building up for sale. Honourable senators, because of this situation, the school is in danger of closing.

On Tuesday, November 10, a group of students, parents and teachers travelled to Halifax to present a petition and to make their case to the provincial government to find a way to keep their school open.

The Nova Scotia Department of Education has yet to make any decisions. It is my sincere hope that a solution can be found to allow future generations of young women in Cape Breton the opportunity to attend Holy Angels High School. I want to take this opportunity to recognize Holy Angels High as a great Canadian institution of learning.

ABORIGINAL PEOPLES

FIFTH ANNIVERSARY OF FIRST MINISTERS MEETING IN KELOWNA

Hon. Patrick Brazeau: Honourable senators, I rise today to highlight the anniversary of a pivotal event in Canada's Aboriginal affairs. Today marks the fifth anniversary of the First Ministers Meeting on Aboriginal Affairs in Kelowna, British Columbia, and the turning point in the relationship between Canada and its Aboriginal peoples.

Five years ago today, the myth that was the so-called "Kelowna Accord" was born; in reality, no accord at all but a communiqué announcing proposed spending. The provisions announced were to have been rooted in accountability. This never happened. Progress was to have been monitored year upon year. This monitoring was also abandoned. Kelowna spawned the impetus for a new and better way of working with Canada's Aboriginal peoples. Through the ultimate failure of the Kelowna process came the opportunity to begin to confront and incrementally overcome the real and fundamental issues that impede our nation's Aboriginal people's ability to stake their rightful claim on every aspect of our seemingly boundless prosperity.

Honourable senators, our government seized this opportunity with vigour. The results speak for themselves.

• (1340)

As a government, we took responsibility for the shame of Indian residential schools and rendered a sincere apology to survivors of this tragic ordeal and to the Aboriginal community at large.

We brought the protection of human rights for First Nations people to the fore by repealing section 67 of the Canadian Human Rights Act, thereby ensuring that First Nations people on reserves had the same rights protections that every other Canadian citizen has enjoyed for over 30 years.

Through partnership with First Nations leaders, we jointly implemented an independent adjudication body for the settlement of specific claims.

We endorsed the United Nations International Declaration on the Rights of Indigenous Peoples in respect of affirming our abiding commitment to promoting and protecting the rights of indigenous peoples.

Kelowna was an unaccountable exercise that sought to buy a legacy of investment, rather than deliver upon promise to people in real need. Five years on, honourable senators, together with our partners, our government remains determined to sustaining the momentum gained thus far. Together, we will achieve meaningful results for the entire Aboriginal community and for the country as a whole.

YOUTH SERVICES BUREAU OF OTTAWA

CONGRATULATIONS ON FIFTIETH ANNIVERSARY

Hon. Jim Munson: Honourable senators, it is my pleasure today to highlight that this year, 2010, marks the fiftieth anniversary of the Youth Services Bureau of Ottawa. Since it was founded in 1960, the agency has assumed a crucial role in this city, helping youth and their families resolve a wide range of serious problems. I am honoured to be a member of the YSB's team and to be part of its long-standing tradition of reaching out to youth with the assistance they need.

Honourable senators, I am talking about young people struggling with issues that could well change the course of their lives: kids with mental health issues, kids who are homeless and unemployed, kids in trouble with the law. These issues are tough, complicated and far too weighty for anyone to confront alone. This is where YSB comes in, offering mental health support, shelter, employment programs and guidance on our legal system. Each service is composed of an array of relevant and innovative activities.

Under its youth justice services, for example, the agency works with community partners to help young people facing criminal charges turn their lives around. In cases where mental illness is the cause of criminal behaviour, the Ottawa Youth Services Bureau will hook up young people and their families with the appropriate community health services and information.

Through its residential facilities and outreach activities, the agency also delivers training and counsel on real life matters, such as vocation and education options, drugs, dispute resolution and anger management.

YSB is funded by the Province of Ontario, the City of Ottawa, the United Way and other donors. With 20 sites located in Ottawa, it serves between 2,500 and 3,000 youth and their families every month. Thanks to YSB, young people who might otherwise be stifled by hardship or finding jobs are succeeding in school and making positive decisions about their health and well-being.

This evening, I will be attending a fundraising event called "One Big Party" for current and former staff, volunteers and board members. We are trying to raise $750,000 by the end of the fiscal year. It is also a chance to just celebrate the people behind the YSB's extraordinary work. Once that party ends tonight, where Jim Cuddy will play, the work will continue, as will the need for support from government, businesses and individuals.

I invite honourable senators to look into YSB and consider whether it might be the type of agency they would like to get behind. I can remind them, in the few seconds I have left, that when they walk off the Hill, appreciating being who we are and what we do, within the shadows of Parliament there are young people in this city who are not sleeping in comfort but are sleeping on the street. These are the people we should be caring about. Honourable senators can be sure that whatever help they can give will be put to good use.

[*Translation*]

ROUTINE PROCEEDINGS

COMMISSIONER OF OFFICIAL LANGUAGES

ACCESS TO INFORMATION ACT AND PRIVACY ACT— 2009-10 ANNUAL REPORTS TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2009-10 annual reports, pursuant to section 72 of the Access to Information Act and of the office of the Commissioner of Official Languages Privacy Act.

[*English*]

PAGES OF REFLECTION: A JOURNAL OF ESSAYS BY SENATE PAGES, VOLUME 3, 2010

DOCUMENT TABLED

Hon. Sharon Carstairs: Honourable senators, pursuant to rule 28(4), I request leave to table a document entitled: *Pages of Reflection: A Journal of Essays by Senate Pages*. This is the third edition and honourable senators will receive it in their offices.

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

Hon. Senators: Agreed.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

EIGHTH REPORT OF COMMITTEE TABLED

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

QUESTION PERIOD

ENVIRONMENT

CLIMATE CHANGE POLICY

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Last Friday, there was an article published by Reuters in Britain, the title of which was "CANADA: A Govt Versus Its people on Climate Change." That article was written following the defeat of Bill C-311 in the chamber last week and it argued that there is obviously a real disconnect between this government and the Canadian people with respect to climate change.

The results of an Environics research poll last week revealed that the vast majority of Canadians want their government to urgently take action in order to address climate change. Over 80 per cent said that the government should invest in green jobs and transition programs for workers and communities affected by a shift from fossil fuel; 85 per cent also agreed that:

> Industrialized countries . . . should be the most responsible for reducing current emissions.

The results of this poll are the Canadian portion of a global referendum on climate change that documents the views of citizens all over the world. The final results will be presented at next week's conference in Cancun and they will provide some context for these negotiations.

Where these poll results clearly indicate a demand from Canadians for greater action from their government, how will Minister Baird justify his government's inaction and explain to the world why his government is completely at odds with Canadians on the matter of climate change?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. Canada is taking the issue of climate change seriously. Minister Baird will go to Cancun, following up on the work of the former Environment Minister, Jim Prentice, at Copenhagen, and put forward forcefully — that Canada supports a new, single global climate change agreement based on the Copenhagen Accord and which includes commitments from all major emitters. We want to see balanced progress toward this objective at the 2010 United Nations Climate Change Conference in Cancun in December and we will continue to engage with Canadian stakeholders and international partners leading up to Cancun.

Under the accord, as the honourable senator knows, we committed to reduce Canada's emissions by 17 per cent below 2005 levels by 2020, which is aligned with the target of the United States. Given our deeply integrated economies and our deeply integrated industries, there is a significant environmental and economic benefit to a harmonized approach. We will continue to work with the Obama administration to develop clean energy technology and take a continental approach on climate change.

• (1350)

Our regulations recently introduced for passenger cars and light trucks were finalized in October. It is one of many things that the government is doing, including taking action on coal-fired electrical plants and dealing with new energy sources such as wind and tidal power.

Senator Cowan: The leader's government has now been in power for five years —

Some Hon. Senators: Hear, hear.

Senator Cowan: — enthusiastically supported by about 32 per cent of the voting population. Since the leader's government came to power five years ago, it has introduced a single piece of environmental legislation, and that was the Clean Air Act. Listen to what happened to the Clean Air Act. When a majority of the elected members in the House of Commons made some improvements to that act that the leader's government did not agree with, the government allowed it to suffer death by prorogation.

The government has never bothered since that time, despite all of the intervening prorogations and elections, to reintroduce that bill into the House of Commons or the Senate.

Bill C-288, the Kyoto Protocol Implementation Act, was passed by the House of Commons and by the Senate, and received Royal Assent in 2007. The government simply chose to ignore it. Recently, the House of Commons passed Bill C-311, and last week the government killed this bill without giving it an opportunity to go to committee and for Canadians to be heard. The leader's government does not want to be bothered with obligations imposed on it by acts of this Parliament. The government chose last week, against the will of the House of Commons, to defeat a bill without giving it proper consideration.

I repeat my question to the minister in another way. Next week, the part-time Minister of the Environment, Minister Baird, will represent Canada at the Cancun conference. Without any plan to tackle climate change, with no measurable results on a non-legislative approach to climate change, what will Minister Baird be proposing to his international counterparts?

Senator LeBreton: The record clearly shows, with regard to Bill C-311, that the government would not support it because of the serious consequences to the Canadian economy, to Canadian manufacturers and Canadian industries. In fact, it would have put the country into a recession.

The bill did come before the Senate. The government side certainly was prepared to speak to the bill and have it go through the normal stages in the Senate, but the record clearly shows — and the honourable senator, *The Toronto Star* and all the people who try to say otherwise cannot change it — that the vote at second reading was forced by the honourable senator's side. I would then ask what position the government could have taken other than the position it took, to defeat a bill that would be completely injurious and damaging to our economy? All our partners from around the world with whom we sat at the table in Copenhagen would have been left wondering why we had abandoned the position that we had taken there.

The Liberal opposition in the Senate supported this coalition bill, which was an irresponsible piece of legislation. It should be a warning to Canadians that this is the kind of bill and the sort of actions that would be taken by Michael Ignatieff if he ever gets past 25 per cent in the polls, which the honourable senator himself has mentioned.

It is a bit rich for the honourable senator to talk about a private member's bill dealing with the Kyoto Accord when the government of Jean Chrétien, immediately after signing the accord, indicated that the government had no intention of living up to it.

The honourable senator calls Minister Baird a "part-time minister." Minister Baird is the former Minister of the Environment. He is well-versed on this file. Minister Baird worked with provincial and territorial governments to develop and implement our climate change policies and initiatives. We have created two federal-provincial-territorial working groups, which focus on domestic and international climate change.

In June, as I mentioned earlier, we announced that we are regulating the phase-out of coal-fired plants, which will significantly reduce emissions from that sector and help to meet Canada's target of 17 per cent emissions. This is the kind of initiative that Minister Baird will be taking to Cancun. He will be working again in partnership with the people who worked around the table at Copenhagen, where, as the honourable senator knows, for the first time, the real major emitters in the world — the United States, China, India — were also convened. That is what is most important.

For the honourable senator to suggest that Canada, which contributes less than 2 per cent to the world's problem, and already pays 4 per cent of the cost, should somehow or other be wholly responsible for the climate change issue, is unfair to Canada, unfair to our industries and unfair to Canadians whose jobs depend on our country continuing to be an industrial and energy power.

The government is very responsible.

Obviously, Canadians feel strongly about the environment. We all do. Canadians also know that there has to be a balance between being a good world citizen and a world partner, such as we were at Copenhagen and will be in Cancun, and ensuring that they and their families have a job and can continue to enjoy the standard of living that they presently do.

Senator Cowan: I certainly was not suggesting that Canada was responsible in any way for all the difficulties there are in this world with respect to climate change. However, I think it is entirely reasonable to suggest that Canada has a responsibility to take a leadership role. For the leader to simply say that we are at 2 or 3 per cent and therefore should let everyone else lead while we follow along behind is not good enough. Canada is expected to take a larger role than that, and Canadians deserve to have a government that is prepared to take a leadership role.

Since the leader raised the issue of what happened to Bill C-311 and predicted that it would have done all kinds of horrible things to our economy, let me remind her that while she shares that opinion with some of her Conservative colleagues, it is not an opinion that is shared by the majority of the elected members of the House of Commons. What happened, I remind the leader, was that she had a choice —

An Hon. Senator: Oh, oh.

Senator Cowan: The Bloc Québécois has nothing to do with it, Senator Comeau. I suggest the senator go to Quebec and say that.

What happened last week came about after the leader had a choice for 194 days. She had time to make a choice. She could have sent the bill that received the support of the majority of the members of the House of Commons to committee so that Canadians could be heard, or kill it. She chose to kill that bill. I suggest to the leader that there is a clear distinction to be drawn between the Senate doing its job and carefully considering legislation that comes from the other place and killing it before it has had an opportunity to be reviewed by our committees.

Senator LeBreton: I agree with the honourable senator. It was certainly the intention of this side to speak to the bill and send it to committee, even though, as the honourable senator publicly acknowledged several times in the interviews he did, that he knew the government, at the end of the day, would not support the bill. Thanks for putting the facts on the record.

However, I point out to the honourable senator that we did not defeat the bill. It was the actions of his senators standing and demanding a vote on second reading that then put the government in the position of not supporting a bill that we vigorously oppose.

• (1400)

Honourable senators, having said that, I believe that these interesting inside-the-beltway debates about process, second reading votes and referral to committee are of scant interest to Canadians. What they were concerned about is the content of the bill.

I think Canadians, other than the group from the David Suzuki Foundation that instructed their people to email us and then did not take those instructions off the email —

Senator Cowan: It is David Suzuki's fault now.

Senator LeBreton: — even though Canadians have problems with the Senate and the way it operates, I believe Canadians support the fact that the government defeated the bill.

By the way, I have seen evidence of that support in some of the call-in shows that I have participated in, where overwhelmingly, people said they were glad that the Senate defeated the bill.

The Honourable Senator Cowan says that Canada should not be a follower on this issue but a leader. I say to the honourable senator that Canada has been a leader.

On the issue of climate change, it is obvious, when 90 per cent of our population lives within 100 miles of the U.S. border and our industries and populations travel back and forth across the border in an integrated economy, it makes no sense whatsoever to approach this issue without the full support and cooperation of the administration of the United States.

Senator Cordy: What happened to "made in Canada"?

Senator LeBreton: I am glad the honourable senator asked, because I am about to read into the record some of the environment issues where we have taken leadership.

Senator Tkachuk: Hear, hear. Please do.

Senator Moore: Dispense.

Senator LeBreton: We support the Copenhagen Accord, as I mentioned, which includes all the world's major emitters, and we continue to work constructively toward a binding, post-2012 international agreement. We are working, as I said a moment ago, with the United States on common North American standards for greenhouse gas emissions for passenger cars and light- and heavy-duty trucks. We recently tabled the first Federal Sustainable Development Strategy, which provides a government-wide approach to improve environmental sustainability. We established renewable fuel content regulations for gasoline. These are all issues where we have taken leadership.

We are moving forward with tough new regulations on coal-fired electricity generation, which I mentioned a moment ago. We protected nearly 90,000 square kilometres of natural areas in national parks, an increase of 30 per cent. These areas include the sixfold expansion of the Nahanni National Park Reserve and the creation of the Gwaii Haanas in B.C., the first ever marine conservation area.

Some Hon. Senators: Hear, hear.

Senator LeBreton: Working with the Nature Conservancy of Canada, our $225 million Natural Areas Conservation Program has secured over 138,000 hectares, including protecting habitat for 79 species at risk.

We introduced the country's first national standards for wastewater management and made significant investments through our Action Plan for Clean Water.

These are all issues this government took leadership on — something that was never done in the 13 years when the honourable senator was in the government.

HERITAGE

EDMONTON'S BID TO HOST EXPO 2017

Hon. Tommy Banks: Honourable senators, on a happier note — well, it is not all that happy.

Honourable senators, the government has said, as I understand it, the principal reason for its refusal to support the Canadian bid for Expo 2017 is cost, and that it feared that the federal government's cost would be in the order of a billion dollars.

However, on November 2 and 3, four weeks ago, safety and security representatives from all three orders of government met in Edmonton to review the security and safety costs for Expo 2017. This meeting was a due diligence review by federal, provincial and municipal security officials.

The resulting revised Expo 2017 consolidated security profile represents the costs allocated across all budgets for safety and security. The total budget is $91 million in escalated dollars. That amount is based upon due diligence conducted by the responsible agencies and representatives of the federal and provincial governments and the City of Edmonton. It includes the safety and security costs of the capital and operating budgets shown in table four of the consolidated security profile. It includes policing, fire and emergency medical services that had been shown previously in other budget sections. The amounts have been consolidated and come to $91 million.

That amount includes all security and safety costs including fencing; security lighting; access control gates; vehicle screening; overhead lighting to support all the security elements; training of the security people; radios for security people; site communications; master security system; X-ray machines; metal

detector gates; safety and security personnel for 120 days including site lock-down before and subsequent to the fair; security equipment for five or six months including installation, operation and dismantling; and various other items set out in the consolidated security profile.

This safety plan, which was vetted by all orders of government, provides detailed principles to the development of the comprehensive safety and security plan. The plan provides that the Edmonton Police Service is the lead and does not require external resources for policing, and that it is responsible for leading an integrated and planning command module for all orders of government.

The security role of the Government of Canada is limited to matters within its jurisdiction exclusively: protection of internationally protected persons, national security investigations, threat assessments and border and entry, the costs of all of which are set out in the agreed budget.

The due diligence review on November 2 and 3 by those three orders arrived at the mutual conclusion that Expo 2017 is a low threat level event. Air support is not required. Those budget numbers resulting from the November due diligence meetings, to which I have referred, are: The Expo corporation's share is $64 million; the City of Edmonton's incremental costs are $8 million; the Province of Alberta's incremental costs are $8 million; and the Government of Canada's costs — including federal coordination and oversight, RCMP, internationally protected persons, Canadian Security Intelligence Service and Integrated Threat Assessment Centre threat assessment and Canada Border Services Agency border and entry costs — are $10.9 million, for a total of $91 million.

Can the leader please explain how it is possible that Mr. Flaherty can derive, even applying the wildest imaginable escalation factors, that the budget could possibly reach $1 billion?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, we have many examples, and everyone puts out figures in advance that often turn out not to be the case.

However, in the case of Edmonton's bid for Expo 2017, I can assure Senator Banks that we had a long, hard look at this proposal and came to the conclusion that it was too expensive.

We have been clear, and the Minister of Finance has been clear, that our economic recovery is fragile. We are performing well, but we look at what is happening in the world and we have to take our recovery in the context of what is happening in the world.

We are entering the next phase of *Canada's Economic Action Plan*, as honourable senators know. The Minister of Finance has said that our government will not make any new significant spending commitments.

As I have said before, and I know people can argue figures six ways from Sunday, it is expected that this investment would cost up to $1 billion once we factor in the cost of the security and other federal obligations.

Again, as I mentioned to the honourable senator, we carefully reviewed the proposal. We are concerned about the high costs and decided that we cannot support the bid and that the prudent thing to do was to advise the City of Edmonton that we were following that course of action.

I believe, honourable senators, that Canadians support the government's economic recovery package. To continue with ramping down on our deficit, I believe that all of us have a responsibility to be prudent with taxpayers' money.

• (1410)

I believe, honourable senators, once people look at this decision after the emotion has been removed from the equation, people will decide that this decision was the right one in the interest of Canadian taxpayers, including the good taxpayers of Edmonton and the province of Alberta.

Senator Banks: Allow me to put the question in a different way, then.

I refer specifically to the numbers that Mr. Flaherty put out which were, we agree, about $1 billion. I read out the budget, which required the input from the Government of Canada, agreed to in a process of due diligence by all three orders of government, for an amount of money having to do with security and safety, including RCMP, CSIS, ITAC, CBSA, and the lot, a thousand times less than that — a thousand times less. There can be accounting mistakes, and I can even see someone misplacing a decimal point, but not by three zeros.

Would the minister undertake to explain to the house, at some future date, but soon please, the process by which in early November the federal, provincial and municipal governments agreed that the contribution of the federal government with respect to security and safety would be $10.9 million, and on the other hand, four weeks later Mr. Flaherty said that we cannot afford it because it could cost up to $1 billion?

I would be grateful if the minister could, at some future time — feel free to take this question as notice — explain that to us.

Senator LeBreton: The various figures bandied around are interesting, but I do not think even a person as weak as I am on the subject of mathematics would think that the federal government could have been engaged in a project like this one for the cost of $10 million.

Cabinet looked carefully at this proposal, seriously considered it, and came to this decision as we work our way out of the worldwide economic recession and ramp down on the expenditures we made in order to keep Canadians in their jobs — 420,000 or so have been created. This decision was a difficult one to make but it was the right decision.

I believe, honourable senators, this decision is supported by the Canadian taxpayer, and I believe it will be supported by the good citizens of Alberta and Edmonton.

At the moment, I realize that emotions are being expressed in the various news media. Minister Rona Ambrose has taken the brunt of some of the criticism. However, the minister is a

responsible minister in the cabinet. I believe she looked not only at the interest of Canadian taxpayers but also at the interest of Alberta taxpayers.

Minister Moore went to Alberta and made the announcement. It was a smart thing for him to do. He was completely honest and upfront with the good citizens of Edmonton, of Alberta and of Canada that our first and foremost responsibility is to be mindful of taxpayers' dollars.

Senator Banks: I agree that Minister Moore was there. I do not think that Minister Ambrose made this decision; I do not think that for a minute.

I know a lot — it is one of the few things I have learned here — about the quality of the people who work in security and safety matters on behalf of the Government of Canada. I know many of them personally. It is a sad thing to suggest that those representatives of the RCMP, CSIS, ITAC, CBSA, et al., who participated in the making of this budget, are sufficiently incompetent — and I know that they are not — to have been wrong by a factor of 1,000.

I reiterate my question and ask the leader to please find an explanation. It is not mathematics; it is arithmetic.

Senator LeBreton: I want to make it clear that in no way has the government, nor would the government, question the professionalism of our security forces, whether they are with CSIS, the RCMP, CBSA or whatever.

The government looked carefully at this proposal and factored in all the costs that would eventually fall to the federal government and came to the conclusion that it was not in the interests of the Canadian taxpayer. Indeed, we have reason to believe that, once the emotion of the decision has receded, the citizens of Alberta, the citizens of Edmonton and the taxpayers of the country will support this decision.

ORDERS OF THE DAY

PRIVACY COMMISSIONER

JENNIFER STODDART—
RECEIVED IN COMMITTEE OF THE WHOLE

On the Order:

> The Senate in Committee of the Whole in order to receive Ms. Jennifer Stoddart respecting her appointment as Privacy Commissioner.

The Hon. the Speaker: Honourable senators, pursuant to the order adopted yesterday, I leave the chair for the Senate to resolve itself into a Committee of the Whole to hear from Ms. Jennifer Stoddart respecting her appointment as Privacy Commissioner.

(The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Senator Fortin-Duplessis in the chair.)

The Chair: Honourable senators, rule 83 states:

> When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it agreed, honourable senators, that rule 83 be waived?

Hon. Senators: Agreed.

The Chair: Carried.

[*Translation*]

I remind honourable senators that, pursuant to the order adopted yesterday, the committee will meet for a maximum of one hour. I also remind honourable senators that the allotted time for each senator and the response from our witness will be 10 minutes.

I invite our witness to enter.

• (1420)

(Pursuant to the order of the Senate, Jennifer Stoddart was escorted to a seat in the Senate Chamber.)

The Chair: Honourable senators, the Senate is resolved into a Committee of the Whole to hear from Ms. Jennifer Stoddart respecting her nomination to the position of Privacy Commissioner.

Ms. Stoddart, I thank you for being with us here today. I invite you to begin your introductory remarks, which will be followed by the senators' questions.

Jennifer Stoddart, Commissioner, Office of the Privacy Commissioner of Canada: Thank you, Madam Chair. Good afternoon, honourable senators.

[*English*]

Good afternoon. It is a tremendous privilege to be in this beautiful chamber to answer questions about my nomination for reappointment.

I very much appreciate, honourable senators, the government's confidence in me to continue on in the role of Privacy Commissioner of Canada and to have a chance to build on the important work my office has been doing over the past few years. It has been an incredible honour to serve Canadians and to serve Parliament. The last seven years have been, for me, a passionate journey.

Honourable senators may recall that, back in late 2003, I took over an office that was only beginning to recover from an extremely difficult period in its history. Our administrative powers had been seriously curtailed. Part of our budget was about to lapse. We were being

investigated by the RCMP, the Auditor General and others. It took a lot of hard work, but we got our house back in order and returned our focus to where it should be, on privacy protection. Since then, the massive challenges that have emerged in a compressed time frame are nothing short of astonishing. Technological advances have brought us social networking, You Tube, Foursquare and any number of other novel and new ways to communicate.

Personal information has also become an increasingly valuable commodity for private sector organizations. Meanwhile, governments around the world are collecting more and more of our personal information as part of national security and law enforcement initiatives.

The worldwide flow of data has become instantaneous and constant. I am extremely proud of our achievements in the face of these and many other colossal challenges, but the privacy threats we continue to face are immense. There is still much to do, and so I would focus on a few areas: leadership on priority privacy issues, supporting Canadians' organizations and institutions to make informed privacy decisions and certainly service delivery to Canadians.

[*Translation*]

I will now move on to leadership on priority issues. The online world has been something of a wild frontier for privacy protection. As Canadians live out more and more of their daily lives in this digital environment, it is clear that is where we need to be focusing much of our attention. We have already begun this work.

As you know, we have had ongoing discussions with online giants such as Facebook and Google. Currently, we are conducting investigations into further complaints about Facebook, a site targeting children and an online dating site. These are important issues when you consider the role the Internet plays in our lives. I recently read that one in four American couples who met since 2007 first met online.

Looking ahead, we need to continue to develop a deeper understanding of privacy issues in a digital world. Our recent public consultations on online consumer tracking and cloud computing are a good example of that. Continued cooperation with our provincial, as well as our international, colleagues will also be critical to our future success.

We should also continue to build on our expertise by hiring more IT specialists and creating links with outside experts. Another ongoing strategic priority relates to the privacy implications of national security and law enforcement measures, which raise the potential for extremely serious consequences for individuals.

Privacy is not an absolute right. Indeed, there may be cases when privacy protections must give way to protecting a greater good. However, Canadians should only be asked to make this sacrifice when it is clear that the promised outcome — be it safer air travel or catching money launderers — will actually be achieved and that there is no other less privacy-invasive option that would allow us to reach this goal.

We have worked with numerous government departments and agencies to introduce stronger privacy protections into initiatives such as Passenger Protect, airport scanners, and the RCMP's Exempt Data Banks. We should continue to be vigilant in this area.

[*English*]

Another piece of the privacy protection challenge is ensuring that Canadians develop strong digital literacy skills. We are using online tools to help Canadians better understand their privacy rights and to make well-informed choices in a rapidly changing privacy landscape. We have a website targeted at youth and a blog. We tweet and we post videos about privacy on YouTube.

Much of our public awareness work is being conducted in collaboration with others, including teachers, librarians, government organizations and consumer and business groups.

Partly because I am a former provincial commissioner, I have always seen the need to build stronger ties with provincial colleagues and other stakeholders across the country. I want to ensure that the Privacy Commissioner's office is not perceived as either too Ottawa-centric or unaware of issues outside the National Capital Region.

We recently opened an office in Toronto, where many of the organizations we receive complaints about are headquartered. It will also be critical to maintain regional outreach to all parts of the country and to continue to maintain cultural and linguistic diversity in the office to be truly responsive to the Canadians that we serve.

At the end of the day, though, what is most important to me is that our work meets the needs and the expectations of Canadians. Part of that means also remaining responsive to the needs of Parliament, of government and of businesses.

Looking ahead, we should identify and deliver new service delivery models that use new technologies to help us maximize our results.

Personally, I am looking forward to the next review of the Personal Information Protection and Electronic Documents Act, PIPEDA, which starts next year. It is important in this fast-changing world to ensure that the legislation and tools available to us continue to be effective.

If reappointed, you can also expect me to continue pressing the urgent need for reform of our badly out-of-date Privacy Act.

In conclusion, honourable senators, I would welcome the opportunity, if you see fit, to continue to leverage what the Office of the Privacy Commissioner has accomplished over the last seven years. I thank you very much for calling me to address you today, and I look forward to your questions.

[*Translation*]

The Chair: The first question will be from the Honourable Senator Dawson.

Senator Dawson: Ms. Stoddart, assuming that your term will be renewed, I would like to congratulate you on your appointment. As I said this morning in committee, with a government that seems more inclined to dismiss people rather than renew their terms, you have achieved something that few of your colleagues in Canadian institutions have managed to do.

[*English*]

My question is on digital society. We have had debate here in the house about digital society. When you arrived, Facebook was a concept and Twitter was not even in anyone's mind. Today, however, both of those organizations have more information under their control than most foreign states.

You talked this morning in the Social Committee about the fact that foreign states hold information on Canada, but these two organizations hold in their data banks more information about youth, in particular. We are digital tourists, but youth are digital citizens. They live in this digital world. These organizations have more information on what these digital citizens are doing every day of their lives and their shopping trends, for example.

• (1430)

When do we accelerate the way we modernize the Privacy Act to recognize the fact that the technological process is not the same dimension that we had traditionally here in Canada? We could have a committee studying it, but by the time the committee finishes its study, a new instrument may exist.

You had a big battle with Facebook, and I want to congratulate you on that.

How do we, as parliamentarians, set up a process by which we start looking forward or create shortcuts to recognize that this modernization is intruding into our lives and is not being addressed by parliamentary action?

Ms. Stoddart: Honourable senator, you have put your finger on one of the fastest growing menaces not only to privacy but also to freedom, namely, having so much information concentrated in the hands of commercial enterprises that are without Canada. Various people are thinking on this trend.

In the short term, parliamentarians can do quite a bit. Fortunately, a bill will soon be coming to your attention; I believe it is Bill C-29, the anti-spam legislation. Fighting against spam is long overdue in Canada. We are about five years behind the other G8 countries. Tacked onto that bill are some important modifications of my power to give me discretion to refuse complaints that are, perhaps, not as relevant to privacy matters as they could be, and to cooperate internationally.

If I have more powers to cooperate internationally, I can share more of my files with my international colleagues. Increasingly, data privacy commissioners or their equivalent, consumer protection authorities in the United States, realize that because of the global reach of these new technologies, we have to have a global response, certainly in democratic nations. Increasingly, we are working in a network, and it is important to enhance and speed up enforcement, because, as you said, these things are happening so quickly. If, for example, they are coming from the United States, as they are now, it is important for me to be able to form a working relationship with the Federal Trade Commission, which can then take enforcement action, if it sees fit, under its own legislation.

I have heard that the bill will be coming to you in the next few weeks, and turning your attention to that will be a huge contribution.

Next year is the review of PIPEDA, our private sector privacy legislation that governs these phenomena, and, again, it is due for some significant changes.

Senator Dawson: You talked about the anti-spam bill. You will be welcome at the Transport and Communications Committee because it will be debated there. We will give you as much time as the government will permit us to give you so that you are not treated as you were this morning.

We are five years behind in anti-spam legislation.

Ms. Stoddart: Roughly, yes.

Senator Dawson: Is that because some countries have a different process of catching up on this legislation? I recognize the fact that we have had five years of minority governments, but are we behind for other reasons?

Ms. Stoddart: I cannot speak to the process of policy-making closely enough. I know that most of the G8 countries adopted anti-spam legislation around 2005. I think Australia adopted it two years ago, but that is not traditionally considered a G8 country.

Senator Munson: I have two questions for you. Do you have enough money in your budget to do the job you want to do?

The second question is sort of the Gordon Sinclair question: How much do you make? You can be honest and forthright here. Obviously, we are going through this process and we will confirm you. It is part of the process. It is open, public and transparent.

You spoke about opening an office in Toronto. What was the rationale behind Toronto? Why not Montreal? Are you contemplating Montreal, Halifax or Vancouver? I am a firm believer that if you bring your operation to the people, people understand exactly what you do.

Ms. Stoddart: Are those three questions, honourable senator?

Senator Munson: They are three now.

Ms. Stoddart: First, on the budget, we have been fortunate to have had budget increases, once we got our house in order, as we needed it, through the parliamentary committee review panel process over the years. We have been fortunate that as we were given new tasks, such as the auditing of FINTRAC or our new anti-spam responsibilities, we were given additional monies.

I consider that we do have a reasonable budget. Of course, anyone running government agencies says, "I never have enough money," but I do think we have a reasonable amount of

money. We are trying to maximize the use of what money we have by innovative ways of doing business and by information technologies.

However, we do have a problem with the freeze on travel that was recently decreed by the government. I repeat that we have enough money, but the fact that our travel budget was arbitrarily frozen at its level two years ago hampers us in terms of communicating with and going to our Toronto office, as well as in the international work that we are increasingly asked to do. Canada is asked to take leadership of various committees. I repeat that it is not that I do not have the money; I am just not allowed to spend it on travel.

As an agent of Parliament, I have written to the head of the Standing Committee on Access to Information, Privacy and Ethics pointing this out and wondering if it would be possible for agents of Parliament to have more flexibility — not more money — in the allocation of the budget.

Second, my salary is the salary of a federal court judge, and someone from the Privy Council — because we get our automatic deposits — told me this morning it is $271,000 and change.

Senator Munson: The Senate pays the expenses of witnesses from across the country who appear before our committees. We also have teleconferencing. Would you like to have something in your budget for people from different parts of country who would like to sit down with you and your colleagues to present their case to you, as opposed to submitting something in writing?

Ms. Stoddart: Yes, we would. I think that goes to your third question about why Toronto and what about the rest of Canada.

First, as to Toronto, it is the commercial centre of Canada. There are other important commercial centres, but Toronto is the largest one. It is a large centre for information technology. It is also where three quarters of the businesses that we have complaints against under PIPEDA are located. We want to be part of an informal hub of privacy issues that relate to the application of technology by big business there. We want to be closer to some of the organizations that are headquartered there, and we want to be close to some of the important work that is going on there in universities such as Ryerson University, University of Toronto and so on.

We did have, and will continue to have, a regional presence in the Maritimes. That is not necessarily a bricks and mortar office, but it is expensive to set up in terms of government regulations. We had a person on a contract for two years working full time in the Maritimes. We also have an ongoing informal arrangement to use the Calgary office of Alberta's Information and Privacy Commissioner, and we are looking at increasing our Western presence, perhaps in British Columbia as well.

We are looking at innovative ways of doing that because of the travel costs in Canada and the costs of opening offices. In fact, still within the limits of our budget, we are trying to purchase more technology that will allow us to use Skype, video conferencing and much more, so that we can stay in touch more easily and much better with people across Canada.

• (1440)

Senator Kinsella: A moment ago, Ms. Stoddart, you used the phrase that you were "an agent of Parliament." Could you share your reflections with the house as to how you view the relationship of the Office of the Privacy Commissioner with Parliament?

Ms. Stoddart: I report to Parliament. Parliament, for all intents and purposes, is my boss. I do not have a minister. I do not have a deputy minister.

I appear before the parliamentary review panel if I need an increase in my budget; that is an all-party panel that was set up under the auspices of the Speaker of the House of Commons. I attempt to serve Parliament within the confines of the mandate given to me under the Privacy Act and PIPEDA. I come to Parliament whenever Parliament summons me or when I wish to exchange with them on any privacy matters that are within my mandate.

Senator Kinsella: Do you have any suggestions that you would like to make to honourable senators as to how one might create a more fluid flow of information between the Privacy Commissioner's office and either house of Parliament?

Supplementary to that: In the past, what are some of the obstacles that you have experienced in your relationship with Parliament? What are some of the areas of improvement?

Do you consider yourself an officer of Parliament; if so, how, as an officer of Parliament, do you know what Parliament's intent is on any issue at any moment of time within the context of your legislative mandate? Are there ways in other jurisdictions that the communication is far more free flowing back and forth between a Privacy Commissioner and the legislative body of which the commissioner is an agent?

Ms. Stoddart: In terms of the free flow of information, some senators, I believe, have asked to be put on our newsletter to get informal, automatic updates from us. We would welcome the opportunity to give you more information about what our office does. I just did this for the House of Commons; I think it is perhaps the third time I have done it.

We are talking about running a seminar on privacy law to be part of a continuing legal education requirement for people who are lawyers. I would welcome the opportunity to come and tell senators in more detail what my office does and to answer any particular questions they have about any kinds of privacy questions.

I must say that I have not noticed that there are huge obstacles in our relationship. From my point of view, having a parliamentary liaison committee is very important, and we try to answer your requests, your letters and so on, as soon as possible. Perhaps you have noticed some obstacles and, in that case, I would like to hear them so we can smooth them out.

I have always found both houses of Parliament receptive to my message, which is not always an easy or welcome message in the context sometimes of very important legislation. However, I have always found that parliamentary committees have listened intently.

How do I know what is the wish of Parliament at any given time? Perhaps because neither act has been amended very recently, to a great extent, I continue to take my mandate from the last piece of legislation that Parliament handed down on this matter. We supplement it, of course, with ongoing discussions with departmental officials on specialized areas — for example, airport safety and things like that.

That has been my experience. Perhaps the honourable senator has some suggestions.

Senator Kinsella: These officers of Parliament have developed over the last few decades. One needs to ask the question as to who sets the priorities within the context of the legislation on the programmatic side of things.

Is the paradigm one whereby the commission sets the priority on a day-to-day basis and tells Parliament about that and reports in other ways; or is it the role of Parliament to say this is the area of priority in the subject area — privacy, in your case — and you are an agent of Parliament and therefore you should follow the priority that is set by Parliament, rather than the other way around?

I am not sure what the paradigm is and whether or not we need a paradigm shift. Could you comment on that?

Ms. Stoddart: Yes, that is a fair question, within the context of the fair amount of independence that agents of Parliament do have. This independence, though, is not total. As I say, I do report to Parliament. I appear often — probably more frequently than I do before the Senate — before the Ethics Committee. I submit my report on plans and priorities once a year to the Ethics Committee. We are just starting to work on that now.

That is the time at which the House of Commons, at least, approves my priorities and then subsequently approves the budget that goes with it. If there is a priority that Parliament would like me to follow, it has that opportunity to do it.

Over the years, in terms of appearing before the ethics committee, often they have asked us for a lot of information and suggested, in particular, ways that we can deal with personnel issues, given that it was a constant challenge. We have followed those suggestions and reported back to them.

In short, honourable senator, I have to have the approval of Parliament for my plans I submit to Parliament. Parliament can refuse or suggest or say, "We would like you to look at another priority."

[*Translation*]

Senator Tardif: Ms. Stoddart, in your 2009-10 annual report to Parliament, you mention that the Privacy Act has never been modernized in 27 years of existence. You still hope that this legislation will get a makeover.

First, can you tell us what sections of the act would need to be modernized? Second, I would like you to tell us about the risks Canadians face in protecting their privacy.

Ms. Stoddart: Thank you, senator. There are many aspects to this legislation that could use a change. Among the most important is the lack of a mandatory requirement to conduct a privacy impact assessment, which should be carried out far enough in advance before a program is implemented, in order to minimize any possible risks to Canadians' privacy.

Second, there is the issue of access to justice for Canadians who have problems or concerns with regard to privacy. Currently, under this legislation, a person has access to their file only and they can request to have it corrected. However, if the department or agency does not cooperate with our requests, we can only ask the Federal Court to determine who will prevail when a file access request is denied.

• (1450)

Access to justice is more limited there than it currently is for consumers who do business with companies governed by another law that I administer.

Some cases were brought to our attention in which Canadians suffered harm as a result of a variety of wrongdoing, such as the misuse of personal information by government employees. It would be reasonable to give citizens who have been harmed by the government's actions access to justice in that way.

Senator Tardif: Does the Department of Justice support your request to modernize this act?

Ms. Stoddart: The Department of Justice has decided not to start its work right away, but encouraged us to work informally with the departments and agencies to advance the agenda for privacy reform. That is what we are trying to do on a voluntary basis.

I believe that the Department of Justice also confirmed that we have an education mandate under the Privacy Act, something that was not completely clear before. Therefore, although we have this information, there is no overall plan for reforming the act.

[*English*]

Senator Moore: Ms. Stoddart, thank you for being here. I want to join in the remarks of Senator Dawson commending you for your work, particularly with regard to these large information-holding parties outside of Canada.

You mentioned that one of your priorities is defending the privacy rights of Canadians. What are your thoughts regarding the government bill in the House of Commons, I believe, whereby air carriers would be required to provide to the U.S. Department of Homeland Security with personal information about passengers who pass over U.S. land but who do not land there?

I do not know if we have had any kind of request for a similar arrangement with other countries. Is there reciprocity involved here? Once such information gets in the hands of the Department of Homeland Security, where else could it go? Could it go to other departments in the U.S. or other nations? Could you comment on that, please?

Ms. Stoddart: Yes, honourable senator. We were asked to appear before the House of Commons Transport Committee on this subject. I believe that was just last week, so we do have a complete version of our comments.

I would just say that we are indeed concerned about this additional collection of Canadians' personal information. We had worked with the government to try to see if there could be an exception for this with the Department of Homeland Security, but unfortunately there could not. That being said, it is the right of a sovereign state to control the airspace above it, so I do not think there is any kind of legal basis to object to this. This is a condition set for overflying of American space.

However, we urge the government to continue in its representations to the American government to seek to strengthen some of the protections for Canadians' personal information that will, as you say, find its way into the Department of Homeland Security database, particularly to strengthen what one could call "appeal measures." For all intents and purposes, I understand those now take weeks if one has to go through that process. We also urge the government undertake an information campaign to tell Canadians about this so that they do not find themselves stranded in an airport, refused permission to overfly the United States, and that they think about this in advance.

Regardless, it is a growing trend. It is a curtailment of the freedoms that we have always enjoyed in flying. I cannot speak to reciprocity for the moment in terms of whether or not Canada is planning to do the same for American overflies. However, I know the European Union is thinking about doing that, too, and having a similar program for the overflying of its own space.

Senator Moore: To your knowledge, are there agreements in existence whereby other parties or states could contact the U.S. Department of Homeland Security and request information that involves Canada and Canadian citizens that it might have on file through this proposed legislation?

Ms. Stoddart: In the American regulations that will put this measure into force, there is a specific clause that allows the Department of Homeland Security to share this information widely. I believe it is at its discretion. It may do so not only with other departments within the American government, but with other American levels of government, with private corporations, as well as with foreign governments and international organizations. Even "tribal governments" is set out in this regulation.

Yes, it can be shared widely. Once the United States has the information, I believe sharing said information becomes its prerogative under its own law.

Senator Moore: What do you think of that?

Ms. Stoddart: As I have said before, this is a very worrisome new trend. I believe the Canadian government has made strong representations to the American government. I think we have to closely follow how it is administered. We have seen misuse of information in the hands of governments in the past. This may happen again.

I am very concerned about it. As you know, national security and public security issues are one of our four priorities and we will continue to follow this.

Senator Moore: Thank you.

[*Translation*]

Senator Dallaire: Welcome to the Senate, Ms. Stoddart.

I have two questions. You are obviously very familiar with the fact that Department of Veterans Affairs information was used by various offices for God only knows what.

What methods do departments use when it comes to accessing information of this nature?

Are legislative changes required to ensure that this does not happen again?

The damage is done, but how can we ensure that the bureaucratic machinery of government does not abuse its privileges?

[*English*]

My second question is this: what happens if Google goes rogue? I know there is a strong debate between the Harvard Library and Google on all materials that are now out of print. It also pertains to the authorities Google seems to have to go into all the historic research material, not only to scan it electronically, but also to be able to decide what it wants to take in, which includes the content.

To that extent, what protection do we have against some of that material being fiddled with or maybe not being held truly accountable?

Ms. Stoddart: Those are two excellent questions. Thank you, senator.

[*Translation*]

I will first talk about the mechanisms in place within the departments. In general, privacy protection mechanisms within the departments are satisfactory. Leaks, problems and abuses are the exception, not the rule.

Generally speaking, the person responsible for the access to information and privacy unit plays a key role in upholding the standards, which are quite clear. This includes both the Privacy Act and the Treasury Board's directives for enforcing it.

It seems that when the events in question happened at Veterans Affairs, the culture there was to ignore the directives, laws and practices. The type of behaviour that was reported in the case you mentioned is very rare.

• (1500)

I do not think that the legislation needs to be amended. I believe that Veterans' Affairs needs to comply with the law according to the policies and practices, and it must follow up and require its officials to obey them.

[*English*]

Your second question is an increasingly important one for the future now that much of the democratic world's information will be in the hands of Google. I understand that the Harvard and Vatican libraries will be scanned by Google. As you say, what happens if Google goes bankrupt or a certain interest takes over a controlling number of Google's publicly traded shares?

I think the situation is serious. Fortunately, data protection commissioners are looking increasingly at these questions. Google and other entities are in the United States, and basically the ball to look at this issue is in the camp of the United States. Fortunately, they are increasing their efforts in this area. Both the Federal Trade Commission and the Department of Commerce have been conducting extensive consultations on how to regulate this new type of commerce, and their positions will come out in December.

Coming back to the answer that I gave to the question about why it is important for my office to form international alliances, through alliances with data commissioners in the European Union, for example, we form a critical mass to bring influence on the rising market for information technology. I do not think that Canada alone is a big enough market to make a lot of difference, but with allies around the world we can make comments and try to control the excesses of some of these new giants.

Senator Dallaire: Since Gutenberg, all humans have had the right to be able to read and to access books. That is why we have libraries, et cetera.

With books and other written material becoming increasingly electronic, do you foresee that in the future, unless people are in the wired system or part of whoever is controlling the electronic material, they will not have free access to reading material?

Ms. Stoddart: Yes: That is a huge problem in a country that is as sparsely populated and geographically distant as Canada. This issue is being looked at in the blueprint of the Ministry of Industry for a digital economy. I do not know that anyone has the exact answer, because Internet service providers tell us that it costs a lot to bring service to a remote population of 200 people. Many people are putting their heads together to see how to avoid this digital discrimination.

Digital literacy for seniors, and education for young people in how to use the Internet and how to behave with respect to the consequences of what they leave on the Internet is also an important part of Canada's future, and one in which my office wants to play its role.

Yes, there are huge problems around the fact that information increasingly is consigned to the web. There is, finally, a question of freedom. We have had censorship in many societies, but now it is the exception rather than the standard. Observers talk about a new form of censorship. If the information is available online and people find it easy to go to big online stores, companies will promote the books and information that are in their library. We will not have the range of selection that we had formerly in our university libraries, municipal libraries and public libraries.

How much of Canadian literature will be accessible online?

Senator Dallaire: Who should take the lead within government?

Ms. Stoddart: I believe the Minister of Industry, who generally has competence in this issue, is already looking at it.

Senator Dallaire: Thank you.

[*Translation*]

The Chair: Honourable senators, time is running out. I will see Senator Runciman, followed by Senator Andreychuk and Senator Baker. I would ask you all to be as brief as possible, so that Senator Segal may have an opportunity to ask his question.

[*English*]

Senator Runciman: I have only one question. In your opening you talked about the tools you have in your legislation. Can you speak a little more about whether you need additional tools?

I saw a press report that said that the CBC appears to be treating your legislation and your office, not to mention the taxpayers, with disdain with respect to the cost associated with the development of a new theme song for Hockey Night in Canada. It strikes me that this is simply an effort on the part of the CBC to save them from embarrassment with respect to the significant cost associated with this theme song.

When a Crown corporation or any arm of government that you oversee with your legislation deals with a request for information in this manner, what avenues are available to you for further recourse?

Would you like to have additional tools made available to your office to deal with bad actors, as appears to be the case here?

Ms. Stoddart: I have relatively few powers under the Privacy Act in terms of recalcitrant agencies. I can take them to Federal Court only if they do not give out information that I am of the reasonable opinion they should give out. That power is rather limited.

I can ask the Federal Court for redress when I think that principles under the Personal Information Protection and Electronic Documents Act have been violated. However, that situation happens infrequently. Most parties prefer to settle.

The question that you posed is relevant going forward, honourable senator, because most data protection agencies around the world are modifying powers or acquiring new ones to deal with huge new challenges, particularly the challenge of the large actors who now play in the privacy arena.

I have commissioned a paper written jointly by Professor Lorne Sossin, the Dean of Osgoode Hall, and Professor France Houle from the University of Montreal, on what kind of powers we should have in the private sector for the future. This paper will be on our website as soon as it has been translated.

Broadly speaking, Professor Sossin and Professor Houle raise the issue of explicit guideline-making powers, so that the standards will be much clearer, and the possibility of order-making powers such as all the large provincial commissions have, which I do not have.

Senator Andreychuk: I wish to add my words of appreciation for your work in the past.

My question builds on what Senator Runciman has said, the issue of what is privacy today. The systems that we built over the last 100 years were to protect people against governments. We were hopeful that these systems would trap most of the problems. It seems that we are now still working on the classifications of privacy for print and departments. It seems to me that it is time to look at privacy differently.

For example, when I started working with the adoption of children, anything said on a file was held private. That was deemed to be in the best interest of the child. We woke up to find out that is not in the best interest of the child because it is teaching the child a double standard.

• (1510)

One is also protecting information that may be libellous or slanderous. Therefore, we opened it up; it was better for society to do so. We are on the edge today, whereby we have to define what we mean by "privacy"; who protects it; and how it is protected. That is something different than what I hear from you — perfecting what we already have. It seems we need to have a total relook at it. Are you contemplating that beyond the two professors?

Ms. Stoddart: Yes. I am sorry if I did not make it clear that one of the things I want to continue to work on and perfect is our interrogations about the changing nature of privacy. That is caught under our fourth principle, identity integrity, which is an obscure name for talking about that very phenomenon: How does all that technology impact on people and on society? Is it changing the way we behave? I would say, yes. How do we deal with that? Is that good or is that bad? As we live our lives increasingly online through censors, video surveillance, bio-metrics, voice recognition, and so on, how does this change the nature of society? Do we still have a kind of privacy? What can we do to protect it?

I would add that our work on Facebook is an example of us seeing that a priority must be given to new types of human experience and new types of information exchange. As I mentioned, we are investigating an online dating site, which is a new but significant development as many people use them. Maybe you know people who use them; they are very popular.

Genetic information sites are also very popular. What kind of personal information are they getting from us? Are they keeping it? Where is it going, et cetera?

We continue to push these new frontiers to have answers before a situation becomes truly critical.

Senator Andreychuk: I leave you to ponder this: We are demanding information and a paper trail, as we used to call it, or a documentation of actions by government officials, whether they are political or civil. At the same time, we are saying that they must keep certain things confidential when others have access to the same facts and do not have to keep them confidential. It sets up a double standard in many ways. I hope that you are looking at the expectations of employees, the public service, et cetera, vis-à-vis the reality of what is happening in today's world, which was not there in the past.

Ms. Stoddart: Yes, we will attempt to do that.

Senator Baker: I have a general question for the commissioner. I would like to congratulate her and her department for the job that they have been doing with a relatively small number of employees. Given the magnitude of your recent work, I do not know how you deal with all these matters.

Of course, your decisions on Personal Information Protection and Electronic Documents Act, PIPEDA, can be found online at Westlaw Carswell and on Quicklaw. Those sites have the decisions numbered and identified separately We also know about your work through decisions of the Federal Court.

You referred to revisions that you consider to be necessary to the Privacy Act and to the Personal Information Protection and Electronics Documents Act. I imagine that one of the major considerations in the Privacy Act today would relate to your jurisdiction in the investigation of matters that affect Canadians but have their grounds in some other nation, such as the United States. That, however, would be rather obvious today.

I would like to ask you about PIPEDA, because it affects a whole range of ordinary Canadians who had their local bank disclose some private information to another bank or a telephone company. Your adjudications over the communications companies that are federally regulated did not start until January 1, 2001. You have talked about making changes to PIPEDA to make it more effective. If I understand, you have said that you should be able to lay down a pattern that the industry should follow to arrive at the solution.

I have read your cases. Someone complains that a company disclosed their private information. You then send an investigator to investigate the matter. You talk to both sides. Usually, those matters are resolved and your investigator makes a report. In some cases, there is even a civil settlement. If a bank has disclosed information, it might decide to settle on a monetary figure without having to litigate the matter before the court. This is all done within your jurisdiction.

What new powers will you have? Your big review of the act will be this coming year. Could you be more explicit when you say that you need other powers to be able to adjudicate these matters more effectively?

Ms. Stoddart: Thank you, honourable senator. The most urgent powers are found in Bill C-29, which I hope will soon come before the Senate, and they include discretion in order to have greater leeway in investigating complaints. Quite a number of complaints come to us every year. Given that personal information is involved in everything we do, the real nexus of the affair is not necessarily the misuse of personal information.

For example, we have a lot of family issues, family disputes, marriage breakups, families fighting over wills and successions, and so on. Some personal information is involved in such cases, therefore they come to our office. We have few reasons to say that we perceive a problem when the case is already before the courts or family services or another place. This change would be very welcome because, as the Nova Scotia Court of Appeal said yesterday, often the issues are not issues of PIPEDA. In this case,

it was a wrongful dismissal. This was a case that we did not take to court and the complainant went alone. Discretion is a huge step forward and it is something we would like to have as soon as we can get it.

As well, the powers would include the flexibility to share what we do in our office and to share, if necessary, the personal information of Canadians with our counterparts. According to the way PIPEDA was set up in 2000, I could share that information only with substantially similar provinces, which are Quebec, Alberta, British Columbia and Ontario, when there is a health care issue.

Given the way that people use the Internet today for travel and getting involved in things, their personal information is everywhere. If they want us to help them with it or to set up a memorandum of understanding, I need the explicit power to talk about the details of what I do in terms of my operations and, if necessary, to hand over a case with the complainant's permission to another country where, for example, the respondent banker or whoever will follow up. Those are the two things that we would like to have immediately.

As for the long term, next year will be a time for study and reflection. We will start that next month. I have spoken about one study, but there may be others. We will bring together a committee, put out a position paper and ask for public comment.

Senator Segal: I share all honourable senators' strong sense of appreciation for the work done by you and your contribution.

• (1520)

Over the last few years the customs form has changed. One of the things that exists along the side is a statement that says, "Information provided in this documentation may be shared across other government departments." Historically, when customs was a part of CRA, it was deemed to be part of your tax file which could not be shared with other departments, except for law enforcement purposes.

Do you get consulted when these kinds of changes are made? Do you get to give your point of view? Is your office able to assure us that no unnecessary or fishing violations of people's privacy occur as a result of this?

My second question is: If some day a government were to decide to do reverse onus on freedom of information, in other words the assumption being that all government data would be made public on a 90-day basis all the time, available on a public website, with the same protections that now exist — privacy, third party negotiations, federal-provincial relations, national security — would that cause you a priori core issues and concerns about privacy, or would you be open to that kind of consideration provided privacy issues were protected in the process?

Ms. Stoddart: Yes, generally we are consulted by departments on new measures affecting privacy. I think that warning sign on the form now is probably part of the work of our office in order that Canadians know. A big part of privacy is transparency and being clear with what you are doing with people's information.

Are there no fishing expeditions? I would like to say they are not, but we know — I would say particularly because of human error — that in every department at some point there are mix-ups and slips, and there are rogue employees, et cetera. Increasingly, the issue for departments is to set up the kind of IT system that will tell them if people are handling the information they should or if they are handling information they should not, and this comes back to the question of a digital audit trail.

As to your second question, I would say, yes, I would have no problem with that. In fact, I had the opportunity to look at this question when I was Information and Privacy Commissioner of Quebec. We decided to do a five-year annual report on access to information, having concentrated on privacy issues for many years under my predecessor. I was very impressed by what was then happening in the United Kingdom. They did not have freedom of information laws but they had just adopted some. The U.K. approach — I do not say in practice now because there are criticisms of how it works in practice — in theory was government information should be public except for what is private, what is national security, what is emergency measures related, et cetera.

We put that in the report and I was happy, long after I had come to Ottawa, to see the Quebec government adopt that principle and they have just adopted regulations putting that policy into force. I have not checked out websites to see how much there is compared to what is done federally. I do not see a problem in that approach at all. I believe it would simplify the endless requests for access to information, and the cost and the time it takes for government departments to sift through them.

[*Translation*]

The Chair: Honourable senators, I know that you will join me in thanking Ms. Stoddart for being with us today.

Ms. Stoddart: Thank you for having me here.

[*English*]

The Chair: Honourable senators, is it agreed that the committee rise and that I report to the Senate that the witness has been heard?

Hon. Senators: Agreed.

[*Translation*]

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Suzanne Fortin-Duplessis: Honourable senators, the Committee of the Whole, authorized by the Senate to hear from Ms. Jennifer Stoddart respecting her appointment as Privacy Commissioner, reports that it has heard from the said witness.

ORDERS OF THE DAY

BANKRUPTCY AND INSOLVENCY ACT AND COMPANIES' CREDITORS ARRANGEMENT ACT

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

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Céline Hervieux-Payette, Deputy Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, November 25, 2010

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

SIXTH REPORT

Your Committee, to which was referred 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 has, in obedience to the Order of Reference of June 17, 2010, examined the said bill and now reports as follows:

Your Committee recommends that this Bill not be proceeded with further in the Senate for the reasons that follow.

Your Committee notes that Bill S-216 attempts to retroactively enhance the priority of claims for unfunded long-term disability liabilities in proceedings commenced pursuant to the Bankruptcy and Insolvency Act before the coming into force of the amendments contained in the bill, which may generate claims that conflict with court-approved settlement agreements already in force, resulting in litigation that would be detrimental to the interests of long-term disability claimants including the former employees of Nortel.

Your Committee believes that Bill S-216 would cause companies to prefer liquidation to restructuring, because it would confer preferred status on claims for unfunded long-term disability liabilities in liquidation proceedings, while conferring super-priority status on similar claims in restructuring proceedings under the Bankruptcy and Insolvency Act; and

Your Committee notes that Bill S-216 would reduce the amount that some creditors would otherwise hope to recover in bankruptcy proceedings, increasing risk for investors and financing costs for bond-issuing companies, which your Committee believes would be detrimental to the currently fragile growth of the Canadian economy.

This report was adopted in committee on the following vote:

YEAS — The Honourable Senators: Ataullajhan, Dickson, Greene, Kochhar, Mockler and Plett (6).

NAYS — The Honourable Senators: Eggleton, Harb, Hervieux-Payette, Moore and Ringuette (5).

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE, P.C.
Deputy Chair

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

[*English*]

Hon. Art Eggleton: Honourable senators, considering the urgency of the Nortel people, I would recommend later this day.

Hon. Gerald J. Comeau (Deputy Leader of the Government): No, at the next sitting.

The Hon. the Speaker: Consent not being granted, it is ordered that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

Some Hon. Senators: Shame.

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

• (1530)

OLD AGE SECURITY ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Judith Seidman moved second reading of Bill C-31, An Act to amend the Old Age Security Act.

She said: Honourable senators, I am pleased to stand today to speak to legislation that is about justice to so many Canadians. That legislation is the Eliminating Entitlements for Prisoners Bill.

Canadians across the country were outraged when they learned that inmates 65 years or over are eligible to receive not only the Old Age Security pension but also the Guaranteed Income Supplement for low-income seniors.

Let me remind honourable senators that the Old Age Security pension provides relatively modest entitlements in recognition of the valuable contributions that seniors have made in building our country and communities; and that under the OAS program, the Guaranteed Income Supplement and the allowances were established to provide low-income seniors and near-seniors with an additional level of income. These benefits are designed to help seniors maintain a minimum standard of living in retirement and to help them meet their basic needs. That is why it is a shock to Canadians to learn that prisoners are also entitled to these benefits.

The purpose of OAS benefits is to help seniors meet their basic needs. This purpose is why the entitlement for prisoners is particularly galling to seniors.

Honourable senators, we can all understand why seniors are upset. Inmates already have their basic needs paid for by public funds. This is why the Government of Canada is amending the Old Age Security Act, so that prisoners will no longer receive Old Age Security benefits while they are incarcerated.

Let me explain briefly exactly what this bill will do. Once passed, Bill C-31 will terminate Old Age Security benefits for prisoners sentenced to more than two years in a federal penitentiary. The federal government will then work with provinces and territories to sign information-sharing agreements to proceed with the termination of these benefits for incarcerated criminals serving 90 days or more in a provincial or territorial institution.

The Minister of Human Resources and Skills Development has written all the provinces and territories to gauge their support. I hope they all agree to move forward with us on this important bill.

Honourable senators, this bill will affect approximately 400 federal inmates and about 600 provincial and territorial inmates per year. In total, implementing this bill will result in a saving to Canadian taxpayers of $2 million annually once the change is made federally. The savings will increase another $8 million to $10 million per year if every province and territory signs on.

I point out that this bill will put the OAS Act in line with other federal and provincial, as well as international, practices. For example, the Working Income Tax Benefit and the Employment Insurance program cease payments of benefits when an individual is incarcerated.

In addition, most of the provinces and territories — British Columbia, Alberta, Saskatchewan, Ontario, Quebec, New Brunswick, Nova Scotia, and the Northwest Territories — do not make social assistance available to inmates, while the United Kingdom, Australia and the United States, among others, all suspend the payment of pensions to prisoners.

It is important to note that this legislation is fair to the spouses of incarcerated individuals. We are ensuring that they are not unduly affected. Spouses will continue to be eligible for the Old Age Security pension, Guaranteed Income Supplement and the allowance. Their entitlements will be reassessed based on the fact that they live alone.

This bill is about treating taxpayers fairly, and this bill is about treating our seniors, who have contributed so much to this country, fairly. It is no wonder that the majority of Canadians find the current situation unacceptable. Taxpayers, who are already paying to support these inmates, also have to pay them OAS.

Canadians feel strongly that federal prisoners should not be entitled to OAS benefits while they are incarcerated and supported by taxpayers' money.

Honourable senators, I will share some of the views expressed by Canadians in regard to this issue.

Sharon Rosenfeldt is the President of Victims of Violence, and she is also the mother of one of Clifford Olson's victims. Her life was forever altered by his heinous crimes. When this bill was introduced, this is what she had to say:

> It's great to see that this government is putting victims and taxpayers first ahead of criminals. The suspension of OAS benefit payments to inmates does just that.
>
> I commend Prime Minister Harper and Minister Diane Finley for taking leadership on this important issue and ending entitlements for convicted criminals.

Ray King is the father of another victim of Clifford Olson. When he learned the government introduced this bill, he stated:

> It's the best news I've heard in a long time. I'm quite pleased the government has actually done something.

David Toner, President of Families Against Crime & Trauma, also praised this bill:

> We are thrilled that the Prime Minister and the minister have taken leadership and are putting victims ahead of the entitlements of prisoners. I commend the Harper Government for introducing this legislation.

It is not only the families of victims that support this bill. Law enforcement has also been supportive. We have heard from police officers across the country, who believe this bill is the fair and right thing to do.

For example, Vancouver Police Chief Jim Chu applauded the bill and had this to say:

> It would be my hope that the innocent victims will no longer feel further victimized by watching their attackers receive old age pensions during their forced retirement from their careers of crime. I'm sure this evolutionary change in legislation will be greeted warmly by the many victims of these criminals.

Taxpayers across the country made their voices heard by signing a Canadian Taxpayers Federation petition in support of this bill. In fact, almost 50,000 Canadians signed the petition. When the bill was introduced, the taxpayers federation said:

> When the government does something right, they deserve credit.

As you can see, victims and other major organizations strongly support this piece of legislation.

Honourable senators, prisoners have no need for income support from the Old Age Security pension or the Guaranteed Income Supplement. Taxpayers already pay for prisoners' basic needs — for their food, shelter, clothing and many other things. The government is amending the Old Age Security Act to ensure public funds are used responsibly and that taxpayers are receiving good value for their hard-earned money.

The government took quick action to put an end to incarcerated criminals receiving taxpayer-funded benefits meant to help Canadian seniors who have contributed so much to our country.

• (1540)

Bill C-31, the proposed Eliminating Entitlements for Prisoners Act, puts an end to hard-working Canadian taxpayers paying twice for prisoners. This bill is about the responsible use of public funds and the fair treatment of Canadian taxpayers. We are taking action to put an end to entitlements for prisoners, and to ensure that those Canadians who have spent their lives working hard and playing by the rules receive the benefits they deserve.

This bill is fair and right. It is what Canadians want us to do.

Honourable senators, I urge all of you to support this bill and to pass it quickly.

Hon. Sharon Carstairs: Would the honourable senator accept some questions?

Senator Seidman: Yes, I will.

Senator Carstairs: I want to thank the honourable senator for her comments. We will catch with this bill, however, only those who collect the old-age pension. We know, for example, in the case of Russell Williams, that he will get a $60,000 pension from the military.

Was there any consideration on the part of the government to, instead of going after the pensions, go in a different route, which is to charge room and board for those inmates in our institutions, like Clifford Olson, who will cost $150,000 per year to incarcerate? Was there any idea that we might take that vehicle instead of this one?

Senator Seidman: Honourable senators, I will say that this is a good point. However, what we are addressing in Bill C-31 is a completely different issue; that is, one of suspending the OAS and the GIS from criminals who are incarcerated. That is the subject of the bill. That is what the debate is about.

If I might remind honourable senators, room and board is but one small part of what taxpayers are charged for prisoners, and it ignores the other significant costs, such as medical and dental care.

Senator Carstairs: That is true, and medical and dental care could be factored in as well. I had gathered, therefore, that the government has not looked at the alternative, which would be to put a price on the room and board portion of inmates, and therefore catch not just those who are collecting OAS but catch all of those who receive substantial income at the same time they are serving terms in prison.

I do know, from our aging study work, that single women are among the poorest seniors in the country. Presumably — one questions sometimes why — we have situations in which some of these incarcerated individuals have spouses.

My question is the following: Will there be any means or any contingency by which the spouse of the incarcerated individual, who might now be receiving a portion of this old-age pension and thereby prevented from being on welfare, will have some of that money passed on to them?

Senator Seidman: I will respond to the initial question first. As the honourable senator well knows, the Canadian Pension Plan is not affected by these amendments, since these benefits are based on contributions to the plan by employers, employees and the self-employed, and inmates continue to be eligible for CPP. There is nothing we can do about that.

As far as spouses are concerned, I must remind honourable senators that this is dealt with in this bill. The old-age pension of spouses and common-law partners are not affected, and indeed it protects the low-income spouse and common-law partners in ensuring that they have their Guaranteed Income Supplement and if they are pre-65, in the 60 to 64 age group, they get their allowance.

Senator Carstairs: I thank the honourable senator for that response. That is very helpful.

In the honourable senator's comments today, she focused on the quotes of a number of victims' groups. Can she assure the Senate this afternoon that these $2 million-plus savings will, in fact, be given to victims' groups so they can better protect the victims of this country?

Senator Seidman: I must remind honourable senators that, as far as the victims are concerned, there is no provision in our statutes to allow us to take OAS entitlements and put them into a victims' fund. The OAS entitlements go directly to the beneficiaries, and we do not have any control. We cannot put them into one pot. It is not allowed under current law.

Senator Carstairs: Presumably, if you have a saving from the failure to pay out old-age pension, that is then returned to general revenues of the Government of Canada. Is there, therefore, a provision that, from the general revenues of the Government of Canada, the same amount will now go to victims?

Senator Seidman: There is no provision in the existing law, apart from Bill C-31, that allows the government to take control of entitlements. These cheques are made out to individuals and go directly to the individual or to his or her family member. We cannot take that entitlement and put it into a general pot or a general fund. It is simply not doable.

Senator Carstairs: I do not think the honourable senator understands my question.

Senator Seidman: Yes, I do.

Senator Carstairs: I do not understand her answer, then. It can work both ways.

The honourable senator is passing a piece of legislation that will take, from the Clifford Olsons of this world, X amount of dollars each month. Now that that money has been withheld from them — and I support that concept — it goes into the general revenues of the Government of Canada.

Will we now see a budgetary line equivalent to that new revenue, which is acquired by the Government of Canada, going into victims' funds?

Senator Seidman: I can only repeat the same answer, because that is just a fact of life. It is simply not possible to take entitlements that are directed to an individual and put them into a general pot or a general fund. It is impossible to do.

Senator Carstairs: Then what will happen with this money? It is not being paid out. There is not a fund for OAS. There is for CPP. What will the government do with the money? Will it just magically go up in smoke?

Senator Seidman: As I have said, we cannot take this money. The cheques will not be made out to the prisoners. The government obviously will save this money. However, we cannot take that money and put it into any general pot. Basically what happens is the government reduces payments, and therefore the government saves that money in its budget.

Hon. Tommy Banks: Perhaps an urging would be in order. The government will save a certain amount of money, which will be in the general revenue, because it will not be paid out. There is a fund to assist both the victims of crime and those who are incarcerated for a crime of about $1.5 million, some of which goes to the excellent work done, for example, by the Elizabeth Fry Societies and the John Howard Society. We heard about this in committee today.

Out of that $1.5 million, $19,000 goes to the non-profit agency that operates across Canada in the interests of victims of crime.

• (1550)

No one wants to take money away from the John Howard Society or the Elizabeth Fry Society, et al., but might the government consider bumping that fund up so a little more than $19,000 a year could go to victims' services? I know that is a rhetorical question.

Senator Seidman: I might remind the honourable senator that no government has done more for victims than this government has.

Some Hon. Senators: Hear, hear.

Senator Banks: I thank the honourable senator.

(On motion of Senator Tardif, debate adjourned.)

GENDER EQUITY IN INDIAN REGISTRATION BILL

SECOND READING

Hon. Patrick Brazeau moved second reading of 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).

He said: Honourable senators, I am pleased to rise today in respect of speaking to Bill C-3, An Act to promote gender equity in Indian registration, and to explain why I encourage my colleagues to join me in supporting it.

Bill C-3 would remove a cause of gender discrimination in the Indian Act. I encourage honourable senators to give this bill prompt attention so that it can be passed in the coming weeks. Doing so would meet the deadline imposed upon Parliament in a ruling of the Court of Appeal for British Columbia, a deadline which has been extended until January 31, 2011.

[*Translation*]

Honourable senators, I will now explain the reasons why Bill C-3 is important and deserves our immediate attention.

On April 6, 2009, the Court of Appeal for British Columbia ruled in *McIvor v. Canada* that two paragraphs in section 6 of the Indian Act create undue discrimination between men and women with respect to registration as status Indians and therefore violate the provision in the Canadian Charter of Rights and Freedom guaranteeing equality of the sexes.

[*English*]

Rather than have its decision take effect right away, the court suspended the effects of its decision until April 6 of this year. In making its decision, the court explicitly called on Parliament to enact an effective legislative solution. In the interest of avoiding a legislation void in British Columbia, this government introduced legislation on March 11 to implement changes that directly respond to the decision of the Court of Appeal for British Columbia.

As honourable senators may be aware, Bill C-3 was informed by a robust stakeholder engagement process. In August 2009, this government announced an engagement plan to provide information and seek input on a legislative solution. That same month, the engagement process got under way with the publication and distribution of a discussion paper setting out the federal government's proposed legislative amendments to certain registration provisions of the Indian Act.

[*Translation*]

Engagement sessions were held from early September to early November. National Aboriginal organizations co-sponsored three of the sessions, and representatives from Indian and Northern Affairs Canada held 12 other sessions with the collaboration of regional Aboriginal organizations.

In all, some 900 people took part in 15 sessions and, as of mid-November, more than 150 briefs had been received.

[*English*]

The process generated a great deal of discussion, throughout which a wide range of views and opinions was expressed. The concerns raised were mostly on broader issues relating to registration, membership and citizenship, rather than the specific elements of the court's decision reflected in this bill's provisions.

Honourable senators, during these engagement sessions, while many people expressed support for actions intended to eliminate gender discrimination in the Indian Act, many also called for

much larger reforms. In light of this, and in the spirit of collaborative dialogue, the minister announced in March that a separate exploratory process is being put in place.

[*Translation*]

This additional process, which will take place outside the legislative process, will enable First Nations and Aboriginal organizations to study the broader problems that were raised in the engagement process.

This process confirmed the relevance of the government's approach and Bill C-3 was introduced in March.

[*English*]

The bill was subsequently referred to the House of Commons' Standing Committee on Aboriginal Affairs and Northern Development where the committee heard from more than 30 witnesses. The bill was amended at committee and again at report stage before being passed in the other place. I would call honourable senators' attention to three significant developments during this time.

In July, the Court of Appeal acknowledged that the government had been diligent in moving forward with legislative amendments without any undue delays in the process. As a result, it responded favourably to the government's request for an extension until January 31, 2011. The court also provided a telling comment about calls to abandon Bill C-3 and instead initiate sweeping amendments to the Indian Act.

Honourable senators, please allow me to read from the ruling of the Court of Appeal for British Columbia:

> . . . while efforts of Members of Parliament to improve provisions of the Indian Act not touched by our decision are laudable, those efforts should not be allowed to unduly delay the passage of legislation that deals with the specific issues that this Court has identified as violating the Charter.

As this excerpt of the decision makes clear, the court believes that the best approach is to address the matter at hand as it is set out in Bill C-3, namely, the discrimination engendered by certain registration provisions of the Indian Act as identified by the court.

[*Translation*]

The other thing I want to address is the letters sent to the Minister of Indian and Northern Affairs by citizens who believe they are entitled to be registered as status Indians.

These people cannot apply for registration until the requirements under the court ruling have been met. In other words, if Bill C-3 does not pass, their status will remain unclear and no court in the land will be able to intervene on their behalf.

[*English*]

Without legislation to address the court's ruling, section 6 of the Indian Act would become invalid, meaning that any and all new registrations would be put on hold for the duration of the invalidity. This legislative gap would affect eligible residents of British Columbia and those affiliated with British Columbia First Nations. In British Columbia over the last few years, there have been between 2,500 and 3,000 newly registered people per year.

[*Translation*]

Honourable senators, passing this bill would change many things. It would mean that some 45,000 people would become entitled to apply for Indian status.

[*English*]

In anticipation of this influx of requests, the Indian Registration and Band Lists program has developed an implementation strategy to efficiently deal with the new applications for registration under the Indian Act in accordance with the proposed amendments.

[*Translation*]

I am fully aware that Bill C-3 will not settle all of the grievances; it will not fix the larger issues of Indian registration, band membership and Indian citizenship for members of First Nations.

The current government plans to study these issues through an inclusive process, in partnership with Aboriginal organizations.

[*English*]

In fact, the Government of Canada has already invited proposals on the exploratory process from the Assembly of First Nations, the Native Women's Association of Canada, the National Association of Friendship Centres, the Congress of Aboriginal Peoples and the Métis National Council.

By working together, I am confident that progress will be made over time. However, as important as this work is, it cannot take precedence over Bill C-3. We must not lose sight of the fact that the Court of Appeal for British Columbia has identified a source of injustice and called upon Parliament to rectify it.

Bill C-3 responds with a focused solution, a solution informed by an engagement process that included a series of meetings with stakeholders that took place last summer and fall, and following the bill's introduction and study in the other place by the Standing Committee on Aboriginal Affairs and Northern Development.

[*Translation*]

The third element came into play on October 26, when two motions to amend Bill C-3 were adopted in the other place — one re-establishing clause 9 of the bill and the other proposing to amend clause 3.1 in order to clarify it.

Clause 9, which was removed from the bill by the other place's Standing Committee on Aboriginal Affairs and Northern Development, was re-inserted at report stage.

[*English*]

Clause 9 would prohibit the courts from ordering compensation, damages or indemnity for decisions made in good faith by government officials or by First Nations governments based on the legislation in place before the amendments to the Indian Act contained in Bill C-3 take effect.

• (1600)

Honourable senators, let me be clear: Clause 9 protects not only the Crown but also First Nations band councils who make decisions with respect to the programs and services they offer to their members.

The government believes that clause 9 is an important provision because it clarifies the law and avoids raising expectations that past decisions will be reopened or past settlements renegotiated.

[*Translation*]

The changes made to clause 3.1 of the bill improve the wording of the amendment passed by the Standing Committee on Aboriginal Affairs and Northern Development who is responsible for the report to Parliament not later than two years after the changes to the Indian Act come into force. Furthermore, they are in line with the recommendations of the drafters of the bill and do not make any changes in the substance of the committee's amendment.

[*English*]

Moreover, they clarify that it is the Minister of Indian Affairs and Northern Development who is responsible for the report to Parliament. As previously drafted, clause 3.1 referred to the minister but did not offer more precision. This situation has now been remedied through this amendment.

Honourable senators, Bill C-3 represents a timely and appropriate response to the court's ruling. In addition, and equally important, it eliminates a cause of gender discrimination. In essence, Bill C-3 represents a progressive step by a country committed to the ideals of justice and equality.

As honourable senators know, the Speech from the Throne contained significant commitments to support the government's agenda to improve the living conditions for Canada's Aboriginal Peoples.

We are focusing our efforts on making a real and measurable difference in the lives of Canada's Aboriginal citizens. That is why we passed Bill C-21, An Act to amend the Human Rights Act, legislation extending fundamental human rights protections to all First Nation communities.

That is also why we have introduced Bill S-4, the family homes on reserves and matrimonial interests or rights act. This bill provides a process for First Nations to enact their own matrimonial real property laws that reflect the cultural and social traditions of their communities.

[*Translation*]

Honourable senators, our government believes that all Canadians — Aboriginals and non-Aboriginals, men and women — should be able to exercise their rights and that everyone's rights should be protected. As I have already said, Bill C-3 is an important bill because it would redress a Charter violation that has been criticized by the courts.

[*English*]

What is more, it is legislation that directly impacts First Nations peoples and their right to be recognized as such while granting Indian status to many and, meanwhile, continuing to address the ongoing need for incremental reform of the Indian Act.

I urge honourable senators in this chamber to join me in supporting the timely passage of Bill C-3. Thank you. *Meegwetch*. Merci.

The Hon. the Speaker: Is there continuing debate?

Hon. Sandra Lovelace Nicholas: Honourable senators, I rise today to speak on Bill C-3, An Act to promote gender equality in Indian registration. This bill that has been presented before the Senate is extremely important. The bill attempts to make laws fairer for Aboriginal people living in Canada.

Most honourable senators know, or have been made aware, of my personal fight against the Government of Canada during the 1970s, which led to similar amendments to the discriminatory provision within the Indian Act registry. These amendments became law in 1985, and this bill is the first time any government has revisited the registration provisions since that time.

As an overview, the Indian Act provides the legal framework for the relationships between First Nations people and the Government of Canada. Legislation was first passed in 1869. In my opinion, it continues to reflect a paternalistic European-Canadian assumption that men should be the heads of the household and that women should be defined by the Indian status of the male household head.

What this assumption means in practice is that women and their children lose their Indian status when they marry non-Native men, but Native men do not when they marry non-Native women. If this is not enough, to make the situation even more perverse, Native men who adopt children from other cultures can legally bestow Indian status on the adoptees, while children born from legitimate native blood cannot and will not be registered.

Following my marriage breakdown, I returned home to my community at Tobique First Nation. Despite the fact that we spoke our language and continued to practice our cultural beliefs, we were met with hostility by Native men and their non-Native wives and moving off our ancestral land. We were denied housing, education and health care benefits that we were originally entitled to prior to our marriages.

I found this situation to be unacceptable and elicited the support of non-Native women's groups, such as the National Action Committee and the Voice of Women. They assisted us with our fight against the intolerable gender discrimination and participated by demonstrating with us. We conducted sit-ins, marches and appeals through the courts.

I clearly remember our demands for change being ignored by government officials, politicians and, oddly enough, the Assembly of First Nations. This response was unacceptable. Our group was dedicated and determined to remove this legislative barrier to our rightful identity.

In July 1979, we decided to make our voice heard in a more visual and meaningful way. Many women from Tobique First Nation organized a 100-mile walk for women and children from the Oka reserve, near Montreal, to Ottawa to draw attention to this problem. We were supported along the way by people who provided us with food and water.

Upon our arrival in Ottawa, we were greeted by dignitaries and members of the media, but only empty promises for change were made. No bill supporting this amendment passed and, unfortunately, the status quo remained.

The Canadian government claimed that it would like to change the law but did not feel it could without the agreement of First Nations people, who were divided on the issue.

It seemed that only the highest court of Canada would decide the legitimacy and outcome of our fight for equality. With the support of a focused and driven legal team, my name was used to bring a complaint against Canada to the Human Rights Committee of the United Nations.

• (1610)

After years of fighting, demonstrating and convincing people who would listen, in 1981 the United Nations committee found Canada had breached the International Covenant on Civil and Political Rights. Even after the UN ruling, the Canadian government acted slowly. Politicians were concerned that the male leadership within First Nations communities who were opposed to the changes were reluctant to interfere.

In July 1981, the Canadian government began granting exemptions from the UN ruling to Indian bands who requested it and, in 1985, despite the opposition of many band governments that opposed reform, the Indian Act was finally revised. Native women who married non-Native men would no longer lose their status, nor would their children. It was a victory to so many Native women who had struggled for equality. It was a victory for the Native children born through our marriages that were denied basic services from our band. It was a victory that, unfortunately, became short-lived.

When Bill C-31 was enacted, it gave back Indian status to Native women, and it also gave back to our children their Indian status, but it did not give back full status. It had limitations. Yes, my children were now entitled to services provided by the band and the Canadian government, but what occurred was a secondary class of Indian status. Our children were now categorized as section 6(2) Indians. As it stands, even prior to the implementation of this bill, people that re-inherited their status and were given the section 6(2) status classification continued to suffer from gender discrimination. For example, our children must remarry or have children with other section 6(1) or 6(2) Indians in order for our children to be eligible for registration under the Indian Act. This is an additional effect of being born to a non-Native father. This cannot be denied because prior to the implementation of Bill C-31, in 1982, there were no classifications of Indian status.

As a member of the greater First Nation communities across Canada, and as a sitting member of the Senate of Canada, I carry the burden to ensure all laws proposed to be passed by this Senate are fair, just and equitable. In this instance, I must balance my responsibility as a senator with my culture as a Maliseet. If the bill is fair, just and equitable, I will support it. If it is not, I will refuse to give it proper support.

I will now turn my remarks to the principles of Bill C-3. I have read the debates on Bill C-3 that took place in the house on Tuesday, May 25, 2010. It was quite clear to me that there is a huge divide between the unanimous voices of Aboriginal peoples on this issue and that of the government. Even the opposition parties have noted the rare unison of opinion on this issue.

What follows are some of the main items the government is using to try to justify passing this bill. First, the government says that it held extensive consultations with the national Aboriginal organizations and others on Bill C-3. It is my understanding that, in fact, there was no full consultation. There was only what government referred to as "engagement" sessions. When INAC officials made their presentation to organizations such as the Congress of Aboriginal Peoples at their annual assembly in 2009, they were asked directly if this amounted to consultation. The definite answer from INAC officials was "no."

No money was provided to First Nations or Aboriginal groups to consult on Bill C-3 with their members. There was no full disclosure of key information and documents, nor was there an assessment of the pros and cons of Bill C-3 provided.

The government's engagement process was simply telling a few select Aboriginal girls what would happen, and the government did not address legitimate concerns presented by these groups or the individuals.

Consultations, as outlined in the Supreme Court of Canada cases like the Haida and Mikisew Cree, adopted principles that suggested that the government would have been legally obligated to consult, not engage, with the First Nations and groups impacted by the bill, and accommodate, not ignore, their legitimate concerns.

Second, the government states that 45,000 people will not get to be registered if this bill is not passed. The government itself claims that it cannot do any costing on this bill because it cannot determine how many people will actually apply for and be granted status. If it cannot do the costing, then it cannot say that 45,000 people will not get status if the bill does not pass. The government cannot have it both ways. Either it is 45,000 and it costs that out or it is not. Gender discrimination is not resolved if only some people get to benefit. One cannot even say that gender discrimination is partially resolved. There is no such thing. Gender discrimination is either eliminated or it is not.

• (1620)

Third, I believe that it is absolutely necessary to include section 9 in Bill C-3 so Indian women are not fooled into thinking they have a legal right to be compensated for their exclusion from registration based on their gender. The government must step up to the plate and register the descendents of Indian women and finally compensate them for what they have lost. Aside from the physical aspects, the harms they suffered are equal to those who attended residential schools and clearly utilize the same assimilatory approach.

Another argument they raised in debate is that section 9 is necessary to protect First Nations. If the government is legitimately concerned about First Nations liability, they could amend section 9 to only protect First Nations liability and only for status issues. We all know that this is about protecting Canada from liability for wilful discrimination, which continues. By having that provision, the government will be able to delay addressing the rest of the gender discrimination as long as they deem necessary, knowing that they are not liable for the harms suffered by Indian women and their descendents.

Fourth, we should pass Bill C-3 as is because joint process will take care of the other issues. Where is the commitment for funding for any First Nation or their representative groups to participate in such a joint process? Has anyone received a penny?

Where are the terms of reference for this joint process? Who will direct this process and will it have measurable deliverables? Where is the commitment to deal with specific issues like unstated paternity and illegitimate siblings? Where is the commitment to deal with band membership?

The joint process was made to be a carrot to get agreement by budget-strapped national Aboriginal organizations that are at the mercy of their funder, namely the government, to pass another otherwise unacceptable bill.

The bill does not address *McIvor*, even in the narrowest terms, because the double mother clause descendents still have better status than the dependants of Indian women who married out. It is as plain and simple as it gets.

Bill C-3 does not address gender discrimination because it cannot be addressed in part. If the elimination of gender discrimination would mean that 100,000 people would be registered, then a bill which would register 20,000, 30,000 or 45,000 people does not address gender discrimination.

We all see through this charade, as so aptly put by MP Todd Russell. We need to support Indian women and their equality rights by voting against the bill. In the end, I think the majority of Aboriginal peoples and their organizations would readily accept a delay in addressing registration if it meant we address gender discrimination in full.

Canada must now live up to its fiduciary and other legal duties and obligations toward Aboriginal people and act in a way that lives up to the honesty of the Crown. My grandchildren and many others are counting on Canada to finally eliminate gender discrimination against Indian women and their descendents.

Honourable senators, I am prepared to support Bill C-3 in principal. I do believe though that many issues have been missed by our present government in the drafting of this bill and throughout its so-called negotiation phase.

Honourable senators, I am a believer in First Nations self-governance. I believe that our elected First Nations leaders and elders should be vested in determining who its band members should be, rather than this red tape, bureaucratic process. Until this issue is addressed by government, the debate over who is and who is not a First Nation member will never end.

Honourable senators, I strongly urge the government to consider this approach.

The Hon. the Speaker: Not seeing any further debate, are honourable senators ready for the question?

Some Hon. Senators: Question.

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

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Brazeau, bill referred to the Standing Senate Committee on Human Rights.)

• (1630)

[*Translation*]

INCOME TAX ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Banks, for the second reading of Bill S-221, An Act to amend the Income Tax Act (carbon offset tax credit).

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have not finished gathering my notes on this bill, and I still have a bit of work to do. I would therefore like to move adjournment of the debate for the remainder of my time.

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

(On motion of Senator Comeau, debate adjourned.)

[*English*]

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. Donald Neil Plett: Honourable senators, I had planned to speak on this matter today, but because of the time, I will try to speak to it on Tuesday. I would like to adjourn this in my name for the duration of my time.

(On motion of Senator Plett, debate adjourned.)

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. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I would like to ask a question of my colleague, the Honourable Senator Comeau.

The honourable senator has assured this chamber on several occasions that there are senators on his side who wish to speak to Bill C-232. Almost a month ago, I raised the question as to when someone might speak on the honourable senator's side and no one has yet spoken. No Conservative senator has spoken on this issue in the last month even though the bill has been before us for 226 days.

Can the honourable senator tell me when the Conservative senators will stop delaying this bill, a bill which has been adopted by the elected majority in the other place?

Hon. Gerald J. Comeau (Deputy Leader of the Government): I am happy to answer this question. I believe Senator MacDonald will speak to this item next week. Senator Meighen will then speak to it within the next two weeks. Senator Champagne has spoken to it. Senator Angus has indicated that he will speak to it within the next two weeks. I will speak to it within the next three weeks. We do have a great number of senators who wish to address this item, and I presume there will be others who intend to speak to this bill as well.

Given the far-reaching effects of this bill, which I will not get into now, there will be plenty of movement on it.

Senator Tardif: As I said, I received that commitment from the honourable senator and from Senator Meighen almost a month ago. Am I given to understand that there is a commitment for some senators to speak to this next week and the week after?

Senator Comeau: If we were not stuck with all the private members' bills that seem to come out of the woodwork every day in this place, we might be able to get to some of these bills in a more timely fashion. If the honourable senator looks at the Order Paper, she will see the huge proliferation of bills that seem to be coming from the honourable senator's side.

INCOME TAX ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Rivest, seconded by the Honourable Senator Lang, for the second reading of Bill C-288, An Act to amend the Income Tax Act (tax credit for new graduates working in designated regions).

Hon. Gerald J. Comeau (Deputy Leader of the Government): I will repeat almost verbatim the speech given by Senator Plett. Given the hour, I think we will postpone debate on this bill at this time.

I move the adjournment for the duration of my time.

(On motion of Senator Comeau, debate adjourned.)

[*Translation*]

THE SENATE

MOTION TO SUPPORT THE ESTABLISHMENT
OF A FEDERAL PUBLIC SAFETY OFFICERS'
SURVIVORS SCHOLARSHIP FUND—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Runciman, seconded by the Honourable Senator Stewart Olsen, as amended:
>
> That in the opinion of the Senate, the government should consider the establishment of a tuition fund for the families of federal public safety officers who lose their lives in the line of duty and that such a fund should operate along the lines of the Constable Joe MacDonald Public Safety Officers' Survivors Scholarship Fund, in place in the province of Ontario since 1997.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I have not yet completed my research on this issue. I would therefore like to adjourn the debate in my name for the remainder of my time.

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

(On motion of Senator Tardif, debate adjourned.)

ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday, November 30, 2010 at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Tuesday, November 30, 2010, at 2 p.m.)

CONTENTS

Thursday, November 25, 2010

PAGE

SENATORS' STATEMENTS

Women in House Program
Hon. Suzanne Fortin-Duplessis 1413

Holy Angels High School
Hon. Jane Cordy 1413

Aboriginal Peoples
Fifth Anniversary of First Ministers Meeting in Kelowna.
Hon. Patrick Brazeau 1414

Youth Services Bureau of Ottawa
Congratulations on Fiftieth Anniversary.
Hon. Jim Munson 1414

ROUTINE PROCEEDINGS

Commissioner of Official Languages
Access to Information Act and Privacy Act—
2009-10 Annual Reports Tabled 1415

***Pages of Reflection: A Journal of Essays by Senate Pages*, Volume 3, 2010**
Document Tabled.
Hon. Sharon Carstairs 1415

Internal Economy, Budgets and Administration
Eighth Report of Committee Tabled.
Hon. David Tkachuk 1415

QUESTION PERIOD

Environment
Climate Change Policy.
Hon. James S. Cowan 1415
Hon. Marjory LeBreton 1415

Heritage
Edmonton's Bid to Host Expo 2017.
Hon. Tommy Banks 1417
Hon. Marjory LeBreton 1418

ORDERS OF THE DAY

Privacy Commissioner
Jennifer Stoddart—Received in Committee of the Whole.
The Hon. the Speaker 1419
The Chair 1419
Jennifer Stoddart, Commissioner, Office of
the Privacy Commissioner of Canada 1419

PAGE
Senator Dawson 1421
Senator Munson 1421
Senator Kinsella 1422
Senator Tardif 1423
Senator Moore 1423
Senator Dallaire 1424
Senator Runciman 1425
Senator Andreychuk 1426
Senator Baker 1426
Senator Segal 1427
Report of the Committee of the Whole.
Hon. Suzanne Fortin-Duplessis 1427

ORDERS OF THE DAY

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act (Bill S-216)
Bill to Amend—Sixth Report of Banking,
Trade and Commerce Committee Presented.
Hon. Céline Hervieux-Payette 1428
Hon. Art Eggleton 1428
Hon. Gerald J. Comeau 1428

Old Age Security Act (Bill C-31)
Bill to Amend—Second Reading—Debate Adjourned.
Hon. Judith Seidman 1428
Hon. Sharon Carstairs 1430
Hon. Tommy Banks 1431

Gender Equity in Indian Registration Bill (Bill C-3)
Second Reading.
Hon. Patrick Brazeau 1431
Hon. Sandra Lovelace Nicholas 1433
Referred to Committee 1435

Income Tax Act (Bill S-221)
Bill to Amend—Second Reading—Debate Continued.
Hon. Gerald J. Comeau 1435

Criminal Code (Bill S-204)
Bill to Amend—Second Reading—Debate Continued.
Hon. Donald Neil Plett 1436

Supreme Court Act (Bill C-232)
Bill to Amend—Second Reading—Debate Continued.
Hon. Claudette Tardif 1436
Hon. Gerald J. Comeau 1436

Income Tax Act (Bill C-288)
Bill to Amend—Second Reading—Debate Continued.
Hon. Gerald J. Comeau 1436

The Senate
Motion to Support the Establishment of a Federal Public
Safety Officers' Survivors Scholarship Fund—Debate Continued.
Hon. Claudette Tardif 1436

Adjournment
Hon. Gerald J. Comeau 1437

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