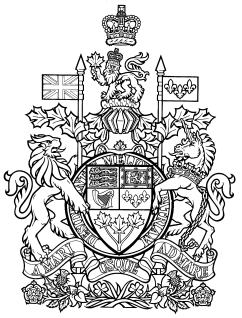

CANADA

Debates of the Senate

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OFFICIAL REPORT
(HANSARD)

Wednesday, November 17, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

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THE SENATE

Wednesday, November 17, 2010

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

Prayers.

SENATORS' STATEMENTS

CLIMATE CHANGE ACCOUNTABILITY BILL

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, the Senate has a long-standing and well-deserved reputation as a chamber of sober second thought, a place where the issues of the day are carefully and thoughtfully considered and Canadians are given an opportunity to be heard. Yesterday was a black day for the Senate and for that tradition.

Yesterday, this government thumbed its nose at the House of Commons and at Canadians from coast to coast to coast who care deeply about climate change, arguably the most important issue facing Canada and the world. Yesterday, this government refused to allow a bill that came to us with the support of a majority of the elected members of the other place to proceed even to committee, where it could receive careful scrutiny and allow Canadians to be heard on the merits of the bill.

For 193 days, this bill sat here on the Order Paper. Not a single Conservative senator cared enough about the issue of climate change to stand on her or his hind legs to express an opinion for or against the bill — not one. A review of the *Debates of the Senate* records only the speeches of Senators Mitchell and Peterson in support of the bill. Not one speech, not one word from the other side: silence. Then those same Conservative senators stood silently to kill the bill at second reading.

Senator Mercer: Trained seals.

Senator Cowan: Honourable senators, the Senate certainly has no obligation to pass every bill that comes here from the House of Commons; but it does have an obligation, a duty, to give those bills due and proper consideration, to subject them to debate and to committee scrutiny and to give Canadians an opportunity to be heard.

Yesterday, for the first time in living memory, the Senate rejected a bill coming from the House of Commons without first sending it to committee for study. There was no debate, no explanation, no witnesses, no evidence, nothing.

Senator Mercer: Orders of the PMO.

Senator Cowan: Once again, this government has shown its autocratic and anti-democratic underbelly, shutting down Parliament to dodge a defeat —

Some Hon. Senators: Oh, oh.

Senator Cowan: Some honourable senators find this funny. I do not think Canadians find this funny. Once again, this government has shown its autocratic and anti-democratic underbelly, shutting down Parliament to dodge a defeat or to avoid uncomfortable committee study — throwing its own fixed election date laws under the bus, and now this.

This government, which spins itself as the champion of openness, accountability and democracy has once again shown its true colours.

This government believes that its ideas are the only ones worth listening to or talking about, which stifles dissent and launches vicious personal attacks against anyone who has the temerity to express an original thought or an independent view.

Honourable senators, this unprecedented action of the unaccountable, unelected Conservative majority in this place was shameful. Canadians deserve better, much better, and sooner rather than later they will get it — a government that respects them and the institutions which reflect and represent them.

Some Hon. Senators: Hear, hear!

[*Translation*]

CANADIAN DISABILITY HALL OF FAME

CONGRATULATIONS TO 2010 INDUCTEES

Hon. Patrick Brazeau: Honourable senators, over the past 30 years, preconceived notions, stereotypes and beliefs about the limitations of persons with disabilities have been changing slowly but surely.

Fortunately, we are now better equipped as a society to easily judge a person's worth, to be compassionate and to promote a society that fully includes men, women and children with physical disabilities.

[*English*]

This change is in no small way thanks to the courage, goodwill and vision of the Canadian Foundation for Physically Disabled Persons, founded nearly 30 years ago in 1987 by the Rotary Club of Toronto-Don Valley. Nearly 30 years and over $25 million in successful fundraising since then, the foundation's important work includes recognizing and celebrating the incredible achievements of some of Canada's finest Paralympic athletes.

In respect of this recognition, I was fortunate enough to be in attendance last week as the foundation celebrated the tremendous accomplishments of four individuals who were named to the Canadian Disability Hall of Fame and who continue to redefine the meaning of success.

They include athlete Colette Bourgonje of Saskatoon, Saskatchewan, who won Canada's first medal and her tenth career medal in the Vancouver 2010 Paralympics 10-kilometre sit-ski cross-country event; builder Alan Dean of Aurora, Ontario, who has played a pioneering and continuing leadership role in the growth and development of international elite sport for athletes with a disability; achiever David Shannon of Thunder Bay, Ontario, whose unique claim to fame includes planting a wheelchair access parking sign on the North Pole in April 2009, making him the first quadriplegic in history to reach the geographic North Pole; and achiever Jeffrey Tiessen, of St Ann's, Ontario, who was also celebrated. One of Canada's best known, he medalled in three consecutive Summer Paralympic Games.

[*Translation*]

Those are just four of the many examples of incredible success achieved by persons with disabilities.

Honourable senators, I applaud the successes of these unique individuals whose abilities far exceed their disabilities.

[*English*]

In the same breath, I offer my sincere thanks and appreciation to our esteemed colleague, Senator Vim Kochhar, who is the foundation's founding chair and who has invested selflessly in this cause and these unique and empowering individuals. They are a tribute to the human spirit, the indomitable will that can prevail over adversity and the unlimited potential to which we can aspire if we choose to say "why not" over "why me?"

CLIMATE CHANGE ACCOUNTABILITY BILL

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, prior to yesterday's defeat of Bill C-311, the Senate has defeated only four bills that were passed by the elected members of the House of Commons in the last 70 years.

In 1998, it defeated a private member's bill, Bill C-220. That legislation was introduced by Liberal member Tom Wappel, and was known as the Son of Sam bill because it would have prevented convicted criminals from profiting by writing and publishing accounts of their heinous crimes.

After arriving in the Senate, it was given second reading and referred to the Standing Senate Committee on Legal and Constitutional Affairs. The committee held 12 days of hearings, hearing from a wide array of witnesses. Based on the evidence the committee heard, it concluded that Bill C-220, notwithstanding its meritorious intent, violated the freedom of speech provisions in our Canadian Charter of Rights and Freedoms, and in the committee's report to the Senate, recommended that the bill not be proceeded with. The Senate accepted the committee's advice and on June 10, 1998, unanimously agreed to adopt the report and kill the bill. That was 12 years ago.

Two years before that, on June 19, 1996, the Senate, at third reading, defeated Bill C-28, the government's Pearson Airport legislation. Prior to that final fateful vote, committees of the Senate held 50 meetings on the Pearson Airport issue, hearing from almost 100 witnesses; and, indeed, one of those committees tabled a 300-plus page report.

• (1340)

Three years before that, the Senate, again on a third reading vote, defeated Bill C-93, a budget implementation bill. The bill was defeated following five days of committee hearings.

In early 1991, the Senate defeated the abortion legislation of then Justice Minister Kim Campbell. This defeat followed 10 days of hearings held by our Legal Committee, which heard from 38 witnesses.

Honourable senators, that is the history and tradition of a legislative chamber that respects its unelected nature by defeating legislation adopted by the elected members of the other place only after listening long and hard to a great many Canadians.

Yesterday, that all changed. Yesterday, the Conservative-dominated, unelected Senate declared that it will defeat, without explanation or any public input, any piece of legislation adopted by the elected members of the House of Commons.

Immediately following the vote, I called across the aisle, "This is a sad day for democracy." The government leader in the Senate immediately responded, "It is a great day for democracy."

What made it great, honourable senators? Is it that the Senate, which has always recognized the limitations its unelected nature has placed on its legislative activities, for the first time in living memory at second reading, killed a bill adopted by the members in the other place — Canadians who were elected to represent and speak for them in Parliament?

Yesterday was a regrettable day for the Senate and for all Canadians who expect that parliamentarians be responsive to their wishes.

GENOME CANADA

Hon. Kelvin Kenneth Ogilvie: Honourable senators, this year, one of our country's true success stories celebrates an important milestone. For 10 years now, Genome Canada has planted the Canadian flag on one of the most exciting frontiers of science — genomics. By unlocking the mysteries of our genes, scientists are literally learning the language of life itself.

Through large-scale projects, Genome Canada has enabled Canadian scientists to make groundbreaking discoveries, propelling sectors from fisheries to forestry, agriculture, health and the environment.

By developing the technological infrastructure critical for this kind of scientific research, Genome Canada has empowered Canadian scientists to make such remarkable contributions as sequencing the virus for severe acute respiratory syndrome, SARS, and the H1N1 "swine flu."

Genome Canada has now reached an inflection point, a time when it translates the last decade of research into applications that will dramatically improve human health, strengthen economic competitiveness and enrich our society.

On Monday, November 22, Genome Canada will hold a special reception, "Genomics on the Hill," giving parliamentarians the opportunity to see firsthand some of its most exciting projects and to talk with the scientists that are leading them.

I invite all honourable senators to join Genome Canada and me at that event in Room 256-S, Centre Block, and to celebrate 10 years of Canadian scientific excellence.

THE HONOURABLE BELINDA STRONACH

CONGRATULATIONS ON EQUAL VOICE AWARD

Hon. Rod A.A. Zimmer: Honourable senators, I rise today to congratulate my dear friend and former colleague, the Honourable Belinda Stronach, on her receipt of Equal Voice's EVE Award, in recognition of her philanthropic and political contributions to the promotion of women in public life.

On Tuesday, November 9, 2010, I had the pleasure of attending the Women in Public Life luncheon along with my fellow colleague Senator Frum, as well as the former ambassador of Cuba, Mr. Mark Entwistle.

The event was presented by the Canadian Club of Ottawa and Equal Voice. Equal Voice is a group of women and men who are deeply concerned about Canadian politics and have formed a multi-partisan non-profit organization, devoted to the still-bold idea that more women must be elected to every level of government in Canada. I strongly support their mission and applaud the works of Ms. Stronach, the women in this chamber and the other place, as well as those in all levels of government.

I will also take this opportunity to support Senator Hervieux-Payette's bill, Bill S-206, which would require public companies under this jurisdiction to increase gradually the number of women on their boards of directors until the promotion reaches 50 per cent.

Honourable senators, finally, I applaud Ms. Stronach for all the philanthropic work she does on behalf of the Belinda Stronach Foundation. I am proud to be a member of the board.

• (1350)

[*Translation*]

NOVA SCOTIA

ECONOMIC DEVELOPMENT

Hon. Donald H. Oliver: Honourable senators, on July 29, 2010, Professor Donald J. Savoie submitted a report to Premier Darrell Dexter of Nova Scotia, recommending a series of measures to improve the province's economic development. Professor Savoie currently holds the Canada Research Chair in Public Administration and Governance at the Université de Moncton.

[*English*]

The report is entitled: *Invest More, Innovate More, Trade More, Learn More: The Way Ahead for Nova Scotia*. It provides invaluable information on Nova Scotia's current and future economic development.

Dr. Savoie made 24 recommendations on what Nova Scotia needs to do to position itself to meet emerging economic challenges.

One of these recommendations was the creation of a $50 million venture capital fund through Innovacorp and the Nova Scotia Department of Economic and Rural Development. This fund would help start-up companies develop their products and technologies and assist them in developing market strategies.

Dr. Savoie recognizes the need for start-up firms to have access to capital to fund their projects. He points out that Nova Scotia has one of the lowest per capita venture capital supplies in Canada, which is 62 per cent below the national average.

I was happy the premier learned from Dr. Savoie's advice. On November 9, the premier announced the creation of a privately run venture capital fund for Atlantic Canada. Premier Dexter said that this fund would benefit companies in what he called "high-growth" sectors, such as clean technology, life sciences and information technology.

Mr. Savoie also feels that "Nova Scotia needs to focus on the energy sector, a key sector in the region's economy." He believes that the province "should take the lead in R&D on alternative sources of power" and that it must "promote energy-efficient measures."

Honourable senators, Nova Scotia is increasingly more active in the energy sector and leading the way in green energy. In March, the creation of the new multi-million dollar wind manufacturing facility in Pictou County was announced. The federal and provincial governments invested in that project.

Dr. Savoie also considers Halifax to be a world-class city that should be promoted further as the ideal place to attract business. He cites many attributes that make Halifax the place to invest, such as its geographical location, its top-tier universities and schools, research facilities and thriving firms. Halifax has the potential of becoming a hub of innovation, research and development, and education in Canada.

Honourable senators, I bring this 42-page report to your attention because it is timely and innovative. It recommends a series of invaluable initiatives that can help both Nova Scotia and Canada become more economically prosperous and competitive.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I draw your attention to the presence in the gallery of His Worship Brad Woodside, the distinguished Mayor of Fredericton, the capital city of New Brunswick.

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

Hon. Senators: Hear, hear.

[*Translation*]

ROUTINE PROCEEDINGS

INTER-PARLIAMENTARY UNION

PARLIAMENTARY PANEL WITHIN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION PUBLIC FORUM 2010 AND STEERING COMMITTEE OF THE PARLIAMENTARY CONFERENCE ON THE WORLD TRADE ORGANIZATION, SEPTEMBER 16, 2010—REPORT TABLED

Hon. Mac Harb: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Inter-Parliamentary Union respecting its participation at the Parliamentary Panel within the Framework of the World Trade Organization Public Forum 2010 and the 22nd Session of the Steering Committee of the Parliamentary Conference, held in Geneva, Switzerland, on September 16, 2010.

CANADA-AFRICA PARLIAMENTARY ASSOCIATION

BILATERAL VISITS, SEPTEMBER 5-12, 2010—REPORT TABLED

Hon. Paul J. Massicotte: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Parliamentary Delegation of the Canada-Africa Parliamentary Association, respecting its bilateral visits held in Cotonou, Benin, and Ouagadougou, Burkina Faso, September 5 to 12, 2010.

[*English*]

QUESTION PERIOD

THE SENATE

CLIMATE CHANGE ACCOUNTABILITY BILL

Hon. Grant Mitchell: Honourable senators, yesterday the unelected Conservative Senate defeated Bill C-311 outright.

Some Hon. Senators: Oh, oh!

Senator Mitchell: The louder they yell, the wronger they are.

That was passed by a majority of elected — I will say that again — elected members of Parliament. They did not just defeat it; they did that without one word of debate on that bill, although they had 193 days — a big number — over which they could have prepared and presented their case. They did it without ever allowing it to go to committee, where it could have been given a broader airing with testimony and discussion in front of the Canadian people so they could properly evaluate it. Perhaps even the government would have learned something about it.

I wonder whether the Leader of the Government in the Senate could explain to us how it is that this unelected Conservative Senate has the arrogance to think that it can turn down legislation passed by a majority of elected members of Parliament in the other place. How does it do that?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question.

As honourable senators are well aware, the government has been clear in its opposition to Bill C-311. In fact, the record also shows that the government was prepared to speak to the bill.

Honourable senators, Senator Mitchell forced a vote on second reading and since the senator forced a vote on second reading, the government was not about to pass up an opportunity to defeat this bill, which would be so injurious to the Canadian economy. If the honourable senator is concerned about who caused all of this, I suggest he look in the mirror and have a strong conversation with whoever is looking back at him.

Senator Mitchell: Honourable senators, regarding who called the question, the leader knows that when she says that I called the question, she knows that is not true and I know that is not true. Honourable senators know that is not true. Senator Comeau is under a good deal of duress because he called the question.

An Hon. Senator: Oh, oh.

Senator Mitchell: Wait a minute. As to the leader's point, the government is on the record as being against this bill. Therefore, is the leader saying that we no longer have to worry about what she has to say about anything in this Senate? Ought we just to call up Hansard in the House of Commons and know exactly what position the Prime Minister and the Prime Minister's Office have told the leader to take?

Senator LeBreton: Honourable senators, I think the record will clearly show that Senator Mitchell called the question and I think the record will clearly show, when His Honour confirmed the question had been called on second reading, that Senator Comeau is quoted in Hansard as saying "no." Do not try to blame Senator Comeau.

Senator Comeau: Don't pawn off your mistakes on me!

Senator Mercer: He did not mean to hurt your feelings.

Senator LeBreton: Honourable senators, as I said a moment ago, I suggest Senator Mitchell have a very serious conversation with himself. He was the person who caused this.

On the issue of unelected Conservative senators, we have two bills before Parliament. One is sponsored by my colleague in this chamber, Senator Brown, for an elected Senate. If the honourable senator wants to prevent such occurrences, I support an elected Senate, he ought to get on with business and start supporting Senator Brown's bill.

Senator Mitchell: Honourable senators, we are actually operating under the Rules in the way the Senate works now. Given that, can the leader tell me if she will, as a matter of course, veto legislation passed in the House of Commons by a majority of elected members? Will she veto that before even allowing anyone

on her side to debate that legislation and before she even allows it to go to committee where it will get a proper, public airing before the Canadian people?

Senator LeBreton: Again, honourable senators, let us be very clear. Senator Neufeld was our spokesperson and he has been working on preparing his speech to address Bill C-311. As honourable senators know as per the *Rules of the Senate of Canada*, the tradition is to call bills each day. We clearly said "stand."

Honourable Mitchell was the one who forced the vote and therefore, he should not try now to unscramble the egg that he himself scrambled.

Senator Mitchell: Honourable senator, the leader and I both know that is absolutely not true.

Some Hon. Senators: Oh, oh.

Senator Mitchell: Right here, I can point, too; right here.

What happens now? There is a part-time Minister of the Environment, who was part-time even when he was full-time. Whatever plan the government thought it had has gone out the window and they are waiting for the U.S. Congress to tell them what to do. They have two weeks before Cancun, when the next round of climate change negotiations occur, and the government just defeated a bill that would have required them to have a plan for such a meeting.

What will the government take to Cancun? What will they say on behalf of Canadians? When will the government defend their interests on climate change?

Senator LeBreton: Honourable senators, I will respond to that. However, before I do, I want to again make it very clear that, on the record, when Senator Comeau said, "stand the bill," Senator Mitchell is clearly quoted on the record as saying "I do not want it to stand."

Some Hon. Senators: Hear, hear!

Senator LeBreton: With regard to our excellent Minister of the Environment, my colleague, the Honourable John Baird, will be going to Cancun to carry on from Minister Prentice's good work in Copenhagen. The International Energy Agency Executive Director Nobuo Tanaka praised Canada's climate target announcement to reduce greenhouse gas emissions by 17 per cent below its 2005 levels by 2020, under the Copenhagen accord. Our target is in line with the target inscribed by the Obama administration. We are going to Cancun to follow along on the good work done by Minister Prentice when, for the first time, the major emitting countries signed on to the Copenhagen Accord.

• (1400)

Hon. Tommy Banks: I have a supplementary question for the leader. Putting aside the substance of the question of the bill — I would ask the leader to take this question as notice and I will do the same and look it up, too — can she tell us whether ever before in the Senate a bill that has been sent to us by the House of Commons was defeated before and at second reading without having been sent to committee for study?

I have only been here 10 years, and I have never seen such a thing. Can the minister tell us whether that has happened before? I will do the same. I am interested to know.

Senator LeBreton: This is a private NDP bill from the House of Commons.

Some Hon. Senators: Oh, oh.

Senator LeBreton: It morphed into an NDP/Liberal/Bloc coalition bill and was sponsored by the Liberals. In answer to the honourable senator's question, we were prepared to continue the debate on the bill and send it to committee, but I do not believe ever before an opposition party has demanded a vote on second reading of a bill. I would suggest that was an unprecedented act by Senator Mitchell.

Senator Banks: Notwithstanding, are any of us aware of any circumstance in this place since 1867 in which the Senate has defeated a House of Commons bill at second reading and before committee study? I am asking for this information because I do not know but I would be very interested in finding out.

Senator LeBreton: Technically, that is not a question for the Leader of the Government in the Senate. That is a procedural question that the honourable senator, as an individual senator, has every right to research himself.

HEALTH

SODIUM REDUCTION STRATEGY

Hon. Catherine S. Callbeck: Honourable senators, my question is for the Leader of the Government in the Senate. Canadians consume about 3,400 milligrams of sodium a day, more than double the recommended intake of 1,500 milligrams. Almost 80 per cent of this daily salt intake comes from processed and packaged foods.

In July, the Health Canada Sodium Working Group released its sodium reduction strategy which called for voluntary restrictions on the amount of salt allowed in packaged and processed food, but there has been no action by Health Canada to date.

A recent Australian study published in the medical journal *Heart* found that government-led mandatory restrictions are 20 times more effective than voluntary restrictions.

Will the government take these new findings into consideration and implement mandatory measures to help reduce the salt content in packaged and processed food?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. She has stated something that is of serious concern to health officials and the government.

Sodium levels are extremely high in Canada. That is why, as the honourable senator mentioned, we established the Sodium Working Group. It has looked at ways to reduce the amount of sodium and has encouraged Canadians, through information pieces, to reduce their sodium intake by one third by 2016.

Health ministers, meaning Minister Aglukkaq and her counterparts in the provinces and territories, are working on the recommendations of the Sodium Working Group and they have agreed to collaborate in working together in areas of public education, research and monitoring. The short answer to the honourable senator's question is that this is an issue that all levels of government, led by Minister Aglukkaq, are seized with and action is forthcoming.

Senator Callbeck: I have a supplementary question. This certainly is a serious issue. The Heart and Stroke Foundation states that a reduction in dietary sodium would eliminate high blood pressure for more than a million Canadians, which would save at least $430 million every year in direct high blood pressure management costs. About one in seven deaths from stroke and one in eleven from coronary heart disease would be prevented.

This new research has indicated that mandatory restrictions are 20 times better than voluntary, so it is imperative that the government act quickly on this issue. The leader said that the minister is working on this, but what is the time frame for introducing initiatives to reduce salt found in packaged and processed food?

Senator LeBreton: The honourable senator is absolutely right. The high intake of sodium has serious health outcomes. Our former colleague Senator Keon regularly briefed us and spoke of this not only in our caucus but in the Senate as a whole. I point out to the honourable senator that we, as a government, established this working group. I am happy to find out if there is a specific time frame, but the fact that the minister established this working group and is working with her provincial and territorial counterparts would indicate that this is a matter the government takes seriously and will be taking action on. With regard to the actual timetable, I will make inquiries.

Senator Callbeck: I thank the leader for making inquiries about the time frame, but I also want to go back to my first question which she really did not answer. Will this group take into consideration the Australian study that has been published in the medical journal *Heart*?

Senator LeBreton: I am sure all the various studies have been considered and taken into account by the working group. The honourable senator asked a specific question. Since I was not in the room with the health ministers, I cannot answer specifically. The honourable senator frequently says that I did not answer her question. I would be in no position to know that, but I would be happy to find out.

[*Translation*]

THE SENATE

LEADER OF THE GOVERNMENT IN THE SENATE

Hon. Jean Lapointe: Honourable senators, my question is for the Leader of the Government in the Senate.

Yesterday, the leader implied that I had called her an acrobat and a tap dancer and said that, every time I spoke, I had new descriptions for her.

I was a bit taken aback, because even though I have always said she has a way with words, I know that the job she does is not easy and that she has to be quick on her feet. I said she was an extraordinary skater because I am always amazed at the way she skates around when she answers questions. I added that she skated so quickly, she could join the real Ottawa Senators, the hockey team.

However, I would like to remind the leader that she was the one who told me she tap danced. I did not know that.

I would like the minister to tell me whether I am mistaken or whether she got a bit carried away.

[*English*]

Hon. Marjory LeBreton (Leader of the Government): I really will miss Senator Lapointe. He actually demonstrates some of the camaraderie that is lacking in this place from time to time.

I thought the honourable senator had said tap dancing. Anyhow, I remember the honourable senator at different times describing various acts I am particularly good at, and I appreciate the compliment.

VETERANS AFFAIRS

PAYMENT OF BENEFITS

Hon. Marie-P. Poulin: Honourable senators, my question is for the Leader of the Government in the Senate.

As we all know, last week marked yet another Remembrance Day. Thousands of people gathered at the National War Memorial just down the street from Parliament Hill, and it was a sight to behold. Their presence and that of other Canadians who held local Remembrance Day ceremonies across the country is a tangible support for the military. We all take pride in the men and women in uniform.

• (1410)

It was regrettable, therefore, to be reminded of the ongoing furor over the way our disabled soldiers are treated, unable to work, trying to cope with the mental and physical trauma they have suffered in the service of the country.

Will the Leader of the Government give some comfort to these heroes and their families? Will she tell us now — not next month or next week — when the lump-sum disability payments will be replaced by lifelong disability pensions?

Hon. Marjory LeBreton (Leader of the Government): I absolutely agree with the outpouring of support by Canadians. I was there myself. The estimated crowd size at the National War Memorial in Ottawa was over 30,000.

I also point out to the honourable senator that the Veterans Charter, which included the lump-sum payment, was enacted in spring 2005 by the previous government, and of course received support in both chambers. The government, Minister Blackburn and the Minister of National Defence have been working extremely hard on addressing many of the concerns and have come a long way in that work.

With regard to the lump-sum payments, the government is addressing these concerns and we will take action, honourable senators. I expect an announcement will be made soon on the lump-sum payment issue.

[*Translation*]

Senator Poulin: Honourable senators, we know that a number of families are worried about these promises. Could the leader enquire of the Minister of Veterans Affairs when he plans to present to Parliament a new program for our military men and women who continue to suffer from mental or physical health problems as a result of serving their country?

[*English*]

Senator LeBreton: I will use the opportunity to tell the honourable senator some of the steps the government has taken in the last few months to address the Veterans Charter and other issues.

Obviously, as I said before in response to questions I think from Senator Dallaire, no government has been more committed to our servicemen and women and to our veterans than this government. We are proud of the work we have done to improve the conditions for our veterans and also to provide our servicemen and women with the proper equipment and the proper tools to do their job.

Obviously, giving our veterans the utmost of care is paramount. That is why we recently announced funding of $2 billion to fix the gaps in the charter. We have a number of new measures particularly to help those returning from Afghanistan with serious and catastrophic injuries, and we are taking measures to put more people in place to ensure that all veterans, and especially those who have suffered serious and catastrophic injuries, are treated properly and with dignity.

Veterans who have suffered severe injuries since 2006, and even before, will see an augmentation on their monthly cheques if they cannot work. Veterans receiving earnings loss will receive no less than $40,000. That is a baseline. These benefits will be available on a go-forward basis when the legislation and regulations are in place. I hope that we can count on the support of all honourable senators on both sides to support this bill when it is before the Senate.

As I mentioned, we also recently announced changes that ensure that no seriously injured veteran will receive less than $58,000 per year in income support. Again, as I mentioned in my first answer, the government is in the process of working on the lump-sum payment issue, and I expect the government will make an announcement in this regard in the near future.

[*Translation*]

Senator Poulin: Honourable senators, is the leader unable to tell us when the changes will be presented in Parliament?

[*English*]

Senator LeBreton: With all due respect, I have already answered the question, and so has the Minister of Veterans Affairs, Minister Blackburn.

In the last two months, we made a series of important changes with regard to the treatment of our veterans. This payment is part of the process. Obviously, some veterans have expressed concern with the lump-sum payment, and others have not. This payment was part of the Veterans Charter that was passed before we came into government. Some veterans preferred the lump-sum payment.

All the concerns and views of the veterans and the potential recipients of these payments have been listened to, and I ask the honourable senator to leave it to my colleague, the Minister of Veterans Affairs, to make this announcement and place it before Parliament, for he is the minister responsible. As I said, it will be soon.

Hon. Percy E. Downe: This is the government of reassuring words, but they are short on commitment for veterans.

They have had reassuring words the last few weeks, but over the last four years, numerous promises have been made to veterans. I have here in my file a letter to Joyce Carter, where Prime Minister Harper promised to extend the Veterans Independence Program. It never happened.

Can the Leader of the Government in the Senate advise when that change will be undertaken on behalf of veterans?

Senator LeBreton: The honourable senator is incorrect.

Senator Comeau: As usual.

Senator LeBreton: The VIP program was greatly enhanced under our government. Obviously, there is still work to do in this area, but to say it did not happen is, of course, flat-out wrong.

Senator Comeau: There you go.

Senator Downe: The minister has to check her record. I have the letter signed by Stephen Harper:

> . . . immediately extend the Veterans Independence Program services to widows of all Second World War and Korean War veterans, regardless of when the Veteran passed away or how long they had been receiving the benefit prior to passing away.

That extension to the program simply did not happen.

Can the minister advise if it will happen?

Senator LeBreton: Again, honourable senators, in February 2008, our government expanded the Veterans Independence Program. To date, the extension has provided about 3,500 low-income or disabled survivors with a maximum of $2,400 a year to help them with housekeeping and grounds maintenance services. As I have said before, we are continuing to look at ways to improve the VIP to ensure those who need the services will have the help they need to remain independent in their homes.

For the honourable senator to say that we have done nothing is wrong. As I pointed out before, we realize there is still work to do in this regard, but we have enhanced the Veterans Independence Program significantly since we came into government.

Senator Downe: I never said the government did not do anything. I said the Prime Minister did not keep his promise. If the leader checks the record, she will find the same thing.

Here is another promise made by this government, more reassuring words. Prime Minister Harper promised during the federal election in 2006:

> Our government will stand up for full compensation for persons exposed to defoliant spraying during the period from 1956 to 1984.

The government then turned around and announced a compensation package for those between 1966 and 1967.

When will the original promise and commitment by the Prime Minister be kept?

Senator LeBreton: The promise was kept. A $20,000 *ex gratia* payment was announced in September 2007, with an April 2009 deadline. An order-in-council provided Veterans Affairs Canada the authority to make payments until October 1, 2010. Recognizing there would be applicants unable to meet the deadline, a grace period was provided to process late applications. Many individuals received the payment after submitting late applications.

Again, honourable senators, I ask Senator Downe to provide the proper facts.

• (1420)

Senator Downe: Honourable senators, with all due respect, the minister was present when the Prime Minister made that announcement in 2006. The leader knows what the Prime Minister promised. It reads clearly, ". . . all those from 1956 to 1984. . . ." That is a quote from Prime Minister Harper. The compensation package was 1966-67. The compensation package the leader referred to was so narrow that they did not even spend all the money; $33 million was returned to the government. What did the government do with the money? We found out today from the Minister of Veterans Affairs, when he appeared before the Veterans Affairs Committee, that the money was returned to general revenue. It did not even go to veterans.

Honourable senators, I have another promise made by the government in respect of the Veterans Affairs Canada Funeral and Burial Program — again, more reassuring words but short of action. Currently, Canadian Forces members receive more than $13,000 for burial. Veterans receive up to $3,600. The minister has been working for months to raise that limit. Nothing has been done. When will the government implement this program?

Senator LeBreton: Concerning Agent Orange, the honourable senator knows well that criteria were established in an effort to capture all who were eligible. They were given ample time to make application. I believe it was under former Veterans Affairs Minister Greg Thompson that the commitment to victims of Agent Orange was met.

With regard to the Funeral and Burial Program, I am sure that Minister Blackburn made it clear today that the government knows the program requires improvement. All of the issues we have addressed over the last three or four months, have been addressed with one goal in mind: To honour our veterans and to look after our injured. The government will continue with this program. Veterans, their families and our servicemen and women appreciate the work of the government. We know that some areas have yet to be addressed.

ORDERS OF THE DAY

QUESTION OF PRIVILEGE

Hon. Grant Mitchell: Honourable senators, I rise on a question of privilege pursuant to rule 59(10). This important matter is obstructing my ability to exercise my privileges on behalf of the Canadian people in this Senate chamber and in my role as senator. I apologize to honourable senators for not giving three hours' notice. I had not been aware of this question of privilege within that three hours' notice deadline. That is why I am presenting it now, without that notice.

The question of privilege hinges upon a very significant and important discrepancy between the audiotapes that recorded the proceedings yesterday in the debate and leading up to the vote on Bill C-311, a very clear discrepancy of what is in the audio tape and what appears in the written Hansard. The two discrepancies, and there are two of them, turn the truth of what occurred, as reflected properly in the audiotape, on its head by the time it appeared in the written Hansard version of what occurred in this Senate chamber.

First, the audio version has Senator Comeau clearly calling for the question. The word "question" is absolutely distinct. Anyone who has listened to that tape, since we have discovered it, will tell you — and I am sure that you will find the same thing — clearly Senator Comeau calls "Question." On the other hand, that absolutely does not appear in the written version of Hansard.

Second, the written version of Hansard has Senator Comeau saying clearly, "no" to a subsequent call by the Speaker for the question.

Honourable senators, lo and behold, when you listen to the audiotape, Senator Comeau did not say that "no." What we have are two things that clearly had been replaced from what occurred in the audiotape to what occurred in the written Hansard record which earlier today, the Leader of the Government and Senator Comeau referred to as proof positive that what they say occurred, occurred. However, in fact, it did not. The truth is exactly the opposite from what can be derived from Hansard. It is exactly the opposite because whatever got into Hansard, for whatever reason, and for however it got in there, it did not come from the audiotape.

My concern is that, fundamental to our ability to represent and communicate with Canadians to discuss issues, is their ability, unfettered, to trust the record of this chamber. The ability to trust the record of this chamber has been grievously undermined by what occurred between audio and written versions.

Some Hon. Senators: Oh, oh.

Senator Mitchell: Honourable senators, that fundamentally erodes my privileges to conduct myself as effectively as possible as a senator. In fact, it erodes the privileges of all members of this Senate.

In light of these facts, I ask His Honour to find that there is indeed a prima facie case of breach of privilege. I would ask His Honour to compare the audiotape with the written version of Hansard that was ultimately released; and I would ask you to pursue with the Hansard administration, and others, this question: Was Hansard ever approached, in writing or verbally, by anybody on that side or elsewhere —

Some Hon. Senators: Oh, oh.

Senator Mitchell: — to change the blues to that which appeared in the blues?

Honourable senators, should His Honour —

Some Hon. Senators: Oh, oh!

Senator Mitchell: The louder they yell, the wronger they are.

Should His Honour find that there is a prima facie case of breach of privilege, I am prepared, more than happily, to move the appropriate motion to have the matter referred to our Standing Committee on Rules, Procedures and the Rights of Parliament, where we will have an opportunity to ascertain why the record of our debates was so error-filled.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: Now we will get the real version.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I never cease to be amazed by the depths of some of my colleagues on the other side. I say, "some of my colleagues," not all. I have some great friends on the other side and a huge amount of respect for them. I never ceased to be amazed by the depth of poor judgment and game play that some of my colleagues on the other side display. Obviously, the honourable senator knows he screwed up.

Senator Tkachuk: That is the nice version. He is extricating himself now.

Senator Comeau: Honourable senators, what happened yesterday can be checked on the audiotapes, and by all means we will have them checked. When the item, Bill C-311, was called, I said, "reporté" or "stand." Senator Grant Mitchell clearly said on the record, "I do not want it to stand." He did not deny saying that.

An Hon. Senator: He stood up.

Senator Comeau: As a matter of fact, he stood up — all five feet, five inches.

Some Hon. Senators: Oh, oh.

Senator Mercer: Speaking of small!

Senator Comeau: The Speaker said:

> If debate has concluded on this item, are honourable senators ready for the question?
>
> **Senator Comeau:** No.

Senator Mitchell: That is not on the tape.

Senator Comeau: We will not take the honourable senator's word for it because, obviously, there might be a certain bias on his side; as well as there might be a bias on this side. We will leave it to less biased people to listen to the tape. By all means, listen to the tape.

An Hon. Senator: Take responsibility.

Senator Comeau: "Take responsibility" is a good comment.

• (1430)

Senator Tkachuk: They never take responsibility, just like 13 years of climate change — no responsibility.

Senator Comeau: Check the tapes. As for the accusation that this side has somehow called the Hansard people asking them to change Hansard —

An Hon. Senator: Disgusting.

Senator Comeau: That is a good word — it is disgusting. No honourable senator in this chamber should be accused of calling Hansard to change the record in order to fit —

Senator Munson: To fit the tape?

Senator Comeau: As a matter of fact, let me refer to this item. I have been following the blogs on this issue. This is what Senator Mitchell, I assume, or others, have quoted a certain Kady O'Malley saying — some lady who writes blogs —

> It seems the Senate xscript from yesterday does *not* reflect the audio, in which Senator Comeau reportedly calls for the Q to be put."

I have listened to the tape. There is one individual who did say "Question." That individual, in my humble opinion, has an accent that is particular. It is an Acadian accent of my good friend, a friend of many decades, Senator Robichaud. Honourable senators may wish to check with Senator Robichaud — a good Acadian accent and clearly on the record. Honourable senators, do not get your Acadians mixed up. Senator Comeau sits on this side; Senator Robichaud sits on the other side.

We are good friends, by the way. Senator Robichaud and I were elected back in 1984 and we have remained friends throughout all these years. I am not accusing him in any way. He wanted the question to be put, just as Senator Mitchell said: "I do not want it to stand."

Senator Mitchell: I wanted to speak about it.

Senator Comeau: Look, hold on.

Senator LeBreton: Why did you not say so?

Senator Tkachuk: That is not what you said.

Senator Wallin: That is not what you said.

Senator Comeau: Like I said initially, the honourable senator made a mistake.

Senator Tkachuk: Just ask Iggy for forgiveness.

Senator Comeau: By forcing the vote, Senator Mitchell, what happened was that on this side we wanted the debate to continue. In fact, our senator who was the sponsor on this side —

Senator Cowan: One hundred and ninety-three days.

Senator Comeau: Democracy takes time, Senator Cowan, patience.

You made your point yesterday. You forced the question and we on our side did our duty to the Canadian public, which was not to pass a bad bill.

Some Hon. Senators: Hear, hear!

Senator Comeau: I was certainly not going to get up and pass a bad bill — a bill that would hurt Albertans and all of Canada, in fact, but the oil sands particularly would have been extremely damaged. There was no way I was voting for that bill; no way.

Senator Tkachuk: Neither was I.

Senator Comeau: You forced the vote.

I suggest to His Honour, I do not think it is worth doing but he may wish to, I do not think it is worth doing, but you may wish to, with your —

Senator Angus: This is an insult to our Hansard people.

Senator Comeau: — especially since Hansard has now been accused of lying on behalf of this side. I think that is a fairly serious accusation. There is no point of privilege against any senator in this chamber, but I think there is the question that Hansard is somehow, for the first time in history, being accused of being political. I have never in all my years —

Senator Angus: That is a disgrace.

Senator Comeau: — heard of Hansard being accused of being political. This is the first time, so I think it is well worth having a look at this.

Honourable senators, this is not a question of privilege. I believe it is a question of the senator's hurt feelings, and that I can understand. It is a question for which he did not quite calculate what would happen if he precipitated the question, and it happened. They can try to spin as much as they possibly want, and spin it to death if they wish, but it will not change what happened yesterday in which the honourable senator forced a bill to be voted upon at second reading; what a screw-up.

Some Hon. Senators: Hear, hear.

Hon. Terry M. Mercer: Honourable senators, as His Honour considers this question of privilege, and as he will hopefully examine the tapes and the transcript, et cetera, he might also try to determine for all of us here the qualifications of Senator Comeau in judging what accent he has been able to hear on a tape.

I have had the privilege of living beside and with Acadians all my life, and I have had the privilege of working and living with many francophones from across the country. My seatmate is Franco-Manitoban. I have known many Quebecers; I have known many people from France. It is extremely difficult to tell the difference in the accents.

Unless Senator Comeau has training that I am not aware of, I do not know how he could have the ability to judge that the person who spoke definitely had an Acadian accent — by the way, whether it was an Acadian accent and whether it was Senator Robichaud's and not Senator Comeau's. Maybe he can tell us whether there is a distinction between the accent of an Acadian person who is from New Brunswick and an Acadian person who is from Nova Scotia.

Hon. Anne C. Cools: Honourable senators, I have been listening to the debate with some interest. For the time being, I will not touch the question of rule 59(10). I will go directly to the subject matter.

I would like to begin by saying Your Honour — please; I am trying to get His Honour's attention.

Honourable senators, I would like to say, Your Honour, that there is no breach of privilege here of any kind.

Some Hon. Senators: Hear, hear.

Senator Cools: There is not a prima facie case before us. Senator Mitchell talks about trusting the record. I make it my business, honourable senators, whenever I give a speech or make an intervention, to always review the blues.

The term "blues" has disappeared. There was a time when a senator spoke in this place and the blues would appear on our desks in the chamber for us to check our remarks and make corrections — not alterations, but corrections. Any senator who reviews blues frequently will know that there are often mistakes and that the senator is presented with ample opportunity to make those corrections before the final printing at three o'clock in the morning or whenever it happens.

Honourable senators, the proper course of action to have been taken here was for Senator Mitchell to rise in his place and to inform the house and His Honour that he noticed a discrepancy between the audio record and the printed debates, to call the attention of the Speaker to this, and to ask the Speaker to review the two sets of records to see whether or not there is a discrepancy.

That course of action is the appropriate one to be taken. If there are genuine mistakes, then the senator has the opportunity to offer corrections to those on the floor after His Honour has looked into the matter. To simply make an assumption that someone has tampered with the record or that somehow or other there has been some improbity is unnecessary and unhelpful. Mistakes happen all the time.

• (1440)

Very clearly, there can be no breach of privilege here because the accusation has not been made on any definite basis which one can measure. We all know that it is a basic principle of common law that accusations of wrongdoing, misbehaviour, misconduct or whatever should always proceed on a very definite and defined basis. That is one of the characteristics of the common law and the penal system, that accusations proceed on a very definite basis — not guess work, not maybe, not speculatively, but very definite.

Your Honour, I propose that you should, first, set aside, even dismiss, any consideration about a prima facie case of breach of privilege. This is a slightly mistaken proceeding. I think what Senator Mitchell was intending to do is raise a point of order and to state clearly that he believes, from what he has seen, that there is a difference, a discrepancy and some errors, and that he would like to have them corrected. In the meantime, perhaps Your Honour could verify whether what Senator Mitchell believes to be the case is actually the case.

Your Honour, I think that you have a duty to look at the two records and to give us an account — not an opinion, but a factual account — of what actually transpired.

In any event, honourable senators, the accusations of partisan misbehaviour should be dismissed. They are uncalled for.

Your Honour, I believe that you should do your homework and perhaps at that time a determination can be made as to whether or not a case of privilege even exists. Based on what has been put before us, there is no such case at the present time.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, these are difficult questions and issues that we are faced with. What Senator Mitchell has brought to our attention is that there are inaccuracies that are put in the *Debates of the Senate* as compared to the audio transcript. I listened to the audio transcript, as did some of my colleagues, and there are two discrepancies. Feel free to listen to it yourselves, honourable senators.

The Debates indicate that Senator Comeau said "no," when that is not on the audio tape. The audio tape would have picked that up and it is not there.

There is also the question of Senator Comeau saying "Question," and that is not included. Those are the discrepancies.

If we feel that the *Debates of the Senate* do not reflect what we say and do as senators, it affects our capabilities and the fact that we can move forward and have confidence in the *Debates of the Senate*. Let us not forget that it is the *Debates of the Senate* that become historical records. They are posted on the web and that is what the public has access to in order to better verify what has gone on in this distinguished chamber. That is the question.

The Leader of the Government in the Senate has indicated that Senator Mitchell called the vote. He said he did not want the item to stand. That was the opportunity for honourable senators to stand and say, "I have not finished my notes; I intend to speak next week or in a few days; several senators are interested; we want to keep this issue alive and to go forward." But you did not do that, honourable senators. You chose to defeat that bill. There are discrepancies and that is why we are saying it is a breach of all of our privileges as senators.

Hon. Consiglio Di Nino: Honourable senators, I think Senator Cools hit the nail on the head more than any one of us. I was not disturbed by Senator Mitchell rising and making his statement on a question of privilege. What disturbed me is when he said that he expected, or that he thought that the records had been tampered with. That is an accusation of an inappropriate act.

Senator Wallin: Beyond repair.

Senator Di Nino: It is a shameful accusation made by a colleague who did not have the proof to say that. He did not say, "Colleagues, I think we may have a mistake made on the record; let us see if we can find it." He got up and he accused someone. I do not think he was accusing anyone on your side. He was either accusing someone on our side or someone at the table. That is unacceptable. That requires at least an apology.

Senator Tkachuk: That is exactly right!

Senator Cools: Honourable senators, I wonder if I could have a clarification. I believe that Senator Tardif said that she had listened to the tapes. I am wondering; was this information that was known to many senators other than Senator Mitchell before he raised it? I was under the impression that Senator Mitchell had raised this matter now because he had had no earlier opportunity.

I wonder if we could have some clarification as to how much time we are talking about here. Perhaps Senator Tardif could clarify for us when it was today that she listened to those tapes.

Senator Tardif: I would certainly accept to reply to that question. I usually read the *Debates of the Senate* every day. Today is a busy day. As the honourable senator knows, we have caucuses in the morning, there is an Alberta caucus and different things. By the time I had a chance to read the *Debates of the Senate*, it was about 11 o'clock this morning. I noticed at that time that the *Debates of the Senate* did not seem to conform with my memory of that particular event.

I then called some of our clerks and asked, "How would I get an audio transcript of what had occurred yesterday?" I was informed as to where I might find that information and, by the time I got to it and listened to it, it was around 11:30 in the morning.

Senator Comeau: I do want to get one last item on the record. I was listening to my colleague Senator Tardif speaking earlier about when she had heard Senator Comeau, myself, call the question. I think she said that was when she was listening to the tape.

I want at least for my side to know that I categorically deny any suggestion that I called for the question yesterday. That is on the record. I want to have it on the record. I categorically deny that I called for the question. In fact, it was picked up by the stenographers. When the Speaker asked whether we were ready for the question, I said "no," we were not ready for the question.

If in listening to the tape Senator Tardif thinks she heard Senator Comeau — and I give her the benefit of the doubt on it — calling for the question, that is dead wrong.

• (1450)

The Hon. the Speaker: Honourable senators, let me thank all honourable senators for their interventions on this matter. It is important that the matter was brought to the floor of the house and I am prepared to deal with it.

First and foremost, the official record of this house is the publication that is on our desks every day called the *Journals of the Senate*. That is the only official record. If you look at page 948 of the *Journals of the Senate* from November 16, 2010, it describes that Commons Public Bills were called; Orders No. 1 and 2 were called and were postponed until the next sitting. Then, the following appears:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Banks, for the second reading of Bill C-311, An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change.
>
> The question being put on the motion, it was negatived on the following vote:

Honourable senators, that is the official record.

I will come to the matter of Hansard that has been the subject of discussion.

As I listened to the debate around the matter, yesterday the proceedings were perfectly in order in the disposition of Bill C-311. There was lots of time; there was a delay of an hour for the vote; but the decision was made. Since a decision of the house was made, I feel it is my obligation to remind honourable senators that in Beauchesne, sixth edition, at citation 479:

> A Member may not speak against or reflect upon any determination of the House, unless intending to conclude with a motion for rescinding it.

Page 617 of the second edition of *House of Commons Procedure and Practice* states:

> Members may not speak against or reflect upon any decision of the House. This stems from the well-established rule which holds that a question, once put and carried in the affirmative or negative, cannot be questioned again. Such reflections are not in order because the Member is bound by a vote agreed to by a majority.

Comments criticizing or reflecting about a clear decision taken by the Senate shall not be made. I am not suggesting that such comments have been made in this discussion, but I wanted to put this as part of the background. What was done yesterday was dealt with in an orderly manner and we are not commenting on it.

Earlier in the day, questions were raised as to whether or not it is in order for a bill that is at second reading to be put to a vote, and whether there is some relationship to the number of members who would have spoken on a bill that is at second reading. Of course, as all honourable senators know, according to our rules, second reading is a debate on the principle of a bill. More clearly, if some honourable senators are opposed to the principle of the bill, they will not adopt the bill at second reading.

That has occurred in the past and that was the question that was put forward. There have been several cases of such bills. One is Bill 86, An Act to amend The Farmers' Creditors Arrangement Act, in 1934. The motion for second reading passed in the negative. Another is An Act to amend the Lord's Day Act, which was put for second reading and also passed in the negative. The answer to that question is that it has occurred.

As to the question around the timeliness of raising a question of privilege and whether or not rule 59(10) was available, I think, in light of what Senator Tardif has said, it appears that this rule might have been available. More typically, because the vote was 24 hours ago, the more normal proceeding of using a written notice would have been used.

I am unable to find a prima facie question of privilege in this matter. However, I think the wise counsel from Senator Cools is important. I will undertake to make inquiries because of the integrity of our reporting system and the professionalism and tremendous work that all honourable senators recognize is done by those who work so diligently in producing the Debates, while providing, as Senator Cools pointed out, opportunities for errors of spellings, et cetera, to be corrected through examination of the blues. I know there is no intent on any honourable senator's part to cast aspersions on the excellent work that our reporters do.

Honourable senators, I will conclude by saying that all honourable senators understand that there are technical limitations. The microphones can pick up only one voice at a time, when they are on, so what is recorded on the tape is what is picked from the microphones that are open at the time and does not cover absolutely everything said at the time.

That is my ruling. I will undertake to report on the administrative side of the issue.

ELECTRICITY AND GAS INSPECTION ACT WEIGHTS AND MEASURES ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Greene, seconded by the Honourable Senator MacDonald, for the second reading of Bill C-14, An Act to amend the Electricity and Gas Inspection Act and the Weights and Measures Act.

Hon. Mac Harb: Honourable senators, it gives me great pleasure to rise to speak on Bill C-14, An Act to amend the Electricity and Gas Inspection Act and the Weights and Measures Act.

Having said that, the government in its wisdom has decided to give this legislation another title: the Fairness at the Pumps Act. The issue of inaccurate pumps or scales certainly deserves attention. Canadians should get what they pay for. It is worth a closer look to see if this bill actually addresses its intent.

Normally, when legislation is introduced to deal with a matter, there are a number of measures against which we will test the bill. The very first one is whether or not a bill is necessary to deal with the specific problem that the government is talking about, in this case, the accuracy and the fairness at the pumps.

Measurement Canada and Industry Canada, as well as the minister and his secretary of state, appeared before the Industry Committee on a number of occasions to answer questions about whether or not the pumps are actually accurate. It was stated that, by all measures, 94 per cent of gas pumps tested by Measurement Canada over the past 10 years were accurate. Only 6 per cent of those pumps were not accurate. In fact, 2 per cent were inaccurate in favour of the consumer, while the balance were in favour of the retailer.

If we take all those figures together, the compliance rate would be 97 per cent accuracy in terms of the gas pumps.

At committee, members of Parliament and representatives from the industry were concerned about the unfairness of the short title of this bill and for good reason. Despite the recommendation to change the title of the bill, the government stuck to its unfortunate and misleading marketing strategy, trying to point the finger at gas retailers in this country, and indicating that the problem is at the pumps in terms of the system that is being used.

• (1500)

Having said that, when Measurement Canada appeared before the committee and they were asked about the systems that are used in other types of industries, it became quite clear that this bill could be called the "Fairness at the Quarry Act." The quarry and sandpit industries had only about 50 per cent compliance; in fact, they had a 47.42 per cent accuracy rate. Why not that? Or why would the government have not used, for example, the electricity issue as a basis to name the act the "Electrical Fairness Act," when Measurement Canada indicated that the compliance rate in that industry is only 74.19 per cent. Independent gas retailers that have a compliance rate of 94 per cent, which is one of the highest of all sectors, feel that they are being targeted and accused of cheating Canadians.

Honourable senators, a closer look at the data indicates that losses due to meters are actually about $8 million annually, although some have put out figure of $20 million. When officials from Industry Canada and Measurement Canada appeared before the committee, they indicated that was not really the case. In fact, it was a lot less.

Witnesses appeared before the committee, in particular, Jane Savage of the Canadian Independent Petroleum Marketers Association, who said:

> I have a member who calls this a solution looking for a problem.

She went on to say:

> . . .The point is that the number of prosecutions is zero or very small, so there is a disconnect between the intensity of the language around this bill, including its name, and the reality.

The government went ahead and issued their press releases. Honourable senators, listen to some of the headlines. From *The Chronicle-Herald*, Halifax: "Feds tackle gas gougers," from the *Vancouver Sun*, "Proposed law aims to stop rip-offs at the gas pumps;" and, perhaps most telling of all, from the *Edmonton Journal*, "Ottawa vows stiff fines for hikes at pumps."

Honourable senators, as you can see, the unfairness is not really in terms of the pump itself. The unfairness is elsewhere. Nonetheless, the government has decided what they want to do is proceed with the bill, and that is the title they want to give it, despite the fact that the inaccuracies in other industries is not the same. The intent of it is really political partisanship rather than responding to a public need.

The first test for the legislation, if we are talking about fairness at the pump, is does this legislation deal with fairness at the pump? No, it does not. So it failed.

The second test is whether the bill responds to the public's needs. The government would have us believe that it does, honourable senators. However, if you go into any type of community you will find people complaining about the high price of gasoline. People still complain about the lack of competition in the gasoline industry in Canada. Of course, in some communities they will complain that they are paying for more gas than they are getting at the pump, but that is due to the ambient temperature compensation provisions that were endorsed by the government.

The bill, honourable senators, misleads Canadians into thinking that long-standing problems of high prices in the retail gas sector will be addressed as a result of it. The truth is that it will not.

The proposed legislation does not address a core issue, which is a flawed pump testing system that can be affected by cold temperatures. What is not in the bill — and, frankly, it should be addressed — is the protection of consumers from high gas prices, and the encouragement of more competition at the retail sector.

A third test is whether or not this bill is effective in terms of fairness at the pump. No, it is not, because the title itself implies that the amendments are only concerned with gas measurement when the new legislation covers eight sectors, including retail petroleum, downstream or wholesale petroleum, dairy, retail food, fishing, logging, grain and field crops and mining.

Mandatory inspections, honourable senators, generally are practices used by many countries around the world in France, Germany, and the United States. In Canada, we already have, for electricity and natural gas, meters that fall under the Electricity and Gas Inspection Act, and they were inspected.

[*Translation*]

It is in their own interest to test their pumps, and they do. Gasoline retailing is not the only sector that worries about accuracy.

Krista Pawley, spokeswoman for the Canadian Council of Grocery Distributors, says the accuracy of scales is taken seriously by retailers because they depend on consumer confidence. Measurement Canada statistics show that inaccuracies occur one in ten times, but three times out of four, the consumer comes out ahead. Obviously, there is room for improvement in this sector, but it is not a crisis pushing Canadians to call for change.

> Canadians' confidence in the accuracy of measurement-based transactions is vitally important to our economy, especially at a time when family budgets are spread thin. . .

Minister of State Denis Lebel said that when announcing his bill.

When Minister Lebel appeared before the committee, he was right about one thing: family budgets are spread thin these days. This trend will continue because of factors such as inaccurate points of reference for automatically correcting volume based on temperature, constantly rising gas prices and the lack of real competition in the retail gas sector.

[*English*]

Another test for the "fairness at the pump," which the government is calling it, is whether it is fair to the consumer and to retailers. Frankly, it makes a minimal difference. Why? Because 300 additional inspectors would have to be hired to do the increased inspections, at a cost of $50 and $200 per pump? Retailers will surely be picking up the tab. If retailers take on these costs, you can be sure that they will transfer them on to the consumer. These retailers are already struggling in small markets, with low margins and typically older equipment. We have heard that these inspections will cost anywhere from, as I mentioned, $50 to $200 per visit. One could ask: How will they be protected? The government assured the committee and the other house that market forces will keep the costs of these inspection services by an accredited service provider down. However, if you look at retailers, they do not have that luxury. There will not be competition among inspectors in these sectors. In fact, they will be lucky to have access to any local inspectors, and they may end up paying extra to bring inspectors from distant urban centres. How fair is it that increased inspections could cost Canadians more as retailers pass along extra costs to consumers?

• (1510)

Can it be applied? Yes, of course, it can be applied. It passes the test. Mandatory inspection frequencies are used by other countries.

[*Translation*]

When they appeared before the committee, most of the industry stakeholders and consumer groups who helped develop Industry Canada's policy on trade measurements agreed with the frequency of mandatory inspections.

However, some of them expressed concerns about the timing of inspections because wear on equipment varies depending on the number of transactions at a retailer. In other words, a gas retailer in a rural area would experience less wear on equipment than a retailer in an urban area.

What benefit is there to privatizing inspections? For many years Measurement Canada has employed authorized service providers to carry out inspections in the electricity sector under the Electricity and Gas Inspection Act.

[*English*]

Member of Parliament Mike Lake indicated that at the committee.

[*Translation*]

As I mentioned earlier, the electricity sector is not exactly a shining example in terms of compliance. Measurement Canada reports that the compliance rate in the electricity sector is 74 per cent, even though the inspections are carried out by authorized service providers.

[*English*]

I would like of guarantee that resources be made available to Measurement Canada to ensure that the laws and regulations of this bill are enforced. When Measurement Canada appeared before the committee, one of the things they made known was that they do need more resources.

Another issue is whether enough certified inspectors will be available in small markets. Some of the witnesses alluded that some of the inspectors who provide the inspection services also provide other services to the gas stations, to the retailers. A member of the committee raised an interesting question at the time. This question, I hope, will be raised when the witnesses appear before the committee on the Senate side.

The question was whether there is a potential for a conflict of interest when a private-sector inspector is hired to certify whether a pump is meeting the requirement while this same inspector is providing other services to the gas station. Is there a potential for conflict of interest there? Measurement Canada said they would take every measure possible to minimize or ensure that would not be the case.

Another important point to address is whether there is an appeal mechanism for a person — a gas retailer or an individual — who is charged. The fact is there is no appeal mechanism. The fairness at the pump legislation supposedly does not provide that mechanism, because the last resort for this individual is the minister; there is no other recourse. It would be important to have an appropriate and realistic dispute resolution process with an appeal beyond the minister so that it does not stop there.

Another test is the compliance measures and penalties — are they enforceable? The truth is yes, they are enforceable in this bill. It passes the test. The bill proposes to strengthen consumer protection by increasing the court-imposed fines under the Electricity and Gas Inspection Act and the Weights and Measures Act from $1,000 to $10,000 for minor offences, and from $5,000 up to $25,000 for major offences. The amendments also introduce a new fine of up to $50,000 for repeat offences.

Currently, prosecution is the only means available to levy fines for non-compliance. In fairness to Measurement Canada, they have stated that it is extremely difficult. The committee heard that only one prosecution was successful over the past few years.

The use of administrative monetary penalties, which was introduced in this bill, is no doubt better than other measures that were in the former law, which were the prosecutions. This gives the authority more flexibility to suit the penalty to the infraction. However, are the fines at a rate that will actually promote compliance with the act? The Consumers Council of Canada raised the point about whether they are in line.

Section 29.28 of the bill allows ministerial discretion to make public offences under the act, which is tricky because one will ask the question whether this will work for or against the deterrent quality of the act. Will gas retailers be subject to a witch hunt — have their names published, et cetera — when they are doing their best to comply with rules, notwithstanding that due diligence is there?

Another concern that was raised was whether a retailer could end up on the list by mistake. If that happened after we published those names, we know that could ruin this particular business completely.

One of the tests is the test of the Charter. Does this bill meet the Charter test? Something that is interesting, and that I hope the committee will have a chance to look at, is the new power that was given to the inspector to enter the business or the home of an entrepreneur.

In the previous act, there are certain measures that are put in place and certain conditions under which an inspector can enter a business in order to specifically search for whether or not compliance with the act is taking place. However, I found it intriguing that the new amendment, 17 (1), clearly states:

> An inspector who has reasonable grounds to believe that an object to which this Act applies is located in or on a place, including a vehicle, or that an activity regulated by this Act is conducted in a place, including a vehicle, may, for the purpose of verifying compliance with this Act,
>
> (*a*) enter the place;
>
> (*b*) examine the place or anything found in or on the place;
>
> (*c*) seize and detain anything in or on the place;
>
> (*d*) use any means of communication in the place or cause it to be used;
>
> (*e*) use any computer system in the place, or cause it to be used, to examine data contained in or available to it;
>
> (*f*) prepare a document, or cause one to be prepared, based on the data;
>
> (*g*) use any copying equipment in the place, or cause it to be used;
>
> (*h*) direct any person to put anything in or on the place into operation or to cease operating it; and
>
> (*i*) prohibit or limit access to all or part of the place.

That is massive. That was not in the previous act. That is an extension of the power of the inspector.

I hope that when the committee has a chance to hear from witnesses, that a number of serious questions are raised in order to ensure that we are not going too far in terms of the delegation of authority to an inspector. I hope we hear from witness on this subject in particular because, as I pointed out earlier, the government now wants to go out into the private sector and license inspectors in the private sector.

Now we have two sets of inspectors, both with similar authorities. One inspector is hired by the government and works for the government; another inspector is on a contract in order to go out and do due diligence. If that particular private-sector contractor is in a constituency or community somewhere where you have a number of clientele, and if the government's intention is to encourage competition, if one of those inspectors ends up losing a contract and somehow the wheels turn, we will have an awkward situation. As I mentioned earlier, one of our colleagues on the committee raised the potential for conflict, which is an important point to look at.

• (1520)

Finally, honourable senators, there is the question of whether or not the cost analysis for this bill was done in terms of "fairness at the pump," as the government calls it. It is important that it be done. An additional 300 inspectors will have to be certified. The cost is anywhere from $50 to $200 per pump. A lot of inspections are to be conducted across the country.

The bill has been in the works for a long time. The bureaucracy has done a marvellous job in reaching out to stakeholders and did a lot of consultation. They brought the stakeholders together, consulted with them, and raised the issue of whether or not they support the idea of regular inspection. They almost got unanimity in that, yes, we need to have regular inspection and that regular inspection has to be mandated.

There was a time when those inspections were not mandated; they were done on a voluntary basis. There was a time when the government asked the industry to regulate itself and to take care of its own problems.

Statistics showed that was not happening and that is why Industry Canada, in 2004, embarked on this type of consultation to reach out to these stakeholders, to bring them together and to set up a mechanism to ensure that there is mandatory testing.

The amendments to the Electricity and Gas Inspection Act and the Weights and Measures Act are good.

However, the government has decided to amend this bill by adding a title that does not belong there and that is unfortunate and misleading. It does not have much to do with these amendments to those two acts. In fact, it is completely outside of them. The minister went on CTV and all across the country, and there were many press releases, talking about fairness at the pump, as if this bill really deals with that. In essence, however, this bill deals with eight different sectors in two acts, and this is a small parcel of it.

We support the principle of the bill. We would like to see some hearings conducted by the committee with witnesses and the due diligence to be done. We hope that we will be able to give the bill the best possible review and bring it back to this house for a discussion and a decision.

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

Hon. Tommy Banks: Will Senator Harb accept a question?

Senator Harb: Yes, I will.

Senator Banks: I thank the honourable senator for his excellent recitation of concerns about this bill, as well as its good parts. I cannot help but note that many of the things the honourable senator referred to about search and seizure, and the appointment of inspectors and the authorities given to them and to the minister under this bill are similar to several acts of Parliament that have been before us. Those pieces of legislation have been passed and they went further than their predecessors did with respect to those powers.

In respect of this bill in particular, I note that some of the administrative penalties under it, which can be assessed by the minister, are in the $10,000 to $20,000 range in some cases. Proposed subsection 22.23 states the following:

> A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

I divine from that, by simple arithmetic, that if I were a dealer or supplier who contravened the act and was, therefore, susceptible to a fine of $10,000, and I committed the offence for ten consecutive days, in the aggregate my fine would be $100,000. If the fine was $20,000 and I continued it for ten days, the fine would be $200,000. Am I reading that correctly?

Senator Harb: That would be a good question to ask at the committee. My understanding is that they have set out a maximum penalty of $50,000 for repeat offenders. It remains to be seen, in the case of a major offence, whether or not every time one commits an offence, one would pay $50,000 and, if one committed it five times, it would be $250,000. That interesting question should be raised at the committee.

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

(On motion of Senator Tardif, debate adjourned.)

SAFE DRINKING WATER FOR FIRST NATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Brazeau, seconded by the Honourable Senator Lang, for the second reading of Bill S-11, An Act respecting the safety of drinking water on first nation lands.

Hon. Lillian Eva Dyck: Honourable senators, I would like to make some comments about Bill S-11, but the adjournment should remain in the name of Senator Mitchell.

Honourable senators, I rise today to speak to Bill S-11, An Act respecting the safety of drinking water on First Nation lands. We have heard much debate on the topic of the dire situation of safe drinking water on reserves across Canada. The statistics are staggering and the situation on reserves has no place in an advanced and modern country such as Canada. All of us in this chamber must surely agree that something needs to be done to rectify this situation, but action for action's sake rarely produces effective change.

Significant portions of Bill S-11, which raise deep and great concern, do not really do much to meet the objective of safe and clean drinking water on reserves. As this chamber continues to study this bill, I would like to point out four areas of significant concern for honourable senators to contemplate.

The first problem with Bill S-11 is that the government did not fulfill its responsibility to consult and accommodate First Nations in the drafting of this legislation. The federal government is obliged to consult and accommodate Aboriginal peoples when their potential or existing rights may be infringed by impending legislative or regulatory schemes. This duty to consult and accommodate was upheld in a 1990 Supreme Court of Canada decision in *R. v. Sparrow*.

While the Department of Indian Affairs and Northern Development did hold engagement sessions and impact assessments, those were not nearly sufficient to fulfill the government's obligations to consult and accommodate First Nations. INAC contracted the Institute On Governance to conduct the consultation and engagement sessions. From February to March 2009, 13 engagement sessions in each province and territory and an additional ten consultation sessions for First Nation organizations were undertaken across the country on the desirability of federal drinking water and waste water legislation pertaining to federal legislation that would call for the incorporation by reference of provincial or territorial regulations relating to potable water and waste water.

However, it did not involve a consultation process on Bill S-11 as it stands here before us now.

The summary report by the Institute On Governance stated that the Crown did not satisfy its duty to consult and accommodate First Nations. The report noted that: First, the Crown failed to engage in any meaningful consultation; second, the Crown breached its duty to accommodate First Nations by making a unilateral decision to proceed with the engagement sessions and impact assessments solely on incorporation by reference; third, the Crown did not genuinely listen to concerns; fourth, the Crown failed to provide adequate time and resources to enable meaningful consultation; and, fifth, the Crown was unwilling to engage in discussion of any inherent, treaty and Aboriginal rights-related issues to proposed changes.

• (1530)

Honourable senators, it could not be clearer that the Government of Canada has not lived up to its responsibility to engage in meaningful consultation with First Nations in regard to Bill S-11. The government's own summary report that it commissioned, facilitated through the Institute of Governance, clearly documents this issue.

Honourable senators, the second area of concern with Bill S-11 arises from the imposition of provincial laws on reserves through incorporation by reference. Subclause 4(3) in Bill S-11 states that "The regulations may incorporate by reference laws of a province. . . ."

Generally speaking, under subsection 91(24) of the Constitution Act, 1867, the federal government has exclusive jurisdiction to make laws in relation to "Indians, and Lands reserved for the Indians." The Expert Panel on Safe Drinking Water for First Nations noted the great uncertainty that this approach encounters. The report summarizes that this approach is "fraught with such uncertainty that it is neither a viable nor effective option," yet it appears in the bill before us.

The uncertainty rests in the legal basis of laws of incorporation to First Nations.

Hon. Tommy Banks: Your Honour, with all due respect, some honourable senators, who I am sure are discussing important things, are speaking and I cannot hear the honourable senator who has the floor.

Perhaps if there are important matters to be discussed amongst honourable senators, they could discuss them in a lower voice or outside the chamber.

The Hon. the Speaker *pro tempore***:** Senator Banks makes a good point, and I ask honourable senators to observe the rules of decorum.

Senator Dyck: The Supreme Court in subsequent cases has carved out how and when incorporation can be used and applied to First Nations people. In *Dick v. R*, the distinction between two categories of provincial laws that could apply to First Nations were, one, provincial laws that can be applied to Indians without "touching their Indianness;" and two, provincial laws applied through section 88 of the Indian Act.

In the first case, the expert panel concluded that there is little legal basis for the application of provincial laws to First Nations drinking water because water and waste water management are under the jurisdiction of the band council. Section 81(1) of the Indian Act allows band councils to make bylaws for:

> . . . the construction and maintenance of watercourses . . . the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;

Through an application under section 88, the panel again states that because section 88 applies only to "Indians," it does not extend to lands reserved for Indians, it would be hard to enforce a regulatory regime on water through incorporation of provincial or territorial laws because water is a natural resource tied to the lands reserved for Indians, not Indians themselves.

While the Supreme Court has not heard on this matter, lower courts have consistently upheld that principle.

With a legal basis for incorporation for drinking water regulations on reserve, which is shaky at best, why has the government included it in their regulatory scheme?

However, the more important and fundamental issue is this: Why has the federal government not recognized the rights of First Nations to initiate and enact their own regulations, policies or First Nations laws with respect to safe drinking water on reserves?

Honourable senators, the third area of concern with Bill S-11 is the systematic chipping away of section 35 treaty and Aboriginal rights. Three clauses in Bill S-11 attempt to limit greatly and even to void these rights. The first clause of concern is paragraph 4(1)(*r*) that states that regulations may:

> provide for the relationship between the regulations and aboriginal and treaty rights referred to in section 35 of the Constitution Act, 1982, including the extent to which the regulations may abrogate or derogate from those aboriginal and treaty rights;

Here there exists a possibility that regulations made under this act could actually "abrogate or derogate" from constitutionally protected Aboriginal or treaty rights. Furthermore, the bill itself does not contain a non-derogation clause, even in the weakest of forms. One does not even appear in the preamble to the bill.

The second clause of concern regarding section 35 rights is subclause 6(1), which allows regulations made under Bill S-11 to prevail over any laws or bylaws made by a First Nation in the event of a conflict or inconsistency between them. I reiterate that under the Indian Act, band councils have the power to enact bylaws that regulate water systems on reserve.

Similarly, the third clause of concern deals with a threat to treaty rights. Subclause 6(2) allows Bill S-11 and regulations made under the act to:

> . . . prevail over the land claims agreement or self-government agreement to which the aboriginal body is a party, and over any Act of Parliament giving effect to it, in the event of a conflict or inconsistency. . . .

This clause has the ability to make null and void significant portions of previous treaties and agreements that the Government of Canada has with First Nations.

Honourable senators, this clause is of great concern. Bill S-11 can potentially allow these federal regulations to override Aboriginal and treaty rights that are constitutionally protected.

Finally, honourable senators, I turn to the fourth problem with Bill S-11. It does not provide the resources needed for the provision of safe drinking water on reserves. An explicit recommendation made in the expert panel report was that the resource gap must be closed in terms of water and waste water management on reserve compared to the provinces and territories.

Further, the report stated that it is "not credible to go forward with any regulatory regime without adequate capacity to satisfy the regulatory requirements." Bill S-11 does nothing to provide First Nations with the resources and capacity to modernize water systems on reserves. Instead, it outlines powers and the mechanism of regulations.

First Nations and First Nation organizations across Canada have all agreed that this problem is the fundamental flaw in Bill S-11. It is unfair and irresponsible first, to create these regulations and then, provide nothing in terms of resources to meet them. For the record, I have met with vice chiefs Watson and Lerat from the Federation of Saskatchewan Indian Nations and they see serious flaws in Bill S-11 and think it should be withdrawn or stopped.

Another question raised by the Institute of Governance report, and a concern among many First Nations, is to what extent First Nations now become liable for regulatory non-compliance and resulting implications. Bill S-11 is unclear on these issues.

Honourable senators, members of the Standing Senate Committee on Aboriginal Peoples are familiar with the problem of safe drinking water on First Nations reserves. In 2007, we released a report on this very issue. The report concluded with two clear recommendations. The first was that Indian and Northern Affairs Canada conduct a complete review of water systems on reserves and dedicate the necessary funds to provide for the identified resource needs.

As Dr. Harry Swain, the chair of the expert panel, stated in the report of the Standing Senate Committee on Aboriginal Peoples in 2007, *Safe Drinking Water for First Nations*:

> . . . if we want to see the completion of what has been a fairly considerable national effort to get good water on Indian reserves, then we should worry about the basic resources and then about a regulatory regime.

• (1540)

The recommendation from our report in 2007 also laid out that a plan for allocation of money should be completed by June 2008. The second recommendation was that the department:

> . . . also undertake a comprehensive consultation process with First Nation communities and organizations regarding legislative options . . . with a view to collaboratively developing such legislation.

It is quite clear that neither of these recommendations is met in Bill S-11. Honourable senators, it is our duty to ensure that the Government of Canada lives up to its obligations to Aboriginal peoples in Canada and to the Constitution. There are significant portions of Bill S-11 that threaten both obligations.

According to a recent news article, the Minister of Indian Affairs and Northern Development stated that he will allow First Nations to help to rewrite Bill S-11. What exactly does that mean? Will the government withdraw Bill S-11 from the Senate in order to live up to Minister Duncan's promise? Honourable senators, I hope that that is the case and that Minister Duncan asks that this bill be withdrawn so that First Nations can sit at the table as equal partners in the drafting of legislation respecting the safety of drinking water on First Nations land.

Honourable senators, I will conclude by reading a quote from the fall 2010 FLOW newsletter, which states the case clearly and succinctly with regard to Bill S-11:

> To enact legislation which appears to contemplate and even condone impacts on First Nation's rights without first accommodating the known concerns of First Nations is in direct violation of the government's fiduciary duties and responsibilities, not to mention the statements of the Supreme Court of Canada regarding the protections afforded First Nations rights by virtue of Section 35(1) of the Canadian Constitution. . . . We are legally and morally bound to ensure First Nations have access to safe drinking water without compromising their inherent and constitutional rights.

The Hon. the Speaker *pro tempore***:** The Honourable Senator Dyck's time has expired. Is she asking for more time to accept a question from Senator St. Germain?

Senator Dyck: Yes.

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

Hon. Gerry St. Germain: Honourable senators, my question is to Senator Dyck. I compliment the senator on her excellent observations with regard to this proposed legislation. She makes reference to the statement made by the minister responsible for this file.

I ask all honourable senators to consider the urgency of this matter because it is hoped that this will lead immediately to bringing together everyone responsible for the safe drinking water of all Canadians, in particular Aboriginals in this case. The sooner honourable senators refer this bill to committee for study, the better it will be.

Minister has indicated that he is open and understands that changes to the bill are required. Would the honourable senator agree that the sooner this bill is referred to committee, the better?

Senator Dyck: I thank the honourable senator for his comments and question. I am not certain that is the best course of action to take. I am still relatively naive when it comes to Senate procedure.

My preferred option is that the bill be withdrawn, which I say with all due respect. The minister must have had second thoughts because he is now saying to the press that there are serious problems with the bill. All the indications from the major First Nation organizations, such as the Assembly of First Nations, the Assembly of Manitoba Chiefs, the Chiefs of Ontario, the Federation of Saskatchewan Indian Nations, et cetera, have said that the bill is so seriously flawed that they are unconvinced that it can be amended to make it acceptable.

The preferred option among First Nations is to draft a bill collaboratively, as was done with specific claims.

Senator St. Germain: I hear what the honourable senator is saying, and I am respectful of her views that the bill be withdrawn. However, there is nothing to prevent this action from taking place in committee. This issue is so important for such a basic requirement for Aboriginal peoples that I do not think we should procrastinate. I am not accusing procrastination. I realize that those who question it from the other side are doing so in a manner that is in the best interests of all. However, in the same breath, we cannot stand still. We have to move forward.

I urge the other side to consider that thought process and at least refer the bill to committee. If a rewrite is needed, it could conceivably happen at that level. Does the honourable senator agree?

Senator Dyck: I agree that drinking water is an important question. Part of the difficulty is: How big and serious a question is it? When the Department of Indian And Northern Affairs appeared before the committee in April this year, they told us that in 2006 there were 193 deficient water systems across Canada; that as of April 2010, they had reduced it to 49; and that only three communities were high risk. Obviously, we do not want to say that we will let those three communities suffer. The whole issue is how big the problem actually is. INAC will not be finished its assessment until this month; so I am not sure if they have finished their assessment of the drinking water situation across Canada. Although we want to act, we do not have all the facts so that we can look at it objectively and know how big the problem is.

Certainly, the AFN and the FSIN are saying that drinking water is a problem but wonder where they will find the resources to fix it. Why should we have regulations? Why should the First Nations organizations be liable if there is a problem with the water because they are not fulfilling the regulations because they do not have the money to do so? The money should come first.

(On motion of Senator Dyck, for Senator Mitchell, debate adjourned.)

• (1550)

CONTROLLED DRUGS AND SUBSTANCES ACT

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

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-10, An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts, with an amendment), presented in the Senate on November 4, 2010.

Hon. John D. Wallace moved the adoption of the report.

He said: Honourable senators, as you may recall, Senator Fraser, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented this eleventh report to the chamber on November 4, 2010. Senator Fraser is not able to be in the chamber today and has requested that I speak to the report on her behalf. I must say, I am pleased to do so.

Honourable senators, I thought it might be helpful to begin by briefly providing background information that will perhaps refresh your memories with regard to the focus and intent of Bill S-10. As you will recall, Bill S-10 proposes to amend the Controlled Drugs and Substances Act and also make related consequential amendments to other acts.

The bill's purpose and objectives are directed towards addressing a problem that is undoubtedly of concern to all Canadians, and that is the problem of illicit drug crimes in this country, particularly those crimes that relate to drug trafficking, production, importation and exportation of illicit drugs. In this regard, Bill S-10 has been described as being a fundamental part of Canada's comprehensive National Anti-Drug Strategy that was announced by the government in 2007, which strategy seeks to address issues involved with illicit drug crime by means of a three-pronged approach that focuses on, number one, drug law enforcement, number two, drug prevention and, number three, drug treatment.

A very significant aspect of Bill S-10 is that it proposes to introduce a number of mandatory minimum penalties that are targeted towards those who commit serious drug offences. When I say "serious drug offences" in the context of production and trafficking of illicit drugs, I am referring to circumstances where certain aggravating factors are present in the commission of a drug crime; for example, when organized crime is involved, when the activity involves the use of violence or weapons, involves repeat offenders or is in relation to youth. Those are the serious drug crimes that Bill S-10 is seeking to address.

Bill S-10 was carefully examined by the Legal and Constitutional Committee and in so doing we heard from a number of witnesses and we also incorporated by reference all of the evidence and testimony that was presented to our committee in respect of the predecessor bill, Bill C-15. Consequently, Bill S-10, subject to one amendment, which I will speak to in a moment, was carried on division by members of the committee. I will take a moment to describe for you the particular amendment that has been proposed by the Legal and Constitutional Committee.

Section 5 of Bill S-10 includes the addition of a new provision, section 8.1(1). I will paraphrase a bit in referring to this. It essentially says that within two years of the section coming into force, a comprehensive review of the operations and provisions of the act, including a cost benefit analysis of mandatory minimum sentences, shall be undertaken by such committee of the House of Commons or both houses of Parliament, as may be designated. Two aspects of that I would draw to your attention: First, that

this comprehensive review take place two years later and involve, according to the bill, only committees of the House of Commons or of both houses of Parliament.

We heard from a number of witnesses — and the issue was raised when we did clause-by-clause analysis of the bill by Senator Baker, and he did so effectively — who pointed out that two years is not sufficient to allow this comprehensive review of the act to take place. It was felt that five years would be more appropriate. The amendment that our committee has proposed and is part of the eleventh report would increase the two-year review period to five years.

Second, and certainly as Senator Baker has related, it has been the practice of our Parliament to have both committees of the Senate and the House of Commons on equal footing on these matters. The amendment that is part of the eleventh report is that this comprehensive review could be undertaken by a committee of the Senate, the House of Commons or both houses of Parliament.

That is the extent of the amendment that our committee is proposing. Other than that, as I say, on division, Bill S-10 was carried. Once again, I want to thank Senator Baker for his useful and constructive input into the development of the amendment within our committee.

Honourable senators, I will conclude by saying I respectfully ask for your support in the adoption of the eleventh report.

(On motion of Senator Tardif, debate adjourned.)

STUDY ON CURRENT STATE AND FUTURE OF ENERGY SECTOR

EIGHTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the consideration of the eighth report (interim) of the Standing Senate Committee on Energy, the Environment and Natural Resources entitled: *Facts Do Not Justify Banning Canada's Current Offshore Drilling Operations: A Senate Review In the Wake of BP's Deepwater Horizon Incident*, deposited with the Clerk of the Senate on August 18, 2010.

Hon. Daniel Lang: Honourable senators, time has passed us by, and I would like to take some time to address the issue on a day following, so I move the adjournment in my name.

(On motion of Senator Lang, debate adjourned.)

IMPACT OF DEMENTIA ON SOCIETY

INQUIRY—DEBATE SUSPENDED

On the Order:

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

Hon. Terry M. Mercer: Honourable senators, this is a very important topic covered here in calling the attention of the Senate to the impact of dementia on Canadian society.

I do not think there is a person in this chamber who has not been affected by this or knows someone who has been affected by it. There is nothing sadder for any of us than to observe a loved one who is suffering from dementia, and the impact it has on families; people going to hospitals or to nursing homes or even to their own homes, visiting their loved ones, their mothers, their fathers, husbands or wives, and not being recognized by those individuals. It is so difficult for all of us to deal with that, as it happens to many of us. It is important that we understand the major impact this has on Canadian society.

I do want to give a much longer speech on this, honourable senators —

The Hon. the Speaker *pro tempore***:** I regret to advise the honourable senator that it being 4 p.m., pursuant to the order adopted by the Senate on April 15, 2010, I declare the Senate continued until Thursday, November 18, 2010, at 1:30 p.m., the Senate so decreeing.

(The Senate adjourned until Thursday, November 18, 2010, at 1:30 p.m.)

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