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(HANSARD)

Monday, December 8, 2014

The Honourable PIERRE CLAUDE NOLIN
Speaker

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

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THE SENATE

Monday, December 8, 2014

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

ROUTINE PROCEEDINGS

THE SENATE

NOTICE OF MOTION TO PHOTOGRAPH AND VIDEOTAPE ROYAL ASSENT CEREMONY

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

> That photographers and camera operators be authorized in the Senate Chamber to photograph and videotape the next Royal Assent ceremony, with the least possible disruption of the proceedings.

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2014

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-47, An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect.

(Bill read first time.)

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

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

[*Translation*]

QUESTION PERIOD

INTERNATIONAL TRADE

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT— TRADE DISPUTE RESOLUTION MECHANISMS

Hon. Céline Hervieux-Payette: Leader, last week I asked a question about the protests, petitions and consultations in Europe in opposition to the investor-state dispute settlement mechanism in the Canada-European Union Comprehensive Economic and Trade Agreement.

You replied that the agreement, as it is currently drafted, is in the best interests of Canadians. It seems that Europeans believe that an agreement that gives a foreign business the right to sue a government in front of a private tribunal is not in their interests. Last week, both the Senate and the National Assembly of the French Parliament adopted resolutions opposing the dispute settlement mechanism in the Canada-European Union Comprehensive Economic and Trade Agreement.

Within the European Union, the current president of the European Commission, Jean-Claude Juncker, is officially opposed to this type of dispute settlement mechanism. In a speech given on October 22, he stated, and I quote:

> "Nor will I accept that the jurisdiction of courts in the EU member states is limited by special regimes for investor disputes."

My question is as follows: Can you tell me how Canadians' best interests will be protected by an agreement that includes a special investor-state dispute settlement mechanism, which violates the fundamental rules of democracy, namely the supremacy of legislatures, when this very mechanism, which is applicable in Europe, is perceived by Europeans — parliamentarians such as ourselves — as a threat to their interests?

Hon. Claude Carignan (Leader of the Government): Honourable senators, I didn't understand the question. Perhaps she can clarify.

Senator Hervieux-Payette: My lead-up might have been a bit long, but I was explaining why I was asking the question. In France, the Senate and the National Assembly passed a general resolution simply stating that they did not accept the out-of-court dispute settlement process in the free trade agreement, which poses a threat to the work of parliamentarians who legislate on a matter that could result in litigation.

Senator Carignan: As I said last week in response to a question on the same topic, investment protection is good for job-creating investments and economic growth, and we think that an effective dispute settlement mechanism must treat investors on both sides of the Atlantic fairly. It is clear that only an agreement that is in the best interests of Canadians would be negotiated. We believe that the complete text of the agreement reflects that commitment.

Senator Hervieux-Payette: There is another country, a place we know well called Singapore, that most often ranks first, nearly always ahead of Canada, in various global economic forum rankings and that the Conservative government likes to refer to. Singapore is considered to be one of the most competitive countries in the world and one of the most open to trade.

• (1810)

It turns out that Singapore recently also finished negotiating a new free trade agreement with Europe, an agreement that includes the same arbitration rules as the Canada-Europe agreement, in other words an investor-state dispute settlement mechanism.

Leader, two months ago, the Government of Singapore asked the European Commission to separate the free trade agreement from the dispute settlement mechanism. That means that Singapore wants to take the dispute settlement mechanism out of the agreement or, if you prefer, that Singapore believes that this clause is not in the best interests of Singaporeans.

I will come back to my question. Why would this dispute settlement clause be in the best interests of Canadians if it is not for the French or for a country that conducts as much trade as Singapore?

Senator Carignan: Senator, I understand that you are advocating for the interests of the people of Singapore, but what matters to us is the interests of Canadians. The spinoffs for Canadians from a free trade agreement with the European Union are huge. This agreement will add $12 billion to our economy every year, which is the equivalent of 80,000 new jobs for Canadians or $1,000 more in annual revenue for every Canadian family. That is why the agreement has received so much support from stakeholders and the provinces and territories. Stakeholders in every region in Canada and every economic sector applaud this agreement.

Canada will now be one of the only developed countries with preferential access to more than 800 million consumers in the two biggest economies in the world: the European Union and the United States. Let me say it again for the last or second-last time: Investment protection promotes investment that creates jobs and stimulates economic growth, and an effective dispute settlement mechanism that will treat investors on both sides of the Atlantic fairly is important to us.

We always said that we would only negotiate an agreement that was in the best interests of Canadians, and that is what happened. The complete text reflects that commitment.

Senator Hervieux-Payette: Leader of the Government, you will agree that an economy of 500 million people is not at all the same as an economy of 30-odd million people and that Canadians' investments in Europe will not be the same at all.

I agree that there will be foreign investments. What I am asking you is to tell us why Canada will not turn to its court system if there is a dispute. Why set up private arbitration panels that could allow the federal and provincial governments to be sued if investors are penalized when those governments change their laws? Why not use our public courts, which have an excellent reputation? We don't have a third-rate justice system. If Singapore and Europe have already signed an agreement and, every week, we hear another country speak out against this process — and French parliamentarians have been clear on this — then I am asking you why your government would not think about this issue and revert to the traditional method of using Canada's regular court system when a dispute arises.

Senator Carignan: Senator, I hear your argument and your plea for the people of Singapore. However, as I said, Canadians' interests are what is important to us. We are promoting their interests and our actions are dictated by the best interests of Canadians.

Senator Hervieux-Payette: I am going to try this one last time. I am asking you to examine this situation with your government and to speak to your colleagues. I am hoping that you will see that this is not in the best interests of Canadians. Either Canadians will have to pay the price or else we will no longer be able to legislate because we will have to pay huge penalties as a result of sanctions imposed by a panel of people who were not appointed by anyone. This has already happened in the case of an American company.

I'm simply saying that this mechanism isn't in the interests of Canadians. Why wouldn't we choose a legal system that we know, one that is in the interests of Canadians and does not infringe on democracy? I'm talking about a system where the laws are made by Canadian parliamentarians and are obeyed by everyone, investors and Canadians alike.

Senator Carignan: I hear your opinion, senator. However, the agreement has received support from stakeholders in the field and the provinces and territories. Stakeholders in all regions across Canada and all economic sectors have applauded this agreement.

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT— FUEL QUALITY DIRECTIVE

Hon. Grant Mitchell: Mr. Speaker, there is another issue that is of great concern to Albertans, and it is very important.

[*English*]

It's difficult to believe that the government didn't deal with this particular issue before it signed the agreement.

The issue I'm referring to is the Fuel Quality Directive. The Fuel Quality Directive will discriminate against Alberta, Saskatchewan and Canadian heavy oil. This Fuel Quality Directive initiative was undertaken by the European Union, the same entity with which we are signing the European free trade agreement.

Why would the Government of Canada not have settled, once and for all, the Fuel Quality Directive issue? Why would they not have insisted that the Fuel Quality Directive no longer apply to the Alberta, Saskatchewan and Canadian oil case before they ever signed this agreement? This was the last time we would have had the leverage to do something about it.

[*Translation*]

Hon. Claude Carignan (Leader of the Government): Thank you, senator. It is interesting that you mentioned the interests of Albertans in your question.

As you know, Canada is a source of safe, responsible and reliable energy that can make an ever-increasing contribution to global energy security.

Our government supports efforts to reduce transportation-related emissions and believes that any directive should be based on science and facts.

However, our government will continue to work in the interests of Canada and promote job creation.

[*English*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, we are now at the start of the Orders of the Day. Pursuant to the order of Thursday, December 4, the bells will ring for 15 minutes to call in the senators for the taking of a deferred vote on third reading of Bill S-219, as amended.

Call in the senators.

• (1830)

JOURNEY TO FREEDOM DAY BILL

THIRD READING

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Ngo, seconded by the Honourable Senator Enverga:

> That Bill S-219, An Act respecting a national day of commemoration of the exodus of Vietnamese refugees and their acceptance in Canada after the fall of Saigon and the end of the Vietnam War, as amended, be read the third time.

Motion agreed to and bill, as amended, read third time and passed, on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Bellemare
Beyak
Black
Boisvenu
Carignan
Dagenais
Day
Demers
Doyle
Eaton
Enverga
Fortin-Duplessis
Frum
Greene
Housakos
Johnson
Lang
LeBreton
MacDonald
Maltais
Manning
Marshall
Martin
McInnis
McIntyre
Meredith
Mockler
Nancy Ruth
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Plett
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Runciman
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Unger
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Wallace
White — 45

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Furey
Hervieux-Payette
Joyal — 4

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THE HONOURABLE SENATORS

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Cordy
Cowan
Downe
Fraser
Hubley
Jaffer
Lovelace Nicholas
Massicotte
Mitchell
Moore
Munson
Ringuette
Tardif — 14

• (1840)

The Hon. the Speaker: I understand, Senator Cowan, you want to address the house.

Hon. James S. Cowan (Leader of the Opposition): I wanted to take a moment, colleagues, to explain my abstention. I did speak at third reading on the bill last week. I expressed no opinion on the bill, either in favour or against it, but I indicated at that time that I would abstain as a protest against the way in which this bill has been handled. I want to take a moment this evening just to remind colleagues of that.

Colleagues, this is a private member's bill. It is not a government bill. It was introduced by our colleague Senator Ngo in April, and then it sat on our Order Paper for months. Suddenly, at the end of October, the government decided that it had to move immediately on the bill. They called a vote. It was sent to committee.

The government permitted only witnesses who spoke in favour of the bill to testify before the committee. Individuals, including the Ambassador of the Socialist Republic of Vietnam, requested the opportunity to appear, and the government denied them that opportunity.

The government has provided no explanation, no justification for what I consider to be an extraordinary course of events. As a result, our committee was unable to do the job that they are here

to do, that is, to consider the evidence, consider the bill, consider all aspects of the legislation, and then to provide advice to us, as senators.

They were not able to do that and, therefore, colleagues, I would suggest that we were not able to form a balanced judgment on the merits of this bill.

So, the end result is the bill has passed, and we leave it to our colleagues in the House of Commons to act as the house of sober second thought. I hope we will reflect on that. This is not the way we should do business in this country. Our job is to carefully consider legislation and to hear those who wish to express opinions, whether they are in favour or against or simply asking questions about legislation.

The government refused to allow us and our committee the opportunity to do the job, and that's the reason why I abstained from the vote.

Hon. Jim Munson: Just a few words on the same subject and echoing the statement given by my leader on why I abstained. Why I abstained is because this bill is about the "road to democracy." There should be the road to free speech. What the 300,000 Vietnamese refugees came to this country for was free speech, and free speech was denied in the Human Rights Committee. It seems to me that when we debate issues, particularly here in the House of Commons and the Senate, Parliament Hill, we must have an opportunity in which every voice should be heard on each issue. I have a soft spot and a great deal of empathy for the Vietnamese people. As a young reporter, I covered refugees who languished in camps in Hong Kong for years, and I did news stories on them and listened to them and understood them. Of course, we all understand why this country opened its arms to the Vietnamese boat people, and they have become part of Canada's mosaic. But, on this particular occasion, this is the first time since I was appointed to the Senate 11 years ago December 10 that I have ever abstained. I did not abstain because of the intent of what the good senator was trying to put on the paper. My concern was simply this: Let this be a lesson that every time we have a conversation in a free, democratic country like Canada, both sides of the issue should be heard, at least, and then we can vote the way we want to vote. Part of the road to democracy is the road to free speech.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation, led by Mr. Phat Nguyen, of leaders from various Canadian-Vietnamese communities across Ontario. They are guests of the Honourable Senator Ngo.

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

Hon. Senators: Hear, hear!

COPYRIGHT ACT
TRADE-MARKS ACT

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Douglas Black moved third reading of Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts.

He said: Honourable colleagues, I rise this evening to speak to Bill C-8, the combatting counterfeit products act.

We see every day the economic contributions made by Canadian creators, researchers and innovators. Unfortunately, we also see the continued growth of counterfeiting, which compromises the brand strength of hard-working entrepreneurs and puts the health and safety of Canadian consumers at risk.

Not only has the scale of counterfeit goods increased, but the types of products being counterfeited has also expanded. As senators know, there is a market for counterfeits in almost every product area, and this has negative economic consequences for innovative Canadian firms and for Canadian consumers. At committee, senators heard sometimes alarming stories of unsafe counterfeit goods, from counterfeit winter coats to counterfeit electrical equipment and air bags.

Counterfeit goods hurt the Canadian economy, undermine innovation, threaten economic growth and threaten the health and safety of Canadians. The combatting counterfeit products act will give our Canadian border guards new powers to search and detain counterfeit goods entering the Canadian economy. Honourable senators, the combatting counterfeit products act provides new tools that will strengthen the ability of both law enforcement and the intellectual property rights holders to tackle the problem of counterfeiting. Bill C-8 directly establishes a mechanism for cooperation and for information sharing between border officers and rights holders. It also ensures that the courts will be the arbitrator on whether goods detained at the border are actually counterfeit.

This is a balanced approach. While we want to stop counterfeit goods, we don't want disruptions of legitimate goods at the border. We are a trading nation, and our wealth depends on increasing our trade with the world.

Bill C-8 creates a new, modern legislative framework to tackle counterfeit goods. That framework has three elements, which I would like to briefly explain: border enforcement measures, civil enforcement measures and criminal enforcement measures.

The centrepiece of this bill is the new border enforcement regime. It allows for greater enforcement cooperation between brand owners and border officers of the Canada Border Services Agency. It provides that border officers can temporarily detain counterfeit and pirated goods on their own initiative or based on information provided by a rights holder. After the detention, a rights holder is informed and can seize the goods and then seek remedies in the courts.

• (1850)

In practice, the new border regime will allow trade-mark and copyright owners to submit a request for assistance with the CBSA, whereby information can be shared with border officials so the commercial shipments suspected of containing goods infringing upon their rights can be temporarily detained. Rights-holders will then be able to commence civil proceedings in a court against those suspected of committing the infringement. They will also have the option to use the information they obtain at the border to seek out-of-court settlements.

In this way, both the government and rights-holders will play key roles in making sure that counterfeit and pirated goods are not able to illegally enter the Canadian market. For businesses and creators, this border regime will be a tool to help protect the brands they work hard to establish.

Bill C-8 offers rights-holders the ability to initiate civil action against counterfeiters at every stage, including the manufacturing or processing of counterfeit goods for commercial purposes. This is a significant improvement over the current framework where rights-holders have to wait until the counterfeit goods actually reach the marketplace before they can take civil action, when often it is much too late to prevent the negative impact.

Honourable senators, this bill also recognizes the need to provide a strong deterrence to commercial activities relating to counterfeiting. The proposed amendments in the bill introduce criminal measures that directly target the sale of counterfeit goods and counterfeit labels. In addition, the criminal offences target the supply chain of those goods and labels, including their manufacture, importation and distribution. The penalties on conviction are up to five years in prison and up to $1 million in fines plus other damages that may be assigned by the courts.

Together, the reforms to the civil, criminal and border enforcement measures provide an integrated and effective approach to address counterfeit and pirated goods.

Bill C-8 provides Canadian rights-holders, border officers and law enforcement with new tools required to fight counterfeiting and piracy. Bill C-8 is a made-in-Canada solution to the problem of counterfeiting that also modernizes Canada's border enforcement regime to the standards of our major trading partners.

The Standing Senate Committee on Banking, Trade and Commerce studied this bill and acknowledges its important progress to address counterfeit activity in Canada. As such, the committee recommends its adoption by the Senate.

There was a positive response from witnesses that the bill improves the anti-counterfeiting regime in Canada and is an important step in modernizing Canada's intellectual property rights regime. However, it must be noted that some witnesses expressed concerns with regard to, first, the viability of the proposed procedure that puts the burden of administrative and legal costs on brand owners rather than the importers of counterfeit goods; second, the exclusion of in-transit counterfeit goods from recourse; and, third, substantial imports from the Internet and in small packages. Therefore, the committee has requested a review and report of the effectiveness of our combatting counterfeit goods regime in no more than two years from the adoption of this bill.

I thank honourable senators for recognizing the importance of addressing this extremely serious issue, and I urge the Senate to swiftly pass this bill.

Hon. Joseph A. Day: Honourable senators, I would like to say a few words in relation to this bill. Let me begin by congratulating Senator Black on his fair presentation of Bill C-8 from the government's point of view. In the time I have available, I will try to highlight a few of the points raised. I also intend to go over some of the observations made by the Banking Committee, because it's important that we understand the effect of them.

Honourable senators, I'm generally supportive of the objective of the bill, namely updating our legislation with respect to counterfeit goods and intellectual property matters. However, it's merely a first step. I will leave it to each of us to determine whether or not that step is sufficient to support the bill. Obviously, the Standing Senate Committee on Banking, Trade and Commerce feels that the step is sufficient to support.

Most witnesses who appeared before the committee agreed that the bill is a good first step, but they expressed several concerns, which I will try to highlight.

Honourable senators, the seventh report of the Standing Senate Committee on Banking, Trade and Commerce outlined three observations, which Senator Black mentioned today.

The first one is the viability of the proposed procedure that puts the burden of administrative and legal costs on brand owners rather than the importers of counterfeit goods. This is an important observation. A number of witnesses pointed out that, given the way in which the bill is worded, it likely will discourage follow-through by owners because of the potential costs and lack of clarity in the bill with respect to what those costs might be. As we'll see later in our discussion, the owner would be required to pay the administrative and storage costs, as well as the possible cost of ultimately destroying the counterfeit products, and there are no guidelines to determine what those costs might be.

Couple that with legal costs, which the owner will incur within 10 days of learning that their trade-mark or copyright is being infringed by a counterfeit product, and the potential costs, especially to a smaller business entity, could be more than the entity could bear. For that reason, there should be some clarification with respect to costs.

We're told that the bill is designed to be revenue-neutral for the government and that's why it contains all these provisions. The government doesn't want to have any increased costs as a result of this proposed legislation. Therefore, the onus will be on the owner of the trade-mark to pay those various costs.

The second observation is the exclusion of in-transit counterfeit goods from recourse. In-transit goods are not manufactured here but they find their way into Canada on their way to somewhere else. For example, goods destined for the United States and just passing through Canada won't be part of our legal process. Border services people in the United States will deal with them, if and when the goods arrive there.

There are conflicting recommendations from a number of highly knowledgeable individuals on this issue. Mr. Geist from the University of Ottawa, who did not appear before the Senate committee but appeared before the House of Commons committee, said that the in-transit exception is right and not to put it in our proposed legislation. He provided an explanation, but I won't go into that now.

The third and final observation is the substantial import of counterfeit goods via the Internet and in small mail packages. This point was raised by a goodly number of witnesses, but the one who impressed me was from Canada Goose.

• (1900)

The witness for Canada Goose said that is an exploding area, the importation by mail or by the Internet, for one product or two jackets and a pair of pants, for small quantities. That can result in a tremendous amount of counterfeit product coming into Canada in that particular way. This legislation hasn't directed itself to the cyber aspect of trade, which is rapidly growing. As honourable senators know, Black Friday is now being followed by Cyber Monday for shopping and that is being pushed extensively and has grown again this year.

This is what the committee said:

> As such, we would appreciate that the ministry review, in consultation with stakeholders, and report back to our committee of the effectiveness of our combatting counterfeit goods regime in no more than two years from the adoption of this bill.

The way that it is worded, it's a question of whether that would be an order of this chamber to ask the executive to report back within two years or merely a request.

I believe that it is worthwhile putting in some limitation. One other possible way this could be done would be an amendment requiring a statutory review within two years or, as one of the witnesses said, within three years — in some reasonable period of time during which we can assess the effectiveness of the legislation that we're passing to determine whether there has been an increase in the stopping of counterfeit goods at the border or, if there has not, then why not.

That analysis is another area that hopefully the executive will do. Normally, we wouldn't ask for that type of analysis to be in legislation, but I'm concerned that without it we'll never know just how effective these legislative changes are.

I said that I agree, generally, with the approach. There is existing legislation, as we know, in the Copyright Act and the Trade-marks Act, and there are questions of infringement and how infringement is determined in each of the two pieces of legislation.

Let's talk about trademarks. From a trademark point of view, commercially, what someone tries to do is to come as close as possible to someone else's trademark product, either with a name or the markings on the product — not how the product is manufactured or how it looks, but how it's identified and distinguished. That legislation has been around for a long time and works very well.

What this legislation is doing is saying, okay, that's a commercial activity that somebody's trying to move in close to. If he gets too close, then he'll be found to have infringed, have to stop and pay some damages.

Canada Goose is a typical example of that, where you start seeing other little labels on the shoulder and Canada something else, such as "Canada Geese." Is that a trademark infringement? Is it not? That's up to a judge to assess and it's up to the plaintiff in the case — the owner of the right — to put forward information as to the public being confused and a product being sold as if it were Canada Goose but wasn't. If that test is met, then the existing law applies.

So, we ask ourselves, do we really need this legislation? What the legislation is doing is going further in relation to commercial products and to health and safety. It is saying that somebody is making the identical product, is putting the identical trademark on there, or virtually identical, and that it is a knock-off, which is the term used in the trade quite regularly. That is a counterfeit product. It's identical and it's a suggestion by whoever manufactured, imported and offered this product for sale that this is a legitimate product. This is a legitimate Rolex or Ferrari, for example, even though it isn't.

There is a place for that kind of legislation. There is a place for that in health and safety, where people can rely on a trademarked product or a generic product. You can rely on it by virtue of it having gone through health and safety checks that are established for manufacturers. But someone is making a product and passing it off as if it were subject to all those tests, when it wasn't. So that's counterfeit and that is what this legislation is attempting to get at.

Now, why did we have this particular approach? Senator Black has described the approach that is being taken with respect to giving border security more power. We know that border security, in conjunction with health and safety officials and in conjunction with the RCMP, have been seizing products at the border and saying these are counterfeit and should not come into Canada. We know that's been happening and there's been a significant increase over the past couple of years in terms of what has been seized.

But we also know that there's been a reduction in the number of people working in border services by virtue of austerity and the measures being taken by the government. So we can't assume that

there is going to be the same increase under the existing legislation. Will this make it better? Time will tell, but the costs are going to be borne by the holder of the right.

Minister Moore appeared before the committee and he says that this legislation is to bring Canadian legislation in line with the Trans-Pacific Partnership, TPP, legislation; but that hasn't been fully negotiated yet. The TPP is not something where we can say that we will know what wording is ultimately going to be necessary there, and then we'll try to have the same legislation, because we want to be accepted as a member of that trading bloc in the Pacific. Well, we don't know what that is.

There was an international agreement called the Anti-Counterfeiting Trade Agreement, ACTA, which for all intents and purposes is dead because Europe has refused. They all signed it — Canada signed it, Europe signed it and the United States signed it — but, that particular agreement now has virtually died since only one country in the world has confirmed: Japan.

If our legislation was modelled on the Anti-Counterfeiting Trade Agreement, then this legislation and the approach that is being taken is faulty for that reason. There are two international agreements, and that appears to be the reason why the executive is moving ahead with this legislation — to bring us in line with international norms, so they say.

However, I made inquiries. The executive was kind enough to make information available to me with respect to another agreement — the Canada-Korea Free Trade Agreement — and why that particular legislation that we have in Bill C-8 is necessary. There are some provisions in that legislation, and I checked this and, indeed, I thank the Leader of the Government and the Deputy Leader for helping me to facilitate the obtaining of that information.

• (1910)

It is true that there are provisions in the Canada-Korea Free Trade Agreement that need to be reflected in legislation similar to what we have here. Not all that we have in this bill is necessary for that agreement, but there are certain provisions that are, so I accept that. The problem is did we negotiate those terms in there because we thought they were going to be in other agreements like the Anti-Counterfeiting Trade Agreement and like TPP and those other agreements? Why did we agree to those terms in the first place? We will probably never know now because they're in as part of that agreement. That, honourable senators, is probably the best argument that could be made for certain provisions in Bill C-8 being necessary for us in legislation.

Does Canada feel it needs to be a leader in the international anti-counterfeit legislation? I should hope not, although we are a trading nation and we want to do our part. It's an important point that other nations haven't accepted the approach that was in the anti-counterfeit legislation. All 27 nations in the European community have rejected the anti-counterfeit legislation because it's considered to be too much of an invasion of privacy and the private rights of companies and individuals. It was rejected. It hasn't been passed in the United States. As I said earlier, it's probably effectively dead at this stage. If we want to be a leader in this particular area, we shouldn't be reflecting legislation that is clearly not acceptable.

I just want to make the point again that there have been seizures at the border by border security with the RCMP and with health officials under the Customs Act, section 101 and other sections, so that is already in existence at the present time.

This particular legislation creates new criminal offences, and I think that is one of the important advances in this legislation. There was a criminal offence in the Copyright Act, but there was not an equivalent in the Trade-marks Act. This legislation expands the civil remedies but also creates a new offence in the Trade-marks Act. That's an important point for us to keep in mind. Previously, it was a commercial-type approach, but now we're going with a criminal offence, counterfeiting, someone who just says, "To heck with the rules. I'm going to make the same product and put it on the market, make my money and get out as fast as I can."

The legislation intended by the government, then, is in part to update the border regime so that customs officers are better equipped to stop counterfeit products from coming across the border. Then the question will be: Will it be a criminal offence or a civil offence? That will be worked out in conjunction with the owner.

Once counterfeit items enter the market, some products can pose health risks. We know that. We've heard others speak on that. The knowledge of counterfeit goods in the market can also, from a commercial point of view, undermine confidence in the marketplace. Currently, Border Services work with RCMP and Health officials, and I expect that will continue, but there is a provision that Border Services will be able to work with the rights owners as well and provide information that will allow the owner of the trademark or copyright to start a lawsuit. The rights owner, before he gets that information, must sign a request for assistance and an assumption of liability. That's the point I was making earlier on. It's a bit of a concern.

We are always looking for unintended consequences. What we've got is a piece of legislation, as Senator Black has referred us to, that has new increased powers for Border Services personnel. It has this new scheme of a request for assistance where we received most of the statements. If you go through the various witnesses that came before us, that request for assistance seems to be one of the most troublesome areas. What are the parameters of it? This is an entirely new scheme that is designed to move the cost of this new procedure over to the rights owner. The rights owner pays for a court process in a civil suit now, and we understand that, but this is a criminal suit or a potential criminal suit, and the rights owners will still be required to assume a lot of liability or potential liability.

So what are some of the gaps? What are some of the unintended consequences? How can we improve the legislation? That's sort of the eye of the camera that we should be focusing on here to see where we could go with respect to the legislation. I tried to go through the various witnesses. As I said, one of the areas is this

entire scheme of request for assistance, and it's not something that we're going to be able to go to other jurisdictions and see how it works. As was mentioned, this is a made-in-Canada solution, and it could be a made-in-Canada problem as well. Let's hope not, but we'll have to be watching that very, very clearly.

One of the other areas is that there is no provision to handle an abuse of process. Let's suppose that somebody wanted to keep a competitor's product out for a while, so you file a request for assistance and say, "That product coming in by somebody else is a counterfeit product of mine," and then the whole system starts working. The product is seized at the border by Border Services. There is no provision to charge the unethical person who claims that he or she or it has intellectual property rights that should stop that other product from coming in. They may have no rights at all, but they've got a big jump in the marketplace by stopping the competitor from coming in for a period of time. Abuse of process is an oversight here that should be dealt with.

There's also the point that there is no administrative or short process that could be provided and should be provided, and many witnesses mentioned that. Administrative process by the entity that seizes the goods as they come across the border, Border Services, should have the opportunity to let the importer know that there is a process in place. Do they agree that the product was counterfeit? They could say, "Oh my goodness, I got this in Indo-China somewhere and it clearly is." There is no process for that to be handled other than to go to a court process within 10 days, extension of 10 days, and within 20 days get into court and then get the court to rule on this.

It's very important to have court oversight, and I absolutely agree, but there are also times when you can have administrative matters, especially if there's an administrative process, especially if the importer agrees that the product is faulty and shouldn't be brought in. Why go through a court process for that? That is not there. This would keep down the costs. It would keep down the costs to the rights owner, but it would also keep down the costs in court process, especially in those cases where the product might be abandoned. You might not get an admission from an importer, but the importer might just walk away; a corporate entity just disappears. There are many different corporate entities that are created just for one particular transaction.

• (1920)

Honourable senators, those are some of the items that I wanted to point out. There is the issue of a number of changes in the trademarks portion. Let me describe some of these. Don't forget, this is purported to be anti-counterfeit legislation in copyright and trademark. But there is a section 4 that is an amendment to extend the definition of "trademark" and current advertising realities where they talk about "use."

You will recall that it was two years ago, or perhaps less than that, that we saw the use issue with respect to trademarks debated at length, and it was just tucked away in one of the budget implementation bills. That is totally contrary to our concept of use of a trademark in Canada. Now we have some more fine tuning in relation to that here.

If we're going to have legislation with respect to trademarks, why not do the same thing that we did with respect to copyright two years ago when we had the Copyright Modernization Act? Everything in that bill was an attempt to deal with copyright. Here we're attempting to deal with counterfeit, and we find all these other little things tagged on for trademark amendments. A clearer definition of "utilitarian function" will be totally overlooked by everybody. It is very important in trademark legislation and very important in the practice of trademark law, but totally lost when you're dealing with the issue of anti-counterfeit.

Another one the same is "not inherently distinctive" in a change of definition. There's the provision to allow the Registrar of Trademarks to make certain changes. There are provisions to allow the registrar to correct certain aspects of this. There's a new definition of what is or is not a mark, which I touched on at second reading. I will quote from that section again shortly.

In the meantime, honourable senators, there is a provision in this bill to allow the registrar to destroy certain documents after a period of years. Now we're in the process of digitizing everything in the office of the Registrar of Trademarks. Why not finish that job rather than giving authority to destroy some documents that will be lost forever if this provision is passed? If those provisions were in a trademark act that dealt with all of the changes, there would be many more that we could look at.

Let me give you the new term that's tucked away in this legislation — a new term for what a mark is or what can be a mark. The new term of "non-exclusivity" is defined in the act as including a word, a personal name, a design, a letter, a number or numeral, a colour, a figurative element, a three-dimensional shape, a hologram, a moving image, a mode of packaging goods — a mode of packaging goods can become a trademark. How you put the product in the box can become a trademark if it's a distinctive way that nobody else does. A sound could become a trademark, a scent, a taste, a texture, a positioning of a sign.

That's the new definition that's tucked away in this legislation that's going to be passed with virtually no discussion whatsoever because everybody is focusing on anti-counterfeit, and that's because that's the name of the legislation. So that's a concern I have, honourable senators, which I think is important for us all to look at.

There were a number of witnesses, and I highly respect the witnesses who came before the Banking Committee. I congratulate the clerk and the steering committee on the selection of witnesses: Food and Consumer Products of Canada; Canadian Intellectual Property Council, which is part of the Canadian Chamber of Commerce; the International Trademark Association, which used to be called the United States Trademark Association; the Intellectual Property Institute of Canada; and the Canadian Bar Association and its intellectual property group.

All of those are excellent, and each was an excellent witness, and those themes keep coming back in each of those witnesses that there is not a clear enough definition of the

request-for-assistance process, and too much burden is being placed on the trademark owner and the copyright owner, which will result in this process being unlikely to be followed and not being used. You could see the concerns by reviewing their various submissions. They gave a very good written submission as well.

If Senator Baker were here I could get into an interesting discussion with him that was raised by the Canadian Bar Association in relation to the question of "knowingly," because we're moving into a new domain in trademark law. You need *mens rea*, knowingly, the mental aspect of what's going on, and they point out that the definition of the offence is so complicated and so precise in all of its aspects that it's not likely that any criminal charge under the Trade-marks Act will happen at all. They give an example of how that could be changed.

It gets quite technical, but they give examples of how this would be plausible escape for any potential importer who is charged under the Trade-marks Act. I never looked at the Trade-marks Act because it's part of the definition of the mental capacity of knowing required that the person knew about the Trade-marks Act and knew that the trademark was registered for certain wares or services. I never looked at sections 19 and 20, which are specifically part of the definition of knowingly infringing the trademark.

That's the aspect we found in a detailed review by the Canadian Bar Association, and I found their examples quite compelling. I referred to Mr. Geist earlier. The IPIC report referred to many of the same potential unintended consequences and made recommendations on how they might be dealt with. They also dealt with the Trans-Pacific Partnership and they point out what I pointed out: It still hasn't been fully negotiated.

Honourable senators, I would urge you to take a look at many of these unintended consequences because we're dealing with something that is completely different from anything that we've dealt with in the past. Not that we shouldn't go there, but we must go there with the intent to clearly outline how the offence would be committed and what the results would be. And we would like for some records to be kept of those processes that do result from this legislation so that we can determine whether the legislation is achieving its intended purpose.

• (1930)

With those warnings, honourable senators, I bring you back to the issue at hand. Do we accept this legislation as a step in the right direction, having in mind that certain aspects of it have been negotiated into the Canada-Korea Free Trade Agreement? Or do we ask the government to rethink some of these issues and make this legislation much more likely to succeed?

On balance, the Banking Committee felt this is worth getting started, but let's bring it back within two years because there are a lot of issues that still haven't been dealt with.

Hon. Jane Cordy: Would the Honourable Senator Day accept a question?

Senator Day: Yes.

Senator Cordy: As a trademark lawyer, you probably have more knowledge of this legislation than most of us in the chamber, and I know every year you have a reception and educate people on the Hill about the dangers of counterfeit products. I thank you very much for that.

I wanted a little clarification. Did you say that Canada can be a transient country? In other words, counterfeit products can leave Europe, arrive in Halifax or Saint John and not be touched, even though we know they will be going along the Eastern Seaboard to American cities?

Senator Day: Thank you for the question and for recognizing my annual reception with the Intellectual Property Institute. I was pleased they were one of the witnesses, and they gave us a very good brief on some of the unintended consequences of the legislation as currently drafted.

This is a new area for me. We're moving into a criminal law aspect with this legislation. Expanded civil, I understand; other civil remedies, party to party. But criminal, the state against individuals, is new. The problem here is introducing what was previously legislation in the copyright and trademark domain dealing with commercial activities and health and safety and moving that into the criminal domain. I'm not saying we shouldn't, but it is going in that direction. I am saying the same thing that many of the witnesses said, that I'm not sure we've filled out enough of the process to clearly understand what might happen or see that it will work.

In-transit is one of the exceptions. There are two fundamental exceptions in this legislation, to expand into criminal, except for in-transit product. If the product is not manufactured here — it has been manufactured somewhere else, found its way here, and is not going to be consumed or purchased by Canadians — it is going out somewhere else and we are absolving ourselves of anything to do with that.

The other exception, just so you understand it, is if an individual goes on a trip and comes back, that individual won't be stopped if you happen to have six Rolex watches on your sleeve — well, one would be okay. Six you might be getting into implied marketing, but individuals are exempted as well.

Senator Cordy: I find that really unusual, because I attended a NATO meeting and heard somebody from Interpol say that the biggest challenge with the drug trade in Asia is that so many countries allow the drugs to go through Asia. If, in fact, we're trying to stop counterfeit products, we're doing what Interpol said North Americans are totally against. If they want to stop the drug trade, then we want to stop the trade through the transient countries. The product is not destined for there, but they are putting blinders on and allowing the product to go through.

Basically what you're saying is that Canada is going to put blinders on so that if a container comes to Halifax and we know it contains counterfeit products destined for the Eastern Seaboard

in the United States, we are going to pretend we don't see it. If we're going to be tough on crime, I find that to be a little unusual. Do you not agree?

Senator Day: I do agree. I can tell you that a number of witnesses commented on this, but not all feel that at this stage we should be dealing with the in-transit. It would be another huge burden on our system, and who will they charge? Right now they are moving the costs over to the copyright owner; so if you think of it from a revenue neutral point of view, this would not be revenue neutral if we introduced that, and that seems to be one of the important motivators of the government in this instance.

I did have an opportunity to review the free trade agreement between Korea and Canada, and the in-transit provision could go either way. It said that nations can have legislation in relation to in-transit products or not, and we obviously opted for "or not" in this agreement.

Senator Cordy: Maybe if border security was given more resources and more person-hours then we would be able to look more closely at it, because you can't have it both ways.

Did you say that small amounts ordered online wouldn't be subject to this bill?

Senator Day: Yes.

Senator Cordy: I have a question about that. Our Social Affairs Committee, when we were looking at pharmaceuticals, had asked Health Canada and the Border Services Agency, who were witnesses, why it is that so many counterfeit pharmaceuticals are coming to Canada. People are ordering online. It wouldn't take you long to look online and find counterfeit products.

We know that at best they're not going to be helpful; at worst, they could cause serious problems in the health of the individual. If I ordered a counterfeit drug online, a small package, that wouldn't be subject to this legislation?

Senator Day: I hope you are not saying you would order a counterfeit product.

That was one of the points that were made, and a Canada Goose representative made that very forcefully for us. You can see it is the third observation by the committee, that the market is growing exponentially with respect to small, individual Internet orders, and this legislation doesn't contemplate dealing with that. It would take some other wording and other issues, because the end user is getting this product in that particular case, as opposed to an importer who is then going to offer it for sale and sell the product.

I don't want to call it an oversight, but it is an area that will need some attention very quickly.

Hon. Pierrette Ringuette: Senator Day, would you answer a few questions for me?

Senator Day: I will do my very best.

Senator Ringuette: I want to clarify the issue of destroying the counterfeit merchandise. It seems to me that the Border Services Agency is not authorized to destroy merchandize, and the only way it could be destroyed is through the court process and the judge ordering the destruction of the merchandise. Am I right?

Senator Day: You are quite right, yes.

Senator Ringuette: We're not destroying criminally-counterfeit products.

May I have an additional five minutes?

The Hon. the Speaker *pro tempore***:** Given that your time is up, Senator Day, do you request five more minutes?

Senator Day: Yes.

The Hon. the Speaker *pro tempore***:** Is the chamber giving five minutes to Senator Day?

Hon. Senators: Agreed.

Senator Ringuette: Two issues puzzle me. First, regarding the trademark of products, the expertise around this issue is a very small community. That very small community was not consulted at all to put this bill together. It is very intriguing. It boggles the mind that, for a few years now, the Government of Canada has been doing somersaults to try to be one of the partners in a trans-Pacific trade agreement. Why would the Government of Canada want to put aside all this issue of in transit and not destroying the counterfeit merchandise when we are trying very hard as a government to have a strong relationship with the U.S., which will be a key partner in this new trans-Pacific agreement? It boggles my mind, and it's completely contrary to one of the major partners in this negotiation process.

• (1940)

Can you, Senator Day, supply me with a reasonable answer as to why one would take this approach?

Senator Day: You're asking me to try to give you a reasonable answer, Senator Ringuette, on what the government has proposed in this particular legislation. Let me go back to your other question.

With respect to the request for assistance — and this is destroying the product — if the owner of the trademarked product does not file a request for assistance, then what can happen? This goes exactly to your second question. The only thing that can happen is for the product to then be allowed to be released back from whence it came or to some other country,

because there is no court process that can take place unless a request for assistance is filed, and then there is a relationship between border services.

Canada is not one of the front-line negotiators in TPP. We should have been, but we didn't think it was important at the front end, but then we scrambled at the back end. So we don't really get to do the front-line negotiating on what is or isn't going to be in this agreement. What we have to do basically is try to influence the negotiators indirectly.

As Minister Moore said when he came before the committee, the TPP was one of the motivators here. We will be doing whatever we have to do, and we may be back with respect to this particular legislation sooner than the two years that the committee felt was reasonable.

Hon. Lillian Eva Dyck: I have a supplementary question: I noticed that last time, when you did second reading, you were talking about patenting scents, taste and sound. That kind of piqued my interest, because I'm wondering how you would develop regulations to do that. If you take something like a taste, of course, that's biologically determined and is a response to the chemicals within a particular food or drink or whatever you're ingesting. During the regulations, then, would there be provisions to analyze all the components of certain tastes that people are trying to patent or copyright?

Senator Day: Thank you, Senator Dyck, for the question. You are absolutely right that I did mention that last time. I just happen to have it in front of me again, and I will read to you the change:

> . . . includes a word, a personal name, a design, a letter, a numeral, a colour, a figurative element, a three-dimensional shape, a hologram, a moving image, a mode of packaging goods, a sound, a scent, a taste, a texture and the positioning of a sign.

They are all possible trademarks under the new legislation, this legislation. It's an add-on to the anti-counterfeiting. It has nothing to do with anti-counterfeiting, but it's just very typical of what we have been seeing over the past few years of little things being tucked in here and there, and they come back to haunt us.

There are no regulations that explain how you describe a scent. There are no regulations with respect to any of that. There has been no discussion, as Senator Ringuette pointed out, with any of the practitioners in the field as to how you would handle all of this. How do you define a texture, a scent, a taste, a smell? That is going to be very interesting. We each have our own ways of defining certain of those items, but from a trademark point of view it has to be something that you could describe that that person is infringing with respect to my right. Everyone has to be able to understand what it is, and there is nothing that helps us in that regard.

(On motion of Senator Fraser, debate adjourned.)

ALLOTMENT OF TIME—NOTICE OF MOTION

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I wish to advise the Senate that I was unable to reach an agreement with the Deputy Leader of the Opposition to allocate time on Bill C-8.

Therefore, I give notice that, at the next sitting of the Senate, I will move:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at third reading stage of Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts.

An Hon. Senator: Hear, hear.

CRIMINAL CODE
CANADA EVIDENCE ACT
COMPETITION ACT
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

BILL TO AMEND—ALLOTMENT OF TIME—MOTION WITHDRAWN

On Government Business, Motions, Order No. 72, by the Honourable Yonah Martin:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at third reading stage of Bill C-13, An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act.

(Motion withdrawn.)

• (1950)

THE SENATE

STATUTES REPEAL ACT—MOTION TO RESOLVE THAT THE ACT AND THE PROVISIONS OF OTHER ACTS NOT BE REPEALED—DEBATE ADJOURNED

Hon. Yonah Martin (Deputy Leader of the Government), pursuant to notice of December 4, 2014, moved:

> That, pursuant to section 3 of the *Statutes Repeal Act*, S.C. 2008, c. 20, the Senate resolve that the Act and the provisions of the other Acts listed below, which have not come into force in the period since their adoption, not be repealed:
>
> 1. *Canada Grain Act*, R.S., c. G-10:
>
> -paragraphs (*d*) and (*e*) of the definition "elevator" in section 2 and subsections 55(2) and (3);

2. *Parliamentary Employment and Staff Relations Act*, R.S., c. 33 (2nd Supp):

-Parts II and III;

3. *Contraventions Act*, S.C. 1992, c. 47:

-paragraph 8(1)(*d*), sections 9, 10 and 12 to 16, subsections 17(1) to (3), sections 18 and 19, subsection 21(1) and sections 22, 23, 25, 26, 28 to 38, 40, 41, 44 to 47, 50 to 53, 56, 57, 60 to 62, 84 (in respect of the following provisions of the schedule: sections 1, 2.1, 2.2, 3, 4, 5, 7, 7.1, 9 to 12, 14 and 16) and 85;

4. *Agreement on Internal Trade Implementation Act*, S.C. 1996, c. 17:

-sections 17 and 18;

5. *Canada Marine Act*, S.C. 1998, c. 10:

-section 140;

6. *An Act to amend the Canada Grain Act and the Agriculture and Agri-Food Administrative Monetary Penalties Act and to repeal the Grain Futures Act*, S.C. 1998, c. 22:

-subsection 1(3) and sections 5, 9, 13 to 15, 18 to 23 and 26 to 28;

7. *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, S.C. 1998, c. 32;

8. *Preclearance Act*, S.C. 1999, c. 20:

-section 37;

9. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34:

-sections 155, 157, 158 and 160, subsections 161(1) and (4) and section 168;

10. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12:

-sections 89 and 90, subsections 107(1) and (3) and section 109;

11. *Marine Liability Act*, S.C. 2001, c. 6:

-section 45;

12. *Yukon Act*, S.C. 2002, c. 7:

-sections 70 to 75 and 77, subsection 117(2) and sections 167, 168, 210, 211, 221, 227, 233 and 283;

13. *An Act to amend the Criminal Code (firearms) and the Firearms Act*, S.C. 2003, c. 8:

-section 23;

14. *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, S.C. 2003, c. 26:

-sections 4 and 5, subsection 13(3), section 21, subsections 26(1) to (3) and sections 30, 32, 34, 36 (with respect to section 81 of the *Canadian Forces Superannuation Act*), 42 and 43;

15. *Assisted Human Reproduction Act*, S.C. 2004, c. 2:

-sections 12 and 45 to 58;

16. *Public Safety Act*, 2002, S.C. 2004, c. 15:

-sections 40, 78, 105 and 106; and

17. *Amendments and Corrections Act*, 2003, S.C. 2004, c. 16:

-sections 10 to 17 and 25 to 27.

She said: Thank you, Your Honour. I've caught up to where we are. I have a lengthy explanation of the items captured in this motion.

Bill S-207, which enacted the Statutes Repeal Act, was passed with unanimous support in both houses of Parliament and received Royal Assent on June 18, 2008. The act came into force two years later, on June 18, 2010.

The purpose of the Statutes Repeal Act is to encourage the government to actively consider the coming into force of acts and provisions that have not been brought into force within 10 years of being enacted.

Section 2 of the Statutes Repeal Act requires that the Minister of Justice table an annual report before both houses of Parliament on any of their first five sitting days in each calendar year. Each annual report must list the acts and provisions of acts not yet in force that were assented to nine years or more before December 31 of the previous calendar year.

Under section 3 of the Statues Repeal Act, any act or provision listed in the annual report will be repealed on December 31 of the year it was tabled unless, before that date, they are brought into force or one of the houses of Parliament adopts a resolution exempting them from repeal.

This is the fourth year of the implementation of the Statutes Repeal Act. The fourth annual report was tabled on January 30, 2014 in the House of Commons and on February 4, 2014 in the Senate and lists one act and provisions of 18 other acts.

Honourable senators, I am speaking today to ask all of you to support the adoption of this motion before December 31 of this year, exempting one act and provisions in sixteen other acts that are listed in this motion from being repealed on December 31, 2014.

Twelve ministers have requested the deferral of the repeal of this legislation. These 12 are the Ministers of Aboriginal Affairs and Northern Development, Agriculture and Agri-Food, Canadian Heritage and Official Languages, Finance, Foreign Affairs, Health, Justice, National Defence, Natural Resources, Public Safety and Emergency Preparedness and Transport, as well as the President of the Treasury Board.

I will now set out the reasons for the requested deferrals by each of these ministers.

The Minister of Aboriginal Affairs and Northern Development is requesting a deferral for provisions in the Yukon Act. Sections 70 to 75 of the Yukon Act would allow the Yukon government to appoint its own auditor general and cease to use the services of Canada's Auditor General. The Government of Canada and the Government of Yukon are discussing the options available to and the readiness of Yukon to establish its own Auditor General. Automatic repeal of sections 70 to 75 of the Yukon Act, in the absence of consultation with the Yukon government, could harm Canada's relations with Yukon.

The rest of the provisions of the Yukon Act are consequential amendments to other acts that should be brought into force when the federal Yukon Surface Rights Board Act is repealed and the Yukon legislature enacts legislation in its place. To date, the territorial legislation is not yet in place.

Second, the Minister of Agriculture and Agri-Food is requesting deferrals for provisions in the Canada Grain Act and in the amending act entitled An Act to amend the Canada Grain Act and the Agriculture and Agri-food Administrative Monetary Penalties Act and to repeal the Grain Futures Act.

In the 2010 federal budget the government signalled its intent to move forward with this plan to modernize the Canada Grain Act. Although targeted amendments to that act were introduced as part of the Jobs and Growth Act, 2012, further changes to align the Canada Grain Act with the needs of the grain sector are being considered. Deferral of the repeal of these not-in-force provisions is being sought because the issue of whether these provisions should be brought into force is being considered in the context of the government's project to modernize the legislative framework regulating the grain industry.

Third, the Minister of Canadian Heritage and Official Languages is requesting a deferral for provisions in one act. The deferral concerns Parts II and III of the Parliamentary Employment and Staff Relations Act. This deferral is requested as these provisions should not have been included in the 2014 annual report. Section 5 of the Statutes Repeal Act exempts certain provisions from being listed in the report until a later date if they meet the requirements in that section.

Unfortunately, it was only noted after the tabling of the report that Parts II and III were caught by the exemption in section 5 and did not need to be included in the 2014 annual report. Consequently, the deferral is requested so that these provisions are not repealed at the end of this year.

Fourth, the Minister of Finance is requesting a deferral for provisions in one act. The deferral concerns sections 17 and 18 of the Agreement on Internal Trade Implementation Act. Those provisions would amend certain sections of the Interest Act to facilitate the eventual creation of regulations relating to a cost-of-credit disclosure harmonization initiative that was referenced in the Agreement on Internal Trade.

The parties to the Agreement on Internal Trade are considering renewing that agreement over the coming months. As a result, until the exact scope of that renewal and the implications for section 17 and 18 of the act are known, deferral of the automatic repeal of those provisions is recommended.

Next, the Minister of Foreign Affairs is requesting deferrals for one act and provisions in two other acts. The first request concerns the Comprehensive Nuclear Test-Ban Treaty Implementation Act. This act will be brought into force as soon as the Comprehensive Nuclear-Test-Ban Treaty comes into force. However, before the treaty comes into force, it requires ratification by 44 specific states, and currently 8 out of these 44 states have not yet ratified the treaty.

It is vital that the act not be repealed so that once the treaty does come into force the act can be brought into force without delay, implementing the treaty in Canada. Furthermore, keeping this act on the statute books demonstrates Canada's commitment to the implementation of the treaty.

The second deferral concerns section 37 of the Preclearance Act. The act implements a bilateral treaty on air pre-clearance between Canada and the United States, and section 37 of the act would prevent the judicial review in Canada of pre-clearance officer decisions to refuse to pre-clear, admit persons or import goods into the United States.

This section cannot be brought into force until the U.S. provides the same authorities to Canada, as the agreement is a reciprocal one. Negotiations to update the agreement have recently concluded. A deferral of the repeal of section 37 is being sought so that the issue of bringing it into force can be considered in the context of the government's implementation of the obligations of the updated agreement.

The third deferral concerns section 106 of the Public Safety Act, 2002, which would enact the Biological and Toxin Weapons Convention Implementation Act. At the August 2014 meeting of

experts in relation to the Biological and Toxin Weapons Convention, a proposal was made to restart negotiations towards a legally-binding protocol to strengthen the convention. Consequently, a deferral of the repeal of section 106 is being sought so that the issue of bringing it into force can be considered in the context of possible future obligations under the Biological and Toxin Weapons Convention.

• (2000)

The Minister of Health is also requesting a deferral for the provisions of one act. The deferral request is with respect to sections 12 and 45 to 58 of the Assisted Human Reproduction Act.

As a result of a 2010 Supreme Court of Canada ruling, the federal government's ability to regulate the complex and controversial area of assisted human reproduction has been significantly redefined and reduced. Therefore, this deferral request is to allow Health Canada to carry out a thorough policy assessment of how to regulate this area, including regarding the impact of its regulation on federal-provincial responsibilities and relations, as well as the options that may be available to the department.

The Minister of Justice is also requesting deferral for the provisions in two acts. The first deferral request is with respect to certain provisions of the Contraventions Act. The act provides a procedural regime for prosecuting federal offences designated as contraventions. It provides two options for implementing the regime: reliance on an autonomous federal infrastructure or reliance on existing provincial penal schemes.

The Minister of Justice has entered into agreements with several provinces to implement the federal contraventions regime through existing provincial penal schemes. The Department of Justice is still in negotiations with three provinces: Newfoundland and Labrador, Saskatchewan and Alberta.

Even though the Department of Justice remains determined to implement the contraventions regime throughout the country using the existing provincial penal schemes for issuing tickets in respect of federal contraventions, negotiations and progress depend largely on the priorities and capacity of the provinces. Therefore, in the event that agreements cannot be reached with the remaining three provinces, the Department of Justice may need to implement an autonomous federal infrastructure in those provinces by bringing into force the remaining not-in-force provisions of the act.

The second deferral request is with respect to provisions of the Modernization of Benefits and Obligations Act, which is a comprehensive act amending some 68 federal statutes to ensure equal treatment of married and common-law relationships in federal law. Work is continuing to bring into force the remaining five provisions. These five provisions are needed to provide a consistent approach throughout federal legislation and would ensure equal treatment between married spouses and common-law partners under section 15 of the Canadian Charter of Rights and Freedoms.

The Minister of National Defence is requesting a deferral for provisions in two acts. The first deferral concerns certain not-in-force provisions of An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other acts. These provisions would amend the Canadian Forces Superannuation Act and relate to supplementary death benefits and elective service rules.

The Department of National Defence has begun a comprehensive analysis of the Canadian Forces Superannuation Act, including these not-in-force provisions. This analysis will lead to the development of regulations intended to add flexibility and clarity to the application of that act. The department intends to bring these provisions into force and make the associated regulatory amendments and for this reason, the deferral is recommended.

The second deferral concerns section 78 of the Public Safety Act, 2002. This would add a new Part V.2 to the National Defence Act that would authorize certain activities to ensure the integrity of the departments and the CAF's information technology systems and the data stored on those systems. The department and the CAF have initiated a project to develop and integrate computer network defence activities into their operational frameworks, and this project includes an examination and an analysis of its legislative and prerogative authorities for such activities. For this reason, a deferral is requested so that the department and the CAF may take the time they require to consider whether Part V.2 of the National Defence Act should be brought into force.

The Minister of Natural Resources is requesting a deferral for section 40 of the Public Safety Act, 2002. Section 40 amends section 9 of the Explosives Act. It provides the authority to make regulations regulating the in-transit shipping and the exportation of explosives from Canada. Importation is currently regulated.

This provision is slated to come into force on February 1, 2015, and an order-in-council to that effect has already been made and has been registered. In addition, regulatory provisions have been made under this authority, and these provisions are also set to come into force on February 1, 2015.

The Minister of Public Safety and Emergency Preparedness is requesting a deferral for section 23 of An Act to amend the Criminal Code (firearms) and the Firearms Act. This provision amends subsection 31(2) of the Firearms Act to ensure consistency under the act as it pertains to public agencies.

The Hon. the Speaker *pro tempore***:** The honourable senator's time is up.

Senator Martin: May I request five more minutes? I will read quickly.

Hon. Senators: Agreed.

Senator Fraser: It's all important stuff.

Senator Martin: More specifically, in-force provisions in the act allow for a person to transfer a firearm to a public agency, including a municipality. The amendment would make it clear that where a transfer to a municipality occurs, the Registrar of Firearms shall revoke the registration certificate for that firearm. A deferral from automatic repeal is required to allow the Department of Public Safety and Emergency Preparedness to prepare a submission with a view to bringing this amendment into force.

The Minister of Transport is requesting deferrals concerning provisions in three acts. The first deferral is with respect to section 45 of the Marine Liability Act. Section 45 will, if it comes into force, give effect to the Hamburg Rules, which is an international convention on the carriage of goods by sea adopted by the United Nations in 1978.

The Department of Transport, in consultation with interested stakeholders, is currently undertaking a thorough analysis of the complete body of law pertaining to carriage of goods by water in Canada and will be making recommendations to modernize it with the view of maintaining Canada's commitment to uniformity of international law, in particular with the law of our major trading partners. Given that this review is not yet complete, the repeal of section 45 of the Marine Liability Act is premature and a deferral of its repeal is requested.

The second deferral request is with respect to section 140 of the Canada Marine Act. Section 140 of the Canada Marine Act would enable Canada to enter into agreements with a third party other than Marine Atlantic Inc., the current provider, to fulfill Canada's constitutional obligation to Newfoundland and Labrador to provide a ferry service between North Sydney, Nova Scotia, and Port aux Basques, Newfoundland and Labrador.

The Department of Transport would like to retain the policy flexibility afforded by section 140. Repealing this provision at this time would limit the department's ability to examine all policy options pertaining to the provision of the ferry service in the future.

The third deferral request is with respect to section 105 of the Public Safety Act, 2002. Section 105 will, when brought into force, amend the Canada Shipping Act, 2001 to allow the Minister of Transport or the Minister of Fisheries and Oceans to make interim orders containing certain provisions if it is believed that immediate action is required to deal with the risk to safety, security or the environment.

Deferral of the repeal of this provision is requested, as currently Transport Canada is analyzing the benefits of section 105 of the Public Safety Act, 2002 and exploring the most efficient means to bring this provision into force. The analysis will take one year to complete.

The President of the Treasury Board is requesting a deferral for provisions in two acts. The first deferral request is with respect to certain provisions of the Public Sector Pension Investment Board Act, which concern pension and related benefits for the Canadian Armed Forces. These provisions would amend the Canadian Forces Superannuation Act to permit the making of regulations prescribing the conditions, manner and time of payment of contributions and the amount of benefits payable.

Legislation in the area of pension and related benefits is very complex and, before these provisions can be brought into force, consultations between the CAF and the Treasury Board are required to ensure that the required regulations are developed with the appropriate degree of alignment with other pension legislation. A deferral from the repeal of these provisions will allow for completion of the policy and financial work related to the provisions.

• (2010)

The second deferral request is with respect to certain provisions of the Amendments and Corrections Act, 2003 — provisions that amend the Lieutenant Governors Superannuation Act, the Salaries Act and the Supplementary Retirement Benefits Act. When these provisions are brought into force, they would provide lieutenant-governors with the same pension protection with respect to disability as is currently in place for members of Parliament. These provisions should not be brought into force before the necessary regulations are prepared, and planning is under way to have the required regulations ready in time to bring the amendments into force before the end of 2015.

The Statutes Repeal Act provides that any deferrals would be temporary. Any legislation for which a deferral of repeal is obtained this year will appear again in next year's annual report, except with respect to Parts II and III of the Parliamentary Employment and Staff Relations Act, which should not be included in the report until 2016. Any legislation appearing in next year's annual report will be repealed on December 31, 2015, unless it is brought into force or is exempted again by that date for another year.

It is important that the resolution be adopted before December 31 of this year; otherwise, the act and the provisions listed in the motion will be automatically repealed on December 31, 2014. The repeal of the act and the provisions listed in the motion could lead to inconsistency in federal legislation. The repeal of certain provisions could even result in federal-provincial-territorial stresses and blemish Canada's international reputation.

If a resolution is not adopted by December 31, 2014, federal departments would need to address the resulting legislative gaps by introducing new bills. Those bills would have to proceed through the entire legislative process from policy formulation to Royal Assent. This would be costly and time consuming.

Honourable senators, I thank you for the additional time and urge all of you to support the motion so that the act and provisions listed in the motion cannot be automatically repealed on December 31 of this year.

Hon. Wilfred P. Moore: I wonder if the senator would take a question.

Senator Martin: Yes.

Senator Moore: I note that there are 17 items that you're requesting the —

The Hon. the Speaker *pro tempore*: Senator Moore, Senator Martin's time is up. She had already requested five minutes, and those five minutes have been used up. It is unfortunate, but her time is up.

Hon. Joan Fraser (Deputy Leader of the Opposition): First of all, I want to thank Senator Martin for the marathon that she just took us through. I think it's really important for Parliament in general and the Senate in particular to be informed in reasonable detail about what it is we are being asked to do.

Colleagues will recall that this process is the result of the admirable bill, a private member's bill, brought forward by Senator Tommy Banks, our former colleague, who thought it was unreasonable for unproclaimed acts to clutter up the books and brought in a bill, which was passed by both houses, to ensure that the process we're now engaged in would work. In other words, we would have to give specific permission for things that have been hanging around for 10 years or more to be continued. And that's what we're doing now.

I think Senator Martin's notes were, on the whole, very helpful to us. Some of the things we are being asked to preserve are obviously desirable in their own right. Clearly we want to retain the ability to move very quickly if the international negotiations ever do bring into effect the Comprehensive Nuclear Test-Ban Treaty and the Biological and Toxin Weapons Convention. These are things that we want to be ready to move on rapidly if the occasion arises, and I'm sure we all hope that it will arise.

Similarly, keeping on with section 140 of the Canada Marine Act makes a great deal of sense. That's the provision Senator Martin referred to about ferry service between North Sydney and Port aux Basques, allowing the federal government to take over responsibility should the provider of that ferry service, which is an essential service, be unable to continue it. These are things that are useful to have on the books for as long as it takes, in my view.

Some other items are understandable because they involve other kinds of international negotiation, for example, the pre-clearance agreement with the United States. Try as we may, we cannot guarantee that the United States will conclude negotiations in what we might consider to be a timely manner and that we will then be able to move rapidly. Again, it is reasonable to suggest that we continue these provisions.

It is also understandable, if irritating, that it takes time — oh, goodness it takes time — to conclude federal-provincial negotiations in this country. The amendments to the Yukon Act would be one example of that kind of negotiation, internal trade. There are a number of things where federal-provincial negotiations always take much longer than they should, or almost always.

I have, however, less sympathy when the negotiations in question amount to the federal government negotiating with itself. With the Public Sector Pension Investment Board Act sections that we're being asked to keep on, last year when we were going through this process we were told that the Department of National Defence and the Treasury Board Secretariat were engaged in the necessary policy development, with 2016 identified as the target date for coming into force and implementation. I notice that this year we're not even given a timeline for two years hence. I wonder what takes so long about these things? It's the Government of Canada. It ought to be able to get its act together.

The same is true for the sections of the Canadian Forces Superannuation Act. What's taking so long? Again, we were told a year ago that it would all come true in 2016, but this year I think we're not even told that.

Then there is the Assisted Human Reproduction Act. We are told that the government had to rethink its policy because of a Supreme Court decision. That decision was four years ago — four years — and assisted human reproduction is not a minor matter. It is a very serious issue indeed, and I fail to understand why on earth it is taking so long to get our act together on this one.

Then I must say, with all respect for Senator Martin, she gave us the material she was given and she did a noble job of getting it all on the record before her time was up, but some of what she was given I'm finding incomprehensible. I note, for example, a reference to section 78 of the Public Safety Act, which would add a new part to the National Defence Act involving, I gather, computer systems. The explanation is that the Defence Department and the Canadian Armed Forces have initiated a project to develop and integrate computer network defence activities into their operational frameworks, and this project includes an examination and analysis of its — I guess the department's — legislative and prerogative authorities for such activities. I don't have the first faintest idea what that actually means.

Maybe I'll do better if I can take the rest of the evening to try and inform myself, so with those slightly irritating remarks, I will move the adjournment for the balance of my time.

(On motion of Senator Fraser, debate adjourned.)

• (2020)

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Michael L. MacDonald moved third reading of Bill C-483, An Act to amend the Corrections and Conditional Release Act (escorted temporary absence).

He said: Honourable senators, our Conservative government has striven to achieve a fair and efficient justice system, a justice system that puts the victim in their rightful place, at its heart. I am, therefore, grateful to have this opportunity to rise and speak about how the government is standing up for victims.

One of the best examples of this commitment to supporting and empowering victims is Bill C-32, the Victims Bill of Rights Act, which was introduced in April. I think it is worthwhile to look briefly at what that legislation aims to do as it is complementary to other efforts being made to empower victims. Stemming from an extensive consultation process, Bill C-32 was rightly informed by those it seeks to help, victims themselves.

It will enshrine in law four meaningful rights for victims: the right to information, the right to participation, the right to protection and the right to restitution. It will mean important changes for victims at all stages of the criminal justice process, from arrest through to an offender's release, giving them a stronger voice at every step.

Let me now return to the proposed legislation before us, which relates to a very specific part of the criminal justice system, namely, how inmates serving minimum life sentences are granted escorted temporary absences, or ETAs.

Victims have told us they are interested in and concerned with how the temporary absence scheme currently operates. Victims have told us that they are concerned because they feel like they do not have a voice in the decision-making process for escorted temporary absences.

The government has listened to these victims with great interest on this and other issues affecting them, further strengthening its resolve to help make changes to our laws that will help and support victims.

The escorted temporary absence system is another area where there is an opportunity to take reasonable and measured action for victims, to improve the system so that it better responds to their needs.

Bill C-483 proposes several important amendments to the Corrections and Conditional Release Act that will do just that. This proposed legislation underwent rigorous study in the other place and amendments were adopted for clarity and sound application. Let us turn now to discussing how the legislation before us represents the best path forward to support victims of crime.

Certainly, escorted temporary absences fulfill an important function in the corrections and conditional release system. In fact, they are a critical tool. They assist offenders in their rehabilitation and in their gradual reintegration into the community. Not only do they allow offenders to maintain family and community ties, they also allow offenders to go to medical appointments and judicial proceedings and to attend correctional programs. There are a number of good and justifiable reasons why offenders may be and should be granted these absences.

The criteria on which escorted temporary absence decisions are based are clearly outlined in the Corrections and Conditional Release Act. It bears mentioning that the paramount consideration is the protection of society. Escorted temporary absences fall into two categories — those granted out of necessity, such as to seek medical treatment, and those granted for rehabilitative purposes, such as family contact or community programming. To be clear, this bill is focused on escorted temporary absences of the latter category, those that are granted for rehabilitative purposes.

These types of absences require a much greater amount of risk assessment and discretion, and rightfully so. Victims want to know how decisions for rehabilitative ETAs are made. In fact, the government has heard loud and clear that the current escorted temporary absence scheme could and should go further in terms of thoroughness, and it has heard the call of victims who want a greater say in this process. That is why the overall goal of this bill is to shift decision-making authority for ETAs for rehabilitative purposes almost exclusively to the Parole Board of Canada.

This is what victims have asked us to do as they want to be able to attend hearings and provide statements to the parole board. We would ensure victim participation in the decision-making process by giving the Parole Board of Canada more authority over escorted temporary absences. Bill C-483 would amend the Corrections and Conditional Release Act so that the parole board would be specified as the decision-making authority for escorted temporary absences after an offender serving a minimum life sentence has reached day parole eligibility.

Currently, the parole board has decision-making authority for rehabilitative ETAs from the start of a life sentence up to day parole eligibility.

The change that we are proposing in the Corrections and Conditional Release Act, along with existing provisions in the Criminal Code, would mean that the parole board is responsible for authorizing escorted temporary absences, both before and after day parole eligibility. Under Bill C-483, the parole board would remain the releasing authority until an offender who has passed day parole eligibility is able to successfully complete an ETA for rehabilitative purposes.

If an offender successfully completes a rehabilitative escorted temporary absence, decision-making authority would then move from the parole board to the Correctional Service of Canada.

Any future rehabilitative ETAs would then be authorized by the Correctional Service of Canada. However, if an inmate breaches any conditions of a subsequent escorted temporary absence, decision-making authority would revert back to the parole board.

Another important provision in this bill is one that will ensure that the Correctional Service of Canada has the authority to cancel an ETA, even if it was granted by the parole board. This authority would be exercised when needed for safety reasons. For example, these could include if an inmate is demonstrating negative behaviour or if unrelated operational issues within the penitentiary preclude the ETA from taking place.

Vesting authority to cancel an escorted temporary absence with the Correctional Service of Canada, rather than with the parole board, makes sense, given the 24/7 nature of the Correctional Service of Canada's operations and its role in supervising offenders on release.

To conclude, Bill C-483 is further proof of this government's strong commitment to victims of crime. By extending the Parole Board of Canada's jurisdiction over escorted temporary absences, we can support those many victims who want to participate in the corrections and conditional release system to voice their concerns and to have those concerns heard.

Therefore, I call on all honourable senators to join me in supporting this bill. Thank you.

Some Hon. Senators: Hear, hear!

(On motion of Senator Fraser, for Senator Baker, debate adjourned.)

AGRICULTURAL GROWTH ACT

BILL TO AMEND—ALLOTMENT OF TIME—NOTICE OF MOTION

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I wish to advise the Senate that I was unable to reach an agreement with the Deputy Leader of the Opposition to allocate time on Bill C-18.

Therefore, I give notice that at the next sitting of the Senate, I will move:

> That, pursuant to rule 7-2, not more than a further six hours of debate be allocated for consideration at second reading stage of Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food.

• (2030)

AGRICULTURE AND FORESTRY

MOTION TO AUTHORIZE COMMITTEE TO STUDY CANADIAN AGRICULTURAL INCOME STABILIZATION PROGRAM—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Day:
>
> That the Standing Senate Committee on Agriculture and Forestry be authorized to study the following:
>
> > The assessment and appeals process of the Canadian Agricultural Income Stabilization Program (CAIS), including the replacement programs; AgriStability and AgriInvest;
> >
> > The definition, including legal precedent and regulatory framework, and application of the terms "arm's length salaries" and "non-arm's length salaries" as used by CAIS and related programs, as well as a comparison of those definitions and the application used by Revenue Canada and Employment and Social Development Canada; and
>
> That the Committee submit its final report no later than March 31, 2015, and retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

Hon. Yonah Martin (Deputy Leader of the Government): Honourable senators, I note that this motion is at day 15, so I wish to adjourn the debate standing in my name for the balance of my time.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF SERVICES AND BENEFITS FOR MEMBERS AND VETERANS OF ARMED FORCES AND CURRENT AND FORMER MEMBERS OF THE RCMP, COMMEMORATIVE ACTIVITIES AND CHARTER

Hon. Joseph A. Day, pursuant to notice of December 4, 2014, moved:

> That, notwithstanding the order of the Senate adopted on Tuesday, November 19, 2013, the date for the final report of the Standing Senate Committee on National Security and Defence in relation to its study on the services and benefits provided to members of the Canadian Forces; to veterans who have served honourably in Her Majesty's Canadian Armed Forces in the past; to members and former members of the Royal Canadian Mounted Police and its antecedents; and all of their families, be extended from December 19, 2014 to December 31, 2015.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until tomorrow at 2 p.m.)

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