

THE STANDING SENATE COMMITTEE ON SOCIAL AFFAIRS, SCIENCE AND
TECHNOLOGY

EVIDENCE

OTTAWA, Wednesday, December 2, 2009

The Standing Senate Committee on Social Affairs, Science and Technology, to which was referred Bill C-6, An Act respecting the safety of consumer products, met this day at 3 p.m. to give clause-by-clause consideration to the bill.

Senator Art Eggleton (*Chair*) in the chair.

The Chair: Welcome to the Standing Senate Committee on Social Affairs, Science and Technology.

We meet today to once again discuss Bill C-6, An Act respecting the safety of consumer products. After seven meetings, including this one, and hearing some 14 witnesses, we are now at the point of doing clause-by-clause study.

I might add, since there was some discussion about this in our counterpart committee in the House of Commons as to the procedure in getting this through, that in the House of Commons Bill C-6 spent some 72 house sitting days in total and to date in the Senate, 31, much less than half of the sitting days it spent in the House of Commons.

That is worth putting it in context. We are at the stage now, if we can complete clause by clause today, where we can report this out to the Senate tomorrow, and there could begin the debate on the receipt of the report and on the third reading of the bill.

If honourable senators are ready, is it agreed that we proceed to clause-by-clause consideration of Bill C-6?

Hon. Senators: Agreed.

The Chair: You can refer to your bill text, as I go through it clause by clause.

Shall the title stand postponed?

Hon. Senators: Agreed.

The Chair: Shall the preamble stand postponed?

Hon. Senators: Agreed.

The Chair: Shall clause 1, which contains the short title, stand postponed? These are the normal postponements at the beginning until we get into the details.

Hon. Senators: Agreed.

The Chair: That is agreed. Now we get into the specific references. We are at clause 2 on page 2. Shall clause 2 carry?

Senator Day: No.

The Chair: I should have pointed out that Senator Day is here today in place of Senator Munson. He sits as a full member of the committee.

Senator Day: My assistant is making copies of what I propose as amendments. I am wondering if the clerk is in receipt of those yet. I understand from his reply that he is not. It makes it flow easier if everyone has a copy of the amendment that I am proposing. I will let this committee know that I will be proposing some amendments. I have listened to the witnesses with a view to seeing what is of concern to the people who we represent, the small- and medium-sized businesses. We also listened to government officials.

As you will see in these amendments as I propose them, I tried to find a balance between some people feeling this bill goes too far and others indicating that they need these powers in order to properly protect the public.

I see my copies are just arriving. I will not have to filibuster any longer in discussing these. I do have an amendment to one portion of this particular clause 2.

Honourable senators, the first amendment is with respect to a concept. I have two amendments that relate to concepts. A concept is where there are several consequential amendments. It makes it a little difficult because it jumps all over the bill to try to pick up this idea in many different places. One of them is amendment number 8 that I will be giving you. The first amendment that relates to that, it seems somewhat strange out of context. However, when you get to the main amendment, which is clause 30, relating to recall, you will then understand the context of the other amendments.

The Chair: Could you give us an overview so members will understand?

Senator Day: Yes.

Senator Segal: I still do not know where to look for what he is amending.

The Chair: At this point, I am in clause 2.

Senator Day: I am still giving you the overview. We are in clause 2. The way we do clause by clause is to go numerically clause to clause to clause. Sometimes an amendment that is at clause 30 will have some consequential amendments earlier that are just changing a word here and there.

The Chair: Give us an overview.

Senator Day: The first one I have is to change a “review officer” to a “review panel.” The majority of amendments are in clauses 33 and 34, but at page 4 of clause 2 there is the necessity of an amendment in order to effect this change throughout the bill.

If I could take you, Mr. Chair, in clause 2 to page 4, we will be looking at lines 19 and 20. You will see that “review officer” appears. What I am proposing in this amendment is the following wording:

“Review panel” means an individual or individuals designated as an independent review panel under section 33.

That is the first amendment that I am proposing. I would like to have that distributed. This is one that I understand we are dealing with the clerk on.

The Chair: Can we have it distributed?

Will you further explain the main section amendment that you are proposing so that we can understand the context of this?

Senator Day: Yes. Everywhere it refers to a “review officer,” we are changing it to a “review panel,” which will be an independent panel. All the amendments relate to that. This is a review. We want it to be a legitimate, honest-to-goodness review by a review panel. That is what the amendment will relate to.

The Chair: The main part of that can be found in clause 33?

Senator Day: Clauses 33 and 34, with the main part being in 34.

The Chair: This is a consequential amendment that goes back into clause 2.

Senator Day: The clause 2 amendment that I have just proposed is consequential to creating an independent review panel as opposed to a review officer.

I would ask Senator McCoy to comment on the general --

The Chair: Is there a copy of this amendment?

Senator McCoy: Yes.

Senator Eaton: Senator McCoy is not a member of this committee.

The Chair: Senator McCoy is not a member of the committee but is allowed to speak. She is just not allowed to vote. Senator Day is replacing Senator Munson and is allowed to vote.

Senator Segal: To be clear on a matter of procedure, will we be expected to debate and pronounce upon amendments that we are seeing for the first time and, in this particular case, are not seeing at all? I do not have the amendment in front of me. I am sure it is drafted in the best of faith, but I do not have it, and I do not want to pass judgment if I cannot see the amendment and see how it connects with the bill.

Senator McCoy: I am sorry. I understood that the law clerk was providing copies. I can give you this.

Senator Day: Our understanding was that the law clerk was providing copies. I have made copies of all the other amendments, and they are here.

Senator Segal: Could we discuss the other amendments and come back to this one when a copy of it is available?

The Chair: Perhaps we could come back to this when we have copies.

Clause 2 will stand postponed.

Shall clause 3 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 4 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 5 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 6 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 7 carry?

Senator Day: I have an amendment to clause 7 and I would ask the clerk to distribute the bundle marked "8." This is 8a of this bundle and this is the other one that has several consequential amendments, all going to the issue of recall.

The Chair: We will wait until it is distributed and then you can explain.

Senator Day: Yes.

The Chair: Clause 7 is on page 5 of the bill. We now have the amendment to clause 7 in both English and French.

Senator Day: This is one of four or five consequential amendments to the fundamental amendment in relation to recall. We will understand the fundamental amendment more clearly when we get to clause 30, but it intends to do two things. One is to create the possibility of negotiation and voluntary recall, just as was explained to us by the government officials when they were here. The crib case was a voluntary recall. It was explained to us that that process was followed, but it is not the process that was outlined, and I think it is imperative that it be outlined.

Second, a recall ordered by the department that is not voluntary could have such a profound effect on the future of a company or an individual in business that it should be done by the minister. The recommendation would come from the department to the minister, constituting a built-in check.

This amendment will try to achieve, one, a process that we were told is being followed anyway; and two, as suggested by at least one witness, if a recall is not voluntary, it should be made by the minister.

I call this amendment 8a. It is to clause 7 on page 5 and reads:

that Bill C-6 be amended in clause 7, on page 5, by replacing lines 23 and 24 with the following:

"section 30 or is the subject of a".

It would then continue with the wording in the bill. Its purpose is to remove section 34.

The Chair: You are saying the effect of that is to say that the recall order must be issued by the minister as opposed to the inspector?

Senator Day: Yes. That is the effect of that. That is a consequential amendment to achieve that at section 30.

The Chair: Are you finished explaining this amendment?

Senator Day: Yes, I am ready for a vote on that.

Senator Eaton: The officials from Health Canada said that they discuss approximately six recalls a day. They have a conversation with the business; they do not simply issue a recall order. To insist that the minister must do it rather than a departmental official who has considered it would tie the minister down a lot.

I wonder if that is a practical amendment, Senator Day.

Senator Day: I am sure Senator Eaton knows that under the current legislation there is no provision for the department to order a recall. I am not suggesting that the government should not be allowed to order a recall; I am just suggesting there should be some parameters around it.

Senator Segal: I have no problem with the spirit of the amendment, but I think the effect of it would be precisely what the bill is trying to avoid. It would add a measure of delay. When a matter is deemed to be of public safety, it is in everyone's interests for a responsible inspector to be able to act quickly. Therefore, I would be opposed to this amendment.

Senator Martin: I concur with my colleagues Senator Eaton and Senator Segal. I question changing lines 23 and 24 to omit clause 34. What would be the effect of such a dramatic change? It would completely change this clause.

Paul Glover, from Health Canada, is here. Would it be appropriate to question Mr. Glover during clause-by-clause consideration? I trust Senator Day did his research before proposing this amendment. I question what happens when we remove a clause and replace it with another clause. I would like to hear from Mr. Glover or other senators.

The Chair: That is up to the committee. We have heard from officials on two occasions, including the last meeting. If it is the wish of the committee to have officials at the table, we can do so.

Senator Cordy: We heard from Health Canada officials on two occasions. Any areas where we might be contemplating an amendment were reviewed. Certainly, we went over and reread the transcript of what the officials had said to us. We ought not to call the officials back for every proposed amendment.

Senator Martin: I would like to clarify certain points.

Senator Cordy: This is the first one we are dealing with.

Senator Martin: I am not suggesting necessarily for this one.

Senator Cordy: I would prefer not to do it.

Senator Martin: Thank you, Senator Cordy. I will object to this amendment for the reason that Senator Segal articulated.

I have concern about removing a clause and replacing it with this amendment.

Senator Ogilvie: Mr. Chair, I just heard this amendment, as everyone else did, presumably. If I heard the explanation correctly, it implied that it would remove the role of an inspector and replace that by the minister. I fail to see where the minister is referenced in the remaining sections. This amendment seems to remove a clause that is intended to ensure that all reasonable efforts have been made. I do not fathom it.

The Chair: Are senators ready for the question?

Senator Keon: This amendment changes the bill appreciably. I will disagree with Senator Cordy. We should bring the officials back to the table for a very short time and ask them to speak to this amendment. A major change is proposed and I would like to hear more about it.

Senator Eaton: Could we read clause 34?

The Chair: I will put Senator Keon's question: Should we ask the officials to come back to the table? It is entirely within the realm of the committee to do that. We have heard from them previously. It is not done all the time, but we did it on the tobacco bill, so there is precedence.

Senator Segal: I support my colleague.

The Chair: Is it agreed? Is there disagreement?

Mr. Glover, could you come back to the table?

Senator Day: Mr. Chair, it is not my intention to enter another debate with the government officials. They have had two occasions to make their position known. I have proposed this amendment having heard all of the evidence and considered all the information.

The Chair: That is a fair comment. Mr. Glover, we will limit your response to the net effects of the amendment.

Paul Glover, Assistant Deputy Minister, Healthy Environments and Consumer Safety Branch, Health Canada: Thank you, Mr. Chair. Briefly, as was said, and for the record, we have not had full time to study this with my best efforts and intentions and the limited time available. The intention of allowing an inspector to issue a recall is for health and safety considerations. There are times when it needs to be done immediately, as Senator Segal has said. The consequence of this amendment would be to remove that.

It would mean that the minister, who is accountable for this and is subject in the review body, could both issue a recall and review the recall later. It would put the minister in the same seat twice, thereby potentially creating a conflict of interest. These are technical matters that are often scientific and engineering related. The minister would be called upon to make those decisions and then later review the recall that she made. We would see that as problematic. Currently, there is a deliberate separation of those two functions such that the technical experts make the call on the recall and it is reviewed by the minister.

Senator Segal: I have heard enough to vote now that we have had that clarified.

The Chair: Shall the amendment of Senator Day carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Senator Eaton: Could we have a recorded vote?

The Chair: Yes. I have been asked to explain the process. The clerk of the committee will call each member's name beginning with the Chair and going in alphabetical order. Senators should verbally vote for or against or abstain. It is my duty to declare when the issue is carried or not carried.

I vote in favour of the amendment.

Senator Callbeck: For.

Senator Cordy: For.

Senator Day: For.

Senator Dyck: For.

Senator Eaton: Against.

Senator Fairbairn: For.

Senator Keon: Against.

Senator Martin: Against.

Senator Ogilvie: Against.

Senator Pépin: For.

Senator Segal: For

Mr. Lafrenière: Seven for; four against.

The Chair: I declare the amendment carried.

Shall Clause 7, as amended, carry? Carried.

Senator Day: I have an amendment for clause 8. Could you pass copies of 8b to all honourable senators? At the top of page 6 -- remove "reviewed under section 34."

Senator Segal: I would like to ask a question to those who are more experienced around this table. Is it normative to see an amendment only four seconds before you vote on it? Is there no courtesy consideration to circulate the amendments prior to the meeting? Is that not how it works? I am just asking.

The Chair: I do not think we have had that on this many occasions. It looked as if the amendments were being prepared right up to the point that we started our meeting. I take it this is the same amendment, another consequential amendment?

Senator Day: It is another consequential amendment. You will get to the fundamental amendment with all the words there in due course when we get to clause 30. This is a consequential amendment.

The Chair: Okay. Should I put the amendment? Senator Ogilvie?

Senator Ogilvie: Mr. Chair, I wish to make the same observation that, in my opinion, this weakens the review process that is currently intended under clause 34 and reduces the protection overall for those who would be subject to an order.

The Chair: Shall the amendment carry?

Some Hon. Senators: Agreed.

An Hon. Senator: No.

Senator Eaton: I think that clause 34 is very involved. It is a very long clause.

Senator Day: I am not eliminating clause 34. We have not gotten there yet, but that is not my intention.

Senator Eaton: What are you eliminating? I misunderstand you.

Senator Day: You should be looking at clause 8 on page 6.

Senator Pépin: Please read it as amended.

Senator Day: As amended, it would be:

No person shall advertise or sell a consumer product that they know

(b) is the subject of a recall order made under section 30 . . .

Then:

. . . or such an order that is reviewed under section 34 . . .

is left out and then you pick up at:

. . . or is the subject of a voluntary recall . . .

I believe we are leaving out the words "or such an order that is reviewed under section 34."

Senator Eaton: It does involve clause 34, which is a little more involved. It is not quite as easy as just leaving out clause 34. It is quite involved.

The Chair: I think he has explained that it is a consequential amendment from what his general intent is with respect to review procedures and the recall procedure by the minister.

Senator Eaton: Would it be fair, Mr. Chairman, if we left that to come back to when we look at clause 34? When we go through clause 34 we will understand what we are taking out of clause 8.

The Chair: Okay. I do not see any problem with that. Is that all right, Senator Day?

Senator Day: Yes. I have no problem with that. I told you this would be difficult to understand.

The Chair: Why do we not stand this down?

Senator Day: We have the same thing with respect to creating this independent review panel. There are a lot of consequential.

The Chair: Let us hold this down.

Senator Day: The danger, Mr. Chairman, is the normal way of doing clause-by-clause is saying: "Is this or that approved?"

The Chair: We can postpone it.

Senator Day: I am worried I will miss one of the consequential by going to the main one. Thank you.

The Chair: I will have to rely upon you to keep on top of it.

Clause 8, then, be postponed. Clause 9?

Senator Day: I have an amendment to clause 9. Could you pass out clause 9? That is Item No. 1.

This could be described as a drafting or technical amendment.

The Chair: It is not related to what we just postponed?

Senator Day: No. It is not a consequential amendment. In a careful reading of the wording of 9(a), you should be looking at line 14 to about 17 or 18. So you get the context, I am suggesting you read more than purely the amendment. Then you will ask what this is all about. It is basically that the words "regarding the fact" do not really need to be there and probably should not be there. I suggest that we eliminate them.

Senator Eaton: Could you explain, Senator Day?

Senator Day: Read the section:

No person shall package or label a consumer product in a manner -- including one that is false, misleading or deceptive -- that may reasonably be expected to create an erroneous impression that it is not a danger to human health or safety.

I would take out "regarding the fact." I am not adding any words. ". . . an erroneous impression regarding the fact that it is not . . ." I do not know who drafted this.

Senator Martin: May I ask your reason?

Senator Day: Poor English. It is just a technical drafting issue.

The Chair: I see. Okay. So you are taking out "erroneous"?

Senator Day: No, "regarding the fact."

The Chair: Okay. I understand now.

Senator Day: How do you create an erroneous impression regarding the fact?

Senator McCoy: It is probably not a fact.

Senator Day: It is probably not a fact at all. It is an impression.

Senator McCoy: This is improving the opportunity.

The Chair: Order, please. One at a time, and speak through the chair, please. Senator Keon, you have the floor.

Senator Keon: I would be very interested in the legalese of this. This looks like some sort of legal English, "an erroneous impression regarding the fact." I think this is legalese.

The Chair: One at a time. Do you want to ask Mr. Glover that question? I do not know if he has his solicitor here.

Do you have any explanation?

Mr. Glover: If I may have just a moment, senator.

Senator Segal: Can I add to the question?

The Chair: As soon as he has finished his consultation. Let him finish that first.

Before you answer, Senator Segal wants to add to the question.

Senator Segal: I think Senator Day, in his editorial enthusiasm, is having the unlikely impact of reducing the protection for the honest producer and manufacturer. This talks about an erroneous impression regarding the fact. If, in a judicial proceeding, it is clear that the fact was not, in fact, the fact, that gives you a defence. I am sure it is not Senator Day's intention to change this because he is on the other side of this question in terms of protecting the innocent. He always has been on the side of protecting the innocent. Tories are not quite as taken up with that proposition as Liberals. Having said that, in this case, it has the opposite effect of removing a defence for an honest manufacturer or store operator, which I do not think he really intends. I have to oppose it in defence of the honest manufacturer.

The Chair: With that additional information, Mr. Glover, do you have a comment?

Mr. Glover: Thank you, Mr. Chair. In addition to the senator's comments, the other concern is the drafting of this was in fact deliberate. There is, through case law that Justice has reviewed, some difficulty in proving an impression. We have to prove an impression of a certain fact. By removing "the fact," we actually make it significantly more difficult, should we need, to move forward on this. It is asking us to prove an impression -- an impression of what? Prove an impression of the fact that it is erroneous. It is in fact deliberate wording.

The Chair: Okay. Senator Day, what is your wish, then, on this?

Senator Day: I wish to continue with my proposed amendment. I believe it is well advised. It makes for much better drafting and I believe that this would be a reasonable amendment.

The Chair: Okay. No one else is speaking on it. Does the amendment carry?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

An Hon. Senator: A recorded vote, please.

The Chair: Okay, a recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Agreed.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Agreed.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: Against.

Mr. Lafrenière: The Honourable Senator Fairbairn.

Senator Fairbairn: Agreed.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: Against.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: Against.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Against.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: Against.

Mr. Lafrenière: Five for, seven against.

The Chair: That is defeated. Shall clause 9, as it is, carry?

Hon. Senators: Agreed.

Senator Day: On division.

The Chair: There are two things we can do; either recorded votes or just on division. You can determine that as you go.

It is carried on division.

Clause 10; shall clause 10 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 11 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 12 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 13 carry?

Senator Day: Just a second here. Yes. I am okay with that one.

The Chair: No amendment on clause 13?

Senator Day: No, it is 14.

The Chair: Clause 13 is carried.

Now we are on clause 14.

Senator Day: Would you pass out the proposed amendment for clause 14 that tries to put some limits on this incident reporting? You will recall we had discussions about whether this could be a flying pan or a hockey stick, and if the hockey stick causes injury do you have to report that incident, that particular one, the screwdriver?

This proposal is at clause 14, page 8, replacing line 10 with the following: It now reads "including a serious injury" and in fact it just adds some words after that, so we pick it up "including serious injury that occurred under circumstances that indicate the product may pose a danger to human health or safety."

The Chair: Okay. That is the amendment. Any comment or questions on the amendment? Shall the amendment carry?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Chair: Do you want to explain it a little more?

Senator Day: We went through countless witnesses who said this could apply to hockey sticks. The department is going to be overwhelmed with reports of incidents or occurrences that fit within this definition of "incident." The department said they are not interested in receiving all of those reports. The way I am trying to limit this and put some arms around it is by adding these words.

Senator Ogilvie: Mr. Chair, I found in the original discussion, and I find again today, that the use of the reference to the idea that things that we use in a common way would be treated in some remarkable fashion by this bill to be in itself remarkable.

This issue here deals with effects that result from the defects in the product itself. It does not deal with the way in which someone deliberately uses or abuses the circumstances, but this is dealing with product safety itself. In fact the language, as it states here, covers the issue and in this case this addition is irrelevant.

Senator Eaton: I would just like to pick up on what Senator Ogilvie said. I believe there is a clause -- and I am sorry, perhaps Mr. Glover can tell us what clause -- which says very clearly that if it is something like a knife and you misuse a knife, then the knife is not subject to recall. It is something for which its use is not a defect. There is a clause explaining that in the bill.

Mr. Glover: Clause 14 in its entirety, A through D and all of its subsections, tries to deal with what the senator was just raising. The key point there is the reasonableness of all of these incidents may be reasonably expected to. We feel that that is clearly articulated there as we move forward with this.

Senator Cordy: I believe the proposed amendment actually clarifies it. When we heard from the Canadian safety standards they talked about the number of frivolous phone calls they received, like the toaster being used to cook pork chops and then someone phoned them because the toaster caught on fire.

We also heard from the Canadian safety standards that they prioritize so they react differently depending on the seriousness of the circumstances. This proposed change moved by Senator Day actually clarifies whether or not the incident is in fact when the product is used for the intention in which it was made. Therefore I will be voting in favour of the amendment.

The Chair: Is there anything further on this, colleagues? Shall I put the amendment? Do you wish to have a recorded vote?

All those in favour of the amendment?

Mr. Lafrenière: The Honourable Senator Eggleton.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Seven for; five against.

The Chair: That amendment carries.

Clause 14 as amended?

Hon. Senators: Agreed.

Clause 15?

Senator Day: I have an amendment to clause 15, Mr. Chair.

Could we pass out my amendment number 3, please? It is relating to clause 15, page 9. What you will see with the first part of this, in effect, what I am doing is making this first clause subclause 1, so it is 15(1), because we will add subclause 2 and subclause 3 afterwards. The wording is: "The minister may disclose personal information" to a person. That is all the same wording. However, the clause is now 15(1).

Then going on to the second part of this, replacing line 17 to 19 with the following. If you like, I can read this to you, at the beginning of line 17: "relates if" and then I am stopping there and I will put these various qualifications in after:

. . . relates if;

(a) the disclosure is necessary to identify or address a serious danger to human health or safety.

That is the same wording that appears there now:

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

My proposed subclause (2) adds the following:

(2) The Minister shall provide prior notice of the intended disclosure to the individual to whom the personal information relates unless doing so would endanger human health or safety.

This is the reasonableness here. The minister will talk to the person before the information is disclosed, unless the public is in danger.

Subclause (3) states:

(3) If the Minister discloses personal information under subsection (1) without providing prior notice, he or she shall, as soon as practicable but not later six months after the disclosure, notify the individual to whom the personal information relates.

I might be overly generous in giving the ministry six months to notify someone, and I am open on that. What I want to achieve is the structure similar to the structure that appears in clause 17, where, first, you notify the person beforehand if you can; if the government cannot because human health or safety is in danger, then at least let them know afterwards that their personal information has been given out to another company, another country, somewhere else.

The Chair: Within six months?

Senator Day: I said six months, but if honourable colleagues would like to shorten that up to 10 days, I would be fine with that, too.

Senator Callbeck: I think six months is too long. What if it were 10 days? Are there problems with it being 10 days?

Senator Day: Maybe we should ask our colleagues.

The Chair: Mr. Glover, do you want to comment on this amendment, plus that specific issue?

Senator Segal: I assume that implicit in this are standing agreements between health authorities and different jurisdictions to exchange information when public safety is involved. I want to be clear that this amendment, by asking Canada to vary what may be an existing agreement with other international bodies, does not diminish the acuity and precision of our responsibility to them with respect to public safety, and their responsibility to us with respect to disclosing material information to our Department of Health, which may be necessary to protect the public here.

I am sure that is not Senator Day's intent, but I worry that the implication of what he is doing may be to put us in violation of some of those normative agreements which I assume exist between governments in good faith to address this kind of information sharing and the protection of the public interest.

Mr. Glover: I have a number of observations with respect to the amendment as it is proposed. There are some concerns with respect to the drafting the way it has been put forward.

First, the Privacy Commissioner testified before you that there were not concerns with these sections. There was some deliberate drafting and we did consult with the Privacy Commissioner's office. I am not in a position to say whether they would or would not be satisfied with these amendments as the bill moves forward. However, I would note for the record that they were previously.

With respect to clause 15(1)(b), from a drafting point of view, I am no longer sure what those functions were as it has been structured.

With respect to the six months, I would also note that the administrative burden on the department for carrying this sort of activity out would be quite substantial. There are times or incidents where we may not be able to reach an individual, which means that we could be resulting in compromising health and safety as we move forward, for example, where a company has gone into receivership but still wishes to protect its CBI. There could be any number of reasons where we are not able to comply with what seems to be a reasonable intent but the standard is exceptionally high.

With respect to Senator Segal's question, while there are written agreements and this would not put us in violation, they would diminish our ability to interact and work with them. I will explain that plus the 10-day comment.

If we are required to disclose this information within a prescribed period of time, it is possible that, even after six months, the work could be ongoing. Notifying the company that two countries are working together to deal with a particular issue alerts the company that that is happening, which could, in its worst situation, lead to the destruction of records and the change of patterns which would then compromise the health and safety of Canadians as we do our work.

The other concern I would have with that is that it might create some reticence on the part of our partners to share that information if they know that we must then disclose it when they do not have to, as a course of the steps they are taking to protect health and safety.

In the long run, this could lead to significant, unintended consequences. I do, as I said, have concerns with the drafting.

Senator Day: I have one comment in that regard. I am talking about clause 15. Clauses 16 and 17 relate to confidential business information. Clause 15 relates to personal information, but I am sure Mr. Glover did not intend to mislead us in his comment, talking about confidential business information.

Mr. Glover: My apologies. Thank you, senator, for the clarification.

The Chair: Is your comment relevant, then, to this clause still?

Mr. Glover: Yes.

The Chair: We are getting into a difficult dialogue here in trying to interpret legal phrases. I think this is becoming uncomfortable.

Mr. Glover: I was just advised that oftentimes some of it is disaggregated. While it is personal information, we are not always able, while it is still personal, to identify the exact individual. We could have elements, for example, the date of birth, the city, and so on, but it is still personal information at an aggregate. To say which individual, and so on, could be exceedingly difficult for us at a practical level.

Senator Martin: I wish to make a comment to Senator Day. These amendments have been prepared by him and his office, but this seems like a fairly major amendment, quite a change in the wording. Earlier, he said he wanted to propose an amendment to make things more concise. If we look at clause 15, the wording at the end of it says "if the disclosure is necessary to identify or address a serious danger to human health or safety." We discussed and studied this at length during our committee hearings as well. This proposed amendment before us is quite lengthy compared to this clause, and it would take more time to consider these changes.

With all the amendments that Senator Day is putting before us, are you absolutely set on moving forward? Obviously, he has put effort into it; he is presenting it to the committee. Right now, with the length of time in this clause-by-clause proceeding, this is a lot of information that we have to consider. Maybe I am feeling the discomfort, as you are, Senator Eggleton.

The Chair: One way of handling this would be to stand it down for the moment. We can always come back to it later or we can go overnight. We do have the ability to meet tomorrow, if necessary, if people need more time to look at these amendments and consider the ramifications of them.

Senator Martin: I do not see the point in that. In any case, I am ready for the question, if others are, at this time.

The Chair: Shall I put the question now or shall I stand it down?

Mr. Lafreniere: Recorded vote?

The Chair: Yes.

Mr. Lafrenière: Senator Eggleton?

The Chair: Yes.

Mr. Lafrenière: Senator Callbeck?

Senator Callbeck: Yes.

Mr. Lafreniere: Senator Cordy?

Senator Cordy: Yes.

Mr. Lafreniere: Senator Day?

Senator Day: Yes.

Mr. Lafreniere: Senator Dyck?

Senator Dyck: Yes.

Mr. Lafreniere: Senator Eaton?

Senator Eaton: No.

Mr. Lafreniere: Senator Fairbairn?

Senator Fairbairn: Yes.

Mr. Lafreniere: Senator Keon?

Senator Keon: No.

Mr. Lafreniere: Senator Martin?

Senator Martin: No.

Mr. Lafreniere: Senator Ogilvie?

Senator Ogilvie: No.

Mr. Lafreniere: Senator Pépin?

Senator Pépin: Abstain.

Mr. Lafreniere: Senator Segal?

Senator Segal: No.

Mr. Lafrenière: Yeas, 6; nays, 5; abstentions 1.

The Chair: That carries.

Clause 15, as amended?

Hon Senators: Agreed.

The Chair: Carried.

Clause 16.

Senator Day: I have a similar type amendment on clause 16, Mr. Chairman. If we could circulate my amendment number 4.

As Mr. Glover pointed out earlier, this is confidential business information, which is different from the personal information we were just dealing with. In this clause the word "environment" appears as well as "human health and safety," so it also becomes environmental legislation.

This amendment would make this first subclause (1), similar to what we did in clause 15. That is part (a). Part (b) is replacing line 27. The effect of that is taking out "and without notifying the person." We will have the same structure afterwards of notifying the person beforehand, or the company, if possible. However, if the public is at danger, notify them afterwards that you made their private, personal, confidential information available to their competitor in a foreign country. Let them know. That is the structure.

Senator Eaton: Mr. Chairman, these are not simple amendments, as we are beginning to see. They are adding many subclauses to each clause. The Justice Department has not looked at this. Are we qualified, as a committee, to add clauses to a bill without legal...

The Chair: That is why the officials are at the end of the table.

Senator McCoy: That is the Senate's job.

Senator Day: We are qualified to vote against them.

The Chair: It is our job to do that, with legal advice.

Senator Eaton: We have no legal advice.

The Chair: We have legal advice at the end of the table.

Senator Eaton: She is not writing the bill. We are writing a bill here.

The Chair: We have legal advice at the end of the table.

Senator McCoy: She is not allowed to give us advice. She is counsel to the department.

The Chair: Is there anything further on this?

Senator Day: Question.

The Chair: Is the amendment of Senator Day agreed to?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Chair: We will have a recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, 7; nays, 5.

The Chair: The amendment is carried. Shall the clause, as amended, carry?

Senator Day: Agreed.

The Chair: That was clause 16.

Shall 17 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall 17.1 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall clause 18 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall clause 19 carry?

Senator Segal: I need to register an abstention on clause 18.

The Chair: There was no vote on clause 18. Can we record an abstention?

Mr. Lafrenière: We will find a way.

The Chair: We will find a way.

With that abstention clause 18 carries.

Shall clause 19 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall clause 20 carry?

Senator Day: I have a proposed amendment to clause 20(2)(d):

(2) The inspector may, for the purpose referred to in subsection (1),

Subsection 1 talks *inter alia* of the purpose of verifying compliance, and that is before there are any reasonable or probable grounds for doing anything. They can:

(d) seize and detain for any time that may be necessary

... an article or a conveyance. A conveyance, as I interpret it, could be a vehicle or whatever a product might be carried in.

This is my amendment 5. It reads:

THAT Bill C-6 be amended in clause 20, on page 11, by replacing line 19 with the following:

"by means of or in relation to which the inspector believes on reasonable grounds any provision of this Act or the regulations has been contravened, or"

I picked up the "or" again at the back end and I added this qualifier so that the inspector cannot seize and detain without having some reasonable grounds for believing. That is the purpose of that.

Senator Segal: I accepted the advice of the officers of the Crown who have appeared before us that the normative common law, public administration rules and others, about inspectors acting in a reasonable way is a given. Therefore, I am not disposed to this amendment.

Senator Day: You are not going to give it to me?

Senator Segal: It may not matter.

Senator Eaton: We are going to win.

Senator Day: Yes, but I would like to see some reasonableness in this committee.

The Chair: Is there anything further on this? A recorded vote has been requested on the amendment.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, 7; nays, 5.

The Chair: The amendment carries. Is there anything else on clause 20?

Senator Day: I have another amendment, Mr. Chairman, to clause 20(4) on page 12. The effect of this amendment is to eliminate the words "and they are not liable for doing so." That is my amendment number 6. That clause would stop after the word "property."

The Chair: Are there any questions on this?

Are senators ready for the question?

Some Hon. Senators: Question. A recorded vote.

The Chair: We will have a recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: Abstain.

Mr. Lafrenière: Yeas, 6; nays, 5; abstentions, 1.

The Chair: That amendment carries. Is there anything further on clause 20? Shall clause 20 with two amendments carry?

Senator Day: Agreed.

The Chair: Clause 21.

Senator Day: Yes, I have a proposed amendment to clause 21. That is my amendment number 7, if you could circulate that one, please. This is reflective of discussions we have had to expand the requirement for a warrant, not to the extent that some of our witnesses wanted it extended, but to include a dwelling house and/or an office if the office is a separate room, separate place than the place of manufacture or the imported goods or labelling of the product. If it is an office somewhere else, then in that particular instance we suggest that there should be a warrant obtained. I point out again that the warrant can be obtained from a Justice of the Peace on the telephone, according to this particular section. I will not go through all of the places where we have to make amendments, but everywhere you see the words "dwelling house" I am adding "office or dwelling house."

The Chair: So you are saying an office, but that does not include a warehouse or store?

Senator Day: That is correct.

The Chair: You are separating out an office and a business as opposed to other components of a business, for warrant purposes?

Senator Day: For warrant purposes.

The Chair: Office in a home. Home is already covered by a warrant, I think.

Senator Day: A dwelling house is covered by a warrant; that is right. If you read subsection 5:

In this section, "office" means a self-contained room or place that is used as a business office, but does not include a room or place in which a consumer product is manufactured, packaged, stored, advertised to the public, sold, labelled, tested or transported.

I had to define "sold" in 21(6) because the definition of "sell," the present of the word "sold," is so broad that I felt it was important to define it for the purpose of this section.

Senator Ogilvie: I am very much opposed to this amendment. I can read this easily without the benefit of long study as meaning an office in the context that the senator has described it being a part of a situation that is clearly in necessary of being investigated where the records would be held for the issue and situation that is occurring. I think this is a travesty with regard to the intent of the bill.

Senator Eaton: I agree wholeheartedly. I think if this committee really wants to protect Canadians, eviscerating the bill, the way we are doing now, is not serving the public interest, and this would certainly not be serving the public interest.

The Chair: Anything else on this?

Senator Cordy: The amendment is not saying that we can never go into an office. The amendment simply says that in order to go into an office that is separate from -- and the definition of office is there. It is a self-contained place that is used as a business office. It does not mean that it is a corner of a warehouse; it means that if you wish to go into a self-contained office you will need a warrant. It does not mean you can never go into an office.

Senator Eaton: Senator Cordy, I appreciate what you are saying, but Revenue Canada can go into your wardrobe without a warrant. An office is still a public place. People can knock on the door and go in. It can hold files and papers. It would be very necessary to know what the formula or distribution is or how much or what stock or inventory. To demand a warrant eviscerates the bill.

Senator McCoy: I anticipate the deliberations, although I am not a member so I am not voting.

The Chair: However, you can speak.

Senator McCoy: Thank you. It seems to me that one of the egregious challenges with this legislation is it leads us down a slippery slope on the procedural side. The intent of the legislation to protect consumer products is inestimable. We have, for years, protected the individual against the depredations and degradations of the state. That is our British common law tradition. To do that we must maintain a certain rigour in our standard legislation that allows the individual to have the intercession of an independent agency, in this case a Justice of the Peace, who says, "Yes, I hear your

reasons. You want to go in. They seem clear to me; go ahead." Those warrants take no time at all to take if the grounds are set out, and they generally are.

Just like the Senate, it is that one moment for a sober second thought that has kept our people safely on the side of the law, both for those called upon to undertake inspections and those called upon to be inspected. What impels me to attend these hearings and your meetings -- and I am very impressed with the quality of participation on all four sides of this table -- is those protections of our legal rights that we must maintain and continue to uphold in the writing of legislation as a tradition that should not be any further eroded. Thank you, chair.

The Chair: Are we ready for the question?

Some Hon. Senators: Question.

Senator Ogilvie: Recorded.

The Chair: A recorded vote on the amendment.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Abstain.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Abstain.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: Abstain.

Mr. Lafrenière: Yeas, five; nays, four; abstentions, three.

The Chair: That amendment carries. Clause 21 as amended. Agreed?

Hon. Senators: Agreed.

The Chair: Carried.

Clause 22?

Hon. Senators: Agreed.

The Chair: Carried.

Clause 23.

Senator Day: I did not like the word "thing" but I did not propose any amendment. It really upset me.

The Chair: "Thing" stays. Clause 23 carried. Shall clause 24 carry?

Hon. Senators: Agreed.

The Chair: Carried.

Shall clause 25 carry? Carried. Shall clause 26 carry?

Senator Day: Yes.

The Chair: Shall clause 27 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 28 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 29 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 30 carry?

Senator Day: This is the one I was looking forward to speaking about. Could we circulate number 8?

I have the proposed amendments to clause 30, with 08c and 08d consequential amendments attached. You have already seen two consequential amendments at the front end, and these are two more at the back end. You might as well have them so there is no confusion.

I propose:

(a) on 14.

(i) by replacing the heading "INSPECTORS' ORDERS," preceding clause 30 with the following:

"ORDERS," and

(ii) in clause 30,

(A) by replacing line 30 with the following:

"30.(1) Subject to this section, if the Minister believes on reason . . . ", and

It would read "Subject to this section, if the minister believes on reasonable grounds that a consumer product is a danger to -- he may, for commercial purposes, recall it."

The amendment would have the minister do the recall, not the inspector. That is the intent.

In addition:

(B) by replacing line 32 with the following:

"danger to human health or safety, he or she may . . . ;" and

In the bill, it says, "they," in reference to the inspector and the amendment refers to the minister, "he or she."

Next, we have:

(b) on page 15, in clause 30, by adding after line 2, the following:

(3) Before making an order under subsection (1), the minister shall issue a notice of opportunity for voluntary recall to the person.

(a) stating the nature of the order that the Minister intends to make and a summary of the reason for so intending:

(b) requesting that the person undertake a voluntary recall of the consumer product, or voluntarily carry out other measures that, in the opinion of the Minister, would be equally effective in addressing the danger to human health or safety posed by the product, within the specified time: and

(c) specifying the time within which the voluntary recall or other measures must be carried out.

This is as it has been done under the Hazardous Products Act and as it is done in the United States. The recent Stork crib recall was voluntary in conjunction and collaboration with the department. That is a reasonable and balanced approach. I have given more balance in subclauses 4, 5 and 6.

(4) The minister may not make an order under subsection (1) unless the person refuses the request contained in the notice or fails to carry out the voluntary recall or other measures within the specified time.

(5) Subsection (3) or (4) does not apply if the Minister believes on reasonable grounds that its application in the circumstances would pose an imminent danger to human health or safety.

If the minister is of the view that there is a need for immediate action, then the voluntary recall is out the window and the minister can act unilaterally.

(6) The minister need not comply with subsections (3) and (4) if a notice of opportunity for voluntary recall was previously issued to the person in respect of the same or a substantially similar matter. END

All of this is an attempt to be reasonable, to protect the public and to give the tools to the ministry that they need. It is an attempt to find the fine balance between the two. I think we have found it with this one.

The Chair: You are saying that the upshot is you would give a company a voluntary opportunity and, if they did not comply, it could be forced upon them.

Senator Day: Absolutely. That is it.

Senator Eaton: We could save a lot of money by getting rid of the public service. Having the minister take on all the jobs of the inspector is wholly unreasonable and unworkable. That is the only part of the amendment I would like to comment on.

Senator Segal: With this kind of amendment, the only thing missing is: . . . And the minister shall breathe 12 times and look out the window and talk to her public servants 14 times over both semi and decaf coffee. The purpose of the bill is to give an inspector in the field the ability and the authority. One assumes that because there is the practice of voluntary recalls in the marketplace, Health Canada is in regular contact with people who do voluntary recalls the minute they are made aware of a problem because they are responsible.

The presumption here is that you cannot do any of this until the minister is involved, and we know how many levels of government that will require. Any of the urgency that the government needs to protect the public, in my view, would be vitiated by this proposition. I am for protecting the vast majority of manufacturers and producers who are innocent. This goes way too far and I could not possibly support it. I would urge colleagues not to support it.

Senator Day: That is absolutely the wrong interpretation of this. This simply limits the minister to making a unilateral order without any consultation, which they can do now. The way this bill is worded, the minister does not have to do any consultation. The inspector does not have to have any consultation. That consultation takes place as it has taken place in the past, and everything is fine. This says that the minister should not act unilaterally without having first talked.

Senator Segal: As Edmund Burke would argue, legislation is about those who do not act responsibly within the law and within the context of the public interest all the time. Legislation is to give power to the state to deal with those who do not act responsibly. While I accept the presumption of innocence and the proposition, the truth is that you could have an endless discussion that constitutes an ongoing consultation before your amendment would allow a minister to act in the public interest. I know you well enough to know that would not be your real intent when public safety is at stake.

Senator Day: That is not there at all.

Senator Segal: I think it is.

Senator Day: I was about to tell him what Mr. Laskin would say about that.

The Chair: Two lawyers arguing about that.

Senator Segal: I am not a lawyer.

Senator McCoy: For hundreds of years, the principle of responsible government has been maintained by setting up legislation such that it is a ministerial responsibility to act. Usually, overall enabling legislation contains an authority for the minister to act through her advisers and civil servants. For those of us who have been ministers, this has always been a standard procedure. It is not embodied necessarily in this particular bill but it would be in the general legislation.

It is unusual to give an order of this magnitude to a civil servant. Usually, the civil servant acts on behalf of a minister. That is how we keep our executive responsible to Parliament. In fact, we have only one house in Parliament that is the "responsible house," or the confidence house -- the House of Commons.

Senator Segal: Do you extend the principle to a police officer? Does the minister have to act while the police officer has no freedom to act, based on what they find in good faith as reasonable officers of the Crown?

Senator McCoy: If we wanted to set up a Criminal Code around consumer products, we would be having, perhaps, a more nuanced conversation.

Senator Segal: It would be a different discussion, I agree.

Senator Day: At clause 30 in the bill, it is important to understand that this power has not existed before. The government is asking us to pass legislation giving the Ministry of Health a power they have never had before. I am suggesting that before that power is exercised, there be some consultation for voluntary recall. That is all that says.

Senator Martin: In response to that, senator, I thought I had heard from our Health Canada officials -- we can ask them again -- and other witnesses, that it has been a consultative process all

along and that this act would not change the kind of consultation that has taken place and that will continue to take place.

We speak about these inspectors with gross powers and, perhaps, how they may exercise and abuse these powers. Yet, we know that the minister has confidence in the individuals that he or she will be working with and that these inspectors will be subject to review by the minister. Ultimately, it is the minister who is overseeing this ministry.

Perhaps I could ask Mr. Glover to confirm what I am saying, namely, that the consultative process and what has happened to date will continue under this act, and that this will strengthen what we have in terms of the necessary tools that Health Canada needs to protect our Canadian consumers.

Mr. Glover: I would love to give a simple answer, but it depends. If the bill is passed with these amendments, the process would change, and change dramatically. Our ability to protect the health and safety of Canadians would be significantly compromised. With the amendment to clause 21, the vast majority of offices we inspect are off-site, in separate dwellings. They will know we are coming; they will have ample notice to prepare and to respond. That will create delays in certain instances -- not all, but it can.

With respect to clause 30, as amended, that would further have the potential to create significant delays. First, the minister must be satisfied. All the regular work and interaction we do with companies on a day-to-day basis, the close working relationship they have with the several hundred staff that I have would now have to be channelled through the minister so that the minister has reasonable grounds. We will be writing briefing note after briefing note to ensure that she understands. In some of the instances, we see cartable things -- that is, things in town for a couple of days. We would not have the authority to interact in a timely way. They can set up shop and take down shop incredibly quickly. The time it would take us to move through the bureaucracy to convince the minister that she has reasonable grounds on which to act would, I think, change the nature significantly to protect business that is not always acting in the best interest of Canadians and compromise health and safety. I think it would radically alter the dimension.

Furthermore, the amendment as it is proposed imposes upon us not just to offer the company the opportunity to work voluntarily; it gives them the choice. There are times today when they want to issue, as part of the recall, a retrofit kit to correct the problem. We are testing those kits and saying, "This does not work for us; we do not think that is an appropriate measure." If we offer them the choice to move something voluntarily, they then have instrument choice which we no longer have control over in terms of the remedy. We may say: "Thanks; you took the opportunity. We have to start the process all over again because we think that on reasonable grounds, it does not satisfy the health and safety concern and would further delay the process." It offers the instrument to remedy fully in the hands of the party and there is no opportunity for negotiation as we move forward. Instrument choice is now gone.

The other problem that this would present is there are instances, however rare they might be, where we would prefer not to work on a voluntary basis. If this is the fourth or fifth time that we have seen a company introduce a similar product with a similar hazard into the marketplace, why would we work voluntarily with them? This is a repeat bad actor. While our spirit and intent at a programmatic level is to work on a voluntary basis, it is not 100 per cent of the time if we see there is a repeat offender for which they are constantly abusing the system and their interactions with us.

Senator Cordy: If you look at part of the amendment, it says that "the Minister need not comply with subsections 3 and 4 if a notice of opportunity for voluntary recall was previously issued to the person in respect of..." -- not just the same but a substantially similar matter. It does not have to be identical; it has to be similar. The minister need not comply with "subsections 3 and 4," if that is the case.

You have said that it takes a long time and that everyone must brief the minister. As a Canadian, I think it is important that the minister is fully briefed and that the minister fully understands what he or she is doing. Sorry; I think most Canadians think that.

The minister is ultimately responsible. I am starting to see ministers distancing themselves from issues and to say, "Whoops, not my fault." I believe that ministers are ultimately responsible for decisions made in their department. I find it offensive that the suggestion is made that those of us who agree with amendments to try to make the legislation better for all Canadians and to protect the

health and safety of all Canadians are, perhaps, a little less concerned because we agree with an amendment. I find that to be offensive. We have said around this table, from the time we received the bill, that each and every one of us, regardless of your political party -- whether you are an independent senator or aligned with the party -- want legislation that makes products safer for all Canadians. To suggest otherwise, I find to be offensive.

Senator Eaton: Senator Cordy, I appreciate your arguments. There is no question that on every minister's desk, the buck stops there. I also think that if you are a minister and you have a highly qualified public service that works for you, that is trained to do their jobs, you have to delegate some things. That is not to say that you are not briefed on important issues. However, with the number of consumer products that are sold across Canada that come from all around the world, I think it would be onerous for a minister who has many different facets of a department to consider -- that is, a minister who has to sit in the house, who has to travel, and who has to read a lot of stuff -- to be expected not to be able to delegate product consumer safety to some of our highly trained public servants. That is not to say she should not be briefed, but I do not think she should sit down every morning and spend two hours listening to various products that are going through various stages of product evaluation. I do not think that is practicable.

Senator McCoy: I agree 100 per cent with you. We are saying the same thing. The delegation is absolutely a matter of course. This legislation does not give the minister any power to delegate. It does not give the minister the power; therefore, she cannot be responsible and she cannot delegate. It is given directly to the inspector.

We are more or less saying the same thing. On a practical level, you are 100 per cent right. Inspectors go off and exercise their discretion until something comes along, and by exception, usually, the minister would be briefed, as she must have been around every major incident that we have seen in the last 18 months or so. I think we are saying the same thing, Senator Eaton.

The Chair: You are coming to a different conclusion, however. Is there anything further on this amendment? Shall the amendment carry?

Recorded vote.

Mr. Lafrenière: Senator Eggleton.

Senator Eggleton: Yes.

Mr. Lafrenière: Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: Senator Day.

Senator Day: Yes.

Mr. Lafrenière: Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: Senator Fairbairn.

Senator Fairbairn: Yes.

Mr. Lafrenière: Senator Keon.

Senator Keon: No.

Mr. Lafrenière: Senator Martin.

Senator Martin: No.

Mr. Lafrenière: Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, 7; nays, 5.

The Chair: Is there anything further in clause 30? Shall clause 30, as amended, carry?

Hon. Senators: Agreed.

The Chair: Shall clause 31 carry?

Senator Day: I have some amendments to clause 31.

The first one is in front of you. That was 8(c). That is consequential.

The Chair: It is 8(c). Number 9 is coming around now as well.

Senator Day: At subclause B the inspector has made an order under section 30 with respect to the product, and section 30 is recall, as you will just recall. The inspector now will not be making recall orders, therefore that section requires amendment. The wording I am proposing is "the minister has made an order under," as opposed to "the inspector." That seems pretty straightforward.

Senator Segal: If one assumes that the consequential amendments follow upon an amendment upon which we have already voted, is it fair to assume -- and I put the question to colleagues -- that the vote on the consequential amendments is likely to be the same as on the main amendment. Why would someone who voted for the amendment vote against the consequential? Why would someone who voted against the amendment vote for the consequential? On that basis, I just wonder in terms of assisting the chair with his onerous duties and his hard-working clerk and other staff, whether we could do that on some of the consequential amendments without having any real impact on the outcome otherwise.

The Chair: We can do that.

Senator Keon: For the first time in my life, I am in slight disagreement with Senator Segal.

Senator Segal: It is not the first time, but be my guest.

Senator Keon: These amendments are transformative to the way the system should work.

Senator Segal: I stand corrected and redacted and joyous in the process.

Senator Keon: Therefore we do have to look at them in detail, and each consequential implication. That is because I believe the amendments, in their entirety, transform the legislation.

Senator Segal: I agree.

The Chair: Senator Day, do you want to proceed, then, to explain your amendments? We will deal with the consequential amendment.

Senator Day: At page 15, 8(c), clause 31 on line 10, (b) would now read "the minister has made an order under."

The second consequential amendment is at page 16 and 17.

The Chair: That is on clause 34. Why not just take the consequential amendment on clause 31. I could take that now.

Senator Day: Sure. Let me go back.

The Chair: On the consequential amendment on clause 31, page 15, on line 10, "the minister has made an order under." That is a consequential amendment.

Senator Day: Correct.

The Chair: All those in favour? Opposed? On division? Carried.

Senator Segal: No, no. I want a recorded vote.

The Chair: You want a recorded vote on that too.

Senator Eaton: I just wanted to ask Senator Day: Before making an order pursuant an inspector shall issue a notice of opportunity for voluntary compliance of the person; what is it, a 15-minute, 24-hour compliance, two months? What is your compliance?

Senator Day: Sorry; I am not with you.

The Chair: Should I just take the same recorded vote on the previous one? Let us record it, but not call it is what I mean. It is the same recorded vote.

Carried.

On clause 31 also, you have a further amendment, a more substantive one.

Senator Day: That would be my amendment 9.

The Chair: Yes, we have it. JAD09; JAD stands for Joseph A. Day.

Senator Day: JAD09, yes.

The Chair: Could you please explain what you are trying to accomplish here?

Senator Day: Yes, the first part of this section 31, this amendment, at clause 31, is to add the words "subject to this section" right after 31(i) then "subject to this section," is going in there. Then you pick up "an inspector may order." The wording continues as it is. I am just saying "subject to this section," because you will see there are some other qualifications.

In subclause B, by adding at line 40, so let us go down to line 40, which happens to be at the end of section 31. What I would like to add here, because there are three subclauses to 31, subclause 1, 2, and 3, and I am proposing to add subclauses 4, 5, 6, and 7.

Subclause 4; before making an order pursuant to paragraph 1(a) or (d), the inspector shall issue a notice of opportunity for voluntary compliance to the person, stating the nature, et cetera, requesting, and specifying.

The order under 1(d) is what we have to look at, pursuant to 1(a) and 1(d). Subclause 1(a) is "that person does not comply with an order made under section 12." That is attesting. The inspector can come around and tell people they have to start doing some testing that would help the inspector to determine whether there is a danger to public health or safety. Is that understood? He can make that order.

Subclause 1(d) is "an inspector believes on reasonable grounds there is a contravention of the act on regulations in relation to the product."

If the inspector decides on these things, such as someone is not testing the way he or she likes or that he perceives there is a violation, and then the inspector would go through these various steps. The inspector shall issue a notice of opportunity for voluntary compliance.

I am trying to create a dialogue between the inspector and the business person. This is doing that here. It is mandating it if the inspector decides to say "you are in violation" or "you have not tested the way I want."

Come and say, "let's try to work this thing out," is what I am trying to do, and that is what we were told they do. However, the wording was not like that in the bill and the bill went far too far and the government said "give us all the powers and trust us."

I am trying to ask that we be permitted to put some limits on these powers so we know there is a process that is going to be followed.

The inspector may not make any order pursuant to paragraph (a) or (d) unless the person fails to carry out the measure requested. The measures are not successful in achieving compliance or the inspector believes, on reasonable grounds, that the measures will not be successful in achieving compliance within the specified time.

The inspector is still in control, but at least someone knows now the business person, the importer, the packager, the labeler, the manufacturer, will know what the rules are.

Subclauses 4 and 5 do not apply if the inspector believes on reasonable grounds that its application in the circumstances would endanger human health and safety.

That is one that goes to protect the public. If there is any possibility that this negotiation, this working it out, endangers human health and safety, then the inspector is free and clear to go right ahead and do whatever he or she thinks is important, and in the same subclause the inspector does not have to do this dialogue if he has already had a dialogue and already given this individual or company the opportunity in the past.

That is my attempt at achieving a balance as to what the inspector can do.

Senator Martin: Senator Day answered it in the number 7 piece. I am not going to ask this question. He answered it in number 7.

Senator Eaton: I think Senator Day is presuming that people he is dealing with, and businesses he is dealing with, are all acting in good faith.

In this big bad world of ours, and with global trade, I do not think we should always presume that a dialogue we are having with a business person necessarily denotes that they carry the same values as we do and that they are all of good faith.

Senator Day: Senator Eaton is absolutely right. I generally believe that by far the majority of business people and individuals involving in packaging, labeling and manufacturing of consumer products are acting honorably and honestly, and this is worded to try to reflect that.

Senator Dyck: I believe that Senator Day is proposing to balance it so that those companies that do act in good faith are not subject to regulations that interfere unnecessarily with the way they conduct their operations. It is a balance between trying to protect those who do operate in good faith and those who may not.

The Chair: Is there anything further? Are senators ready for the question?

Hon. Senators: Question.

An Hon. Senator: Recorded.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, 7; nays, 5.

The Chair: The amendment carries. Shall clause 31, as amended, carry?

Hon. Senators: Agreed.

The Chair: Shall clause 32 carry?

Hon. Senators: Agreed.

The Chair: Clause 32 is carried.

Shall clause 33 carry?

Senator Day: Could I ask my honourable colleague next to me to speak on my behalf? My throat is getting a bit dry. If she could speak, although not a member of the committee, I would propose the amendments that she will now explain to you.

The Chair: Senator McCoy.

Senator McCoy: Thank you.

Clause 33 talks about the minister designating review officers for the purpose of reviewing inspectors' orders. What is being proposed in this amendment to clause 33, and then follows in clause 34 -- and there are consequential references throughout the act -- is to instead have the minister designate an individual or individuals who can act as an independent review panel. This independent review panel would give a more arm's-length appeal function to anyone who wishes to have an order reviewed. The process starts in clause 33 by saying that the minister shall designate qualified individual or individuals who might be appointed as a review panel.

I think it is clearly implied by the legislation as drafted that it would currently be another inspector who reviews an inspector's orders. At least that possibility has occurred to whoever drafted the legislation, because it says the review officer shall not be the inspector who made the order. I should think not. That would be making the normal distance between the actor and the reviewer far too short. This is such a fundamental principle of natural justice, as we would say in administrative law. We must set up a way for people to test a decision, and that decision has to be reviewed by someone who is at arm's length, not sitting at the next desk and not sitting in the chain of control.

This is normally the way it is set up in our departments, but to make it ultimately clear, this would set up the review panel, which could be more than one individual, but it would be an independent panel. That is the purpose of this suggested amendment.

Senator Ogilvie: I assume that there is another amendment describing how this review panel is to be selected and constituted.

Senator McCoy: There is a provision at the end of the bill, under "Regulations," that covers that in broad language. Do not get me on that hobby horse, Senator Ogilvie. There is so much we leave to the regulations rather than putting in the legislation.

In clause 36(1)(a), I believe, there is a provision that the Governor-in-Council can pass regulations as to how regulations, et cetera. Instead of saying "review officer," we would say "review panel." It is with regard to how they are set up and how they exercise their powers, et cetera.

Those details would come in the regulations that would be presented in due course.

Senator Ogilvie: I am sorry. I do not see the reference that was indicated. To make such a substantial change without giving us an idea of how the bill would actually function with regard to setting up a review panel . . .

Senator McCoy: Senator Ogilvie, we have been asked to accept a whole bill largely on the same basis.

Senator Ogilvie: Mr. Chair, with respect, the bill is an orderly document that sets out a series of steps with clearly defined persons at each step. The challenge has been to know who those persons are. This is an undefined set of persons.

Senator McCoy: It is an undefined set of persons now.

The Chair: It replaces "reviewing officers," with no definition, with "a review panel." And I think Senator McCoy is pointing out that there is provision for regulations in section 36.

Is there anything further on this?

Senator Segal: Chair, I oppose the amendment because, like one or two that we have already discussed, I think it will have the opposite impact from that intended by our colleague.

Think about it for a moment. Someone had a bad go with an inspector. Someone wants that inspector's decision reviewed. Based on this amendment, there has to be a bureaucracy in place to appoint a panel. There have to be rules for how the panel operates, as Senator Ogilvie, I think, mentioned.

On that basis, you would have to have some regulatory or statutory basis for how that panel might operate, which has not been put before us. More important, from Justice McRuer's report of the 1960s on civil rights we know that every decision taken by government can be reviewed by court. If you are unhappy with the inspector and asked for a review and the minister quickly appointed a reviewing officer and you are unhappy with that, you then have the right to go to the Federal Court, usually, to have that overturned. This would have the effect of saying there has to be a panel, the panel has to have a structure and there have to be rules by which the panel operates. What is the implication of natural justice in terms of the procedures? You would be setting up a greater delay for the aggrieved person who has treated badly by the inspector. That is not the intent of Senator Day and Senator McCoy, but it is in fact what this amendment would do, so I have to oppose the amendment.

The Chair: Would you not need some rules for the reviewing officer?

Senator Segal: The minute you have a panel, you have to decide whether the panel operates by majority. One officer allows you to get a quicker response, positive or negative, as the case facts and merits might justify. Therefore, I oppose the amendment.

The Chair: Is anything further on this? We will have a recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

The Chair: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Abstain.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, six; nays, five; abstentions, one.

The Chair: That carries. Clause 33 as amended, carried.

Clause 34?

Senator Day: I have a number of consequential here. The first one is 8(*d*). You all remember clause 8 with respect to recall? This is a consequential amendment with respect to that in clause 34, pages 16 and 17.

Do you see on page 16, line 7: "shall be reviewed on the written request"? The effect is to take out the section 30 order because we do not want the minister's order to be reviewed by the review panel. We already have a built-in check by the recommendation going to the minister to make this order of recall, so the minister will have to be briefed and have to understand that this is a serious and potentially political matter. The minister makes the order. We do not have to have that order being reviewed by a review panel.

On page 17, replace line 3, which says now "to recall the consumer product or to take another measure." We are just taking out "to recall the consumer product."

That is a consequential to what we have already passed. It is difficult to follow these consequential amendments because you are only changing a couple of words, but they all go back to the point that we have upgraded this right they never had before. We have put some limits on the right in the existing legislation, the right to order recall, and are having the minister do it as opposed to an inspector. These are consequential things that fall out by virtue of that happening.

The Chair: Which page are you referring to?

Senator Day: Page 16 and 17.

The Chair: We have two pages here now. We have 8(*d*) and we have another one with no number. It is 8(*d*).

Senator Day: Yes, there are two pages on this amendment.

The Chair: I see, so this is a second page.

Senator Day: Not two pages; two amendments.

The Chair: There is clause 34 page 16 and 17 as well.

Senator Day: Yes, that is it. The little one is the one I am talking about now.

The Chair: What is this page here?

Senator Day: That is coming.

The Chair: You are just speaking to this first one here, which are consequential amendments?

Senator Day: To the recall change that we have made. The recall is not a right that has existed with the ministry previously. It had to deal only with voluntary recalls or they had to go to the act and exclude products, et cetera, under the Hazardous Products Act. This bill purports to give the ministry the right to order recall, and we have already discussed that, but these are fall-outs from that. I have suggested it should not be the inspector. I do not want to call him the lowly inspector, but the busy inspector. It should be someone who focuses on how important this is to the future of the business.

The Chair: I could take the same vote. This is a consequential amendment. Vote number 9 was 7:5; could I apply that again as the recorded vote in this case? Is that okay?

Senator Day: That is fine.

The Chair: Is that agreed?

Hon. Senators: Agreed.

The Chair: Carried. You still have a further amendment here.

Senator Day: Yes, we have another one. My colleague will speak on the consequential from the point of view of the review panel, the amendment we just made to clause 33.

Senator McCoy: I may need to chat with you for a minute because you need to make this change.

The Chair: Senator McCoy, do you wish to speak now?

Senator McCoy: Thank you, if I may. With the introduction of this concept of a review panel, which could be one individual or could be more individuals, it would depend on how the senior management would set that up in each region. A review panel has been inserted throughout the language in this clause. That is a consequential.

Two other things have been introduced in this series of amendments, and you would see under (a) (ii) and also (iii) – I am looking at line 20 and 23 on page 16 – section 34 set up a time frame within which, if you wished to have a review, you had to have your request for the review within a certain time. It also referred to when the review would be completed. These two amendments in the first instance, instead of having only seven days within which to request a review, the individual would have thirty days to request a review. Believe me, sometimes that time is needed.

The same consideration, however, at line 23 is modified to some extent. In the event of a serious and imminent danger to human health, the order itself may have specified a shorter time. I suggest here that time be no less than seven days. In other words, the original concept is you can have a request for a review within seven days if there is imminent danger and longer if there is not. Those are the first two.

Later at 34(7), which is line 39 and 40, the review panel itself would be enjoined to complete the review forthwith, in any event within 40 days; so what is good for the goose is good for the gander.

That is the effect of the suggested amendments throughout section 34. On the one hand, to insert the word "panel" instead of "officer," and on the other hand to address the time frames within which a review can be requested and within which a review must be completed.

The Chair: Senator Day, your amendment, which is --

Senator Day: I also have an amendment but it is a separate document.

The Chair: Yes, you do. One of the problems is that your amendment just spoken to by Senator McCoy talks in (v) "by replacing lines 37 to 42," your further amendment on clause 34, the one marked JAD10 talks about replacing lines 36 to 38. You have an overlap. You have two clauses with two different amendments.

Senator Day: My amendment concerns subclause (6).

The Chair: Yes, but they are the same lines.

Senator Day: We can make a friendly amendment. We have already decided that it is not a review officer, so the second line of my amendment should read "review panel."

Senator McCoy: I have made a typographical error, Mr. Chair. Subclause (v) says "referring to lines 37 to 42."

The Chair: It is review officer at about line 39. It should read "review panel," should it not?

Senator McCoy: Yes. There is something odd.

The Chair: Could we get this straightened out, please?

Senator McCoy: That should read "39 to 42."

The Chair: Subclause (5) should read "39 to 42."

Senator McCoy: Subclause (7) should read "a review panel shall complete the review forthwith."

The Chair: The clauses say, "replacing lines 39 to 42."

Senator McCoy: Yes. I apologize.

Senator Day: You also have what I have in the upper left corner, JAD 10, which also relates to clause 34. I am sure Ms. Labelle is listening to this almost technical amendment.

It says "an order continues to apply during a review unless a review officer decides otherwise." But there is no power given to the review officer to decide otherwise. This is a consequence of making a decision that the review officer has no right to make unless we give the review officer that right. In effect, that is all I am doing with this amendment.

I propose that clause 34, on page 16, be amended by replacing lines 36 to 38 with the following:

(6) A request for a review of an order, or the initiation under subsection (5) of a review, does not operate as a stay for the order, but the review panel may stay the order until the review is completed or for any shorter specified period, and may subsequently lift the stay before it expires."

(6.1) for greater certainty, a reference in this Act to "an order that is reviewed under section 34" does not include an order that is stayed under subsection (6), while the stay is in effect."

It creates a legal authority on the review panel to stay or not to stay or change the stay. "Stay" means "stopping the effect of an order."

The Chair: We have two parts on clause 34. The one that says "Draft—Confidential—December 2" at the top and the other one that reads "JAD 10." The first sheet replaces lines 39 to 42 rather than lines 37 to 42, as indicated. He has also changed the word "officer" to "panel" as a result of the other changes made in subclause (6).

Is there discussion?

Senator Ogilvie: He accepted all those as friendly, editorial amendments of his own.

The Chair: Shall I take this together in one recorded vote? Unless there is further discussion, I will take the recorded vote Remember the change to "review panel."

Senator Eggleton: Yes.

Senator Callbeck: Yes.

Senator Cordy: Yes.

Senator Day: Yes.

Senator Dyck: Yes.

Senator Eaton: No.

Senator Fairbairn: Yes.

Senator Keon: No.

Senator Martin: No.

Senator Ogilvie: No.

Senator Pépin: No.

Senator Segal: No.

Mr. Lafrenière: Yeas, 6; Nays, 6.

The Chair: We passed one consequential amendment only to clause 34. Shall clause 34, as amended, carry? Carried.

Shall clause 35 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 36 carry?

Senator Day: Look at clause 36(1)(k), on page 18 at the bottom. You will see "review officer" in the second line to be changed to "review panel."

We have agreed to change that in clause 33, so this is a consequential amendment.

The Chair: On the consequential one, should I take the 7:5 vote, on this one?

Hon. Senators: Agreed.

The Chair: That is agreed. What is the second?

Senator Day: The second one is clause 36.

The Chair: Is that on JAD 11?

Senator Day: That is correct. Amend clause 36, on page 20, by adding after line 16 a new subclause. This flows from the discussion we had from several of our witnesses that said it is very important that we neither get ahead of international standards nor lag behind on international standards because Canada is an international trader. This amendment will help to keep us in the loop by asking the government to let us know how they are doing with harmonization of standards. Give them a couple of years and let us know how they are doing on what they are purporting to achieve. Add after line 16 the following:

(8) Within two years after the day on which this subsection comes into force, the Minister shall prepare a report describing the state of progress made in adopting, under this section, standards-related aspects of international trade agreements entered into by the Government of Canada and shall cause the report to be laid before each House of Parliament."

It will be helpful for all of us to be aware of that and how you are harmonizing things. I realize that someone in the secretariat will have to prepare a report for us, but it would be helpful.

The Chair: Anything further on that? Shall the amendment carry?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Chair: Carried on division. There is an abstention on the clause by Senator Segal.

Shall the clause, as amended, carry? That is clause 36 as amended. Carried.

Clause 36(1); shall it carry?

Senator Day: No; sorry. I am trying to get myself organized here, Mr. Chair. I have too much paper.

Clause 36.1 was added in the House of Commons, at committee. This was not as the bill was originally drafted. This was an amendment that was done, an exercise very similar to this one, over in the House of Commons that added 36.1 and 36.2.

In reading that I noticed that it was drafted in the House of Commons and it is understandable, but it uses the process and the concepts of a House of Commons as opposed to the Senate. I am proposing to change the wording using all of the same wording for the House of Commons but using more appropriate wording from the Senate point of view to keep us both in play here.

The important aspect of this is that our committees are not automatically seized of anything. In the Senate our committees act on the direction of the Senate chamber as a whole. That is the change in wording that is proposed here and that is the effect of this change of wording.

The Chair: This is a technical amendment.

Senator Day: In large part it is. It does not go to policy and it is just cleaning up the wording that came out of another committee in the House of Commons.

Senator Keon: Senator Day, when this goes back to the House of Commons, will they not just change all this back?

Senator Day: I do not know why they would. I used their wording for everything that pertains to them, and for what pertains to us I used more appropriate wording.

The Chair: Anything else on this amendment to clause 36.1?

Senator Day: Perhaps we can have unanimous approval on this one.

Senator Eaton: It says "before each house of Parliament." Does that not cover the Senate?

The Chair: Yes. As I think he is explaining, the process issue here, there are some differences between the two houses and he is trying to adjust the wording to in fact accommodate how we process something in our house as opposed to the House of Commons. Clause 36.1.

Do you want to explain further, Senator Day, where you see the differences again?

Senator Day: Would you like me to go through the wording?

Senator Eaton: "Before each house of Parliament," is that not clear, before the house and the Senate?

Senator Day: Which line are you reading?

Senator Eaton: Clause 36.1, line 19, "lay the proposed regulation before each house of Parliament."

Senator Day: Yes, the minister does not lay anything before the Senate. The minister shall cause to be laid by someone else. The minister has no right to be in the Senate chamber to put anything on the table. These are just procedural matters. We do not have committees that are automatically seized of anything.

Senator McCoy: That is the next one.

The Chair: This appears to be quite technical.

Senator Cordy: In the Senate, for example, a senator is asked to be the sponsor of a bill. The minister does not lay a bill before the chamber. In this case Senator Martin was responsible for steering the bill through committee and through the chamber. In the House of Commons, whatever minister is responsible for whatever legislation brings it forward in the house. In the Senate chamber it is not possible, unless it was Senator LeBreton who would be bringing forward a bill related to seniors because she is the minister for seniors, but other than that there would be no minister in the Senate to bring forward the legislation. She gives cause to ask someone else to bring it forward.

Senator Eaton: I would not argue with that but I do not think, in writing this bill, before each house of Parliament they are meaning to snub the Senate. I just think it is when you refer to mankind you obviously refer to women and men, you do not go on to make a specific definition of how a bill is presented in the Senate. I think that is understood.

Senator McCoy: What you are doing is putting a duty on a minister, which she or he cannot discharge because that minister cannot be in the Senate.

Senator Day: Bear in mind that this is an amendment that was made in committee in the House of Commons. This was not by justice presenting this initially, right.

Senator Ogilvie: Please, Mr. Chair, the world is actually turning.

Senator Segal: Thank God for a scientist on the panel.

The Chair: Regarding the amendment, can I put the question on the amendment? Shall the amendment carry?

Senator Day: Yes.

The Chair: Those opposed? Some abstain. On division.

Senator Day: Thank you.

The Chair: Carried on division.

Shall clause 36.1, as amended, carry?

Senator Segal: I would like to abstain.

The Chair: Please note Senator Segal's abstention on that.

Clause 36.2.

Senator Day: Yes, on 36.2 I have an amendment, Mr. Chairman.

The Chair: Page 21. This is another one of those.

Senator Day: It is technical, as is the last one, because it is before Parliament. Parliament is comprised of House of Commons, Senate and the Governor General, but "each of the houses of Parliament" is more precise. The minister shall cause the statement of his or her reasons to be laid before each house of Parliament on any of the first 15 days on which the house is sitting after the regulation is made. There was no time limit before and it was felt and I felt that there should be some time in there. If you do not like 15 days, you might want to put 12 days or 30 days.

The Chair: The upshot of this is you are putting in the word "cause" and you are putting in 15 sitting days.

Senator Day: Putting a time limit on it.

The Chair: This is sitting days.

Senator Day: Yes, sitting days.

The Chair: Is there anything further on that? I can take that on division, too, if you want. Do you want a recorded vote on this? Okay.

Mr. Lafrenière: The Honourable Senator Eggleton.

Senator Eggleton: Yes.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Yes.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, 7; nays, 5.

The Chair: The amendment carries. Clause 36.2, anything further there? As amended, clause carried.

Clause 37.

Senator Day: There are many things that I would like to, but I will not.

The Chair: Clause 37 carried. Shall clause 38 carry? Carried.

Senator Day: I just note that these offences at subclause 2 have due diligence is a defence in a prosecution for an offence under this section. I want honourable senators to be aware of that when I bring my next amendment. It is not in this section though.

The Chair: Shall clause 38 carry? Carried. Clause 39 carry?

Senator Day: Yes, okay.

The Chair: Carried. Shall clause 40 carry?

Senator Day: Yes.

The Chair: Shall clause 41 carry?

Senator Day: Yes.

The Chair: Clause 42? Carried. Shall clause 43 carry? Carried. Shall clause 44 carry?

Senator Day: No, we have two consequential amendments in clause 44. Clause 44(1), fourth line down is "review officer." It should be "review panel" now that we have passed that earlier in clause 33. Subclause 44(2) is the same consequential amendment: "Review officer" to "review panel."

The Chair: These are consequential amendments arising from a previous motion that carried, right?

Senator Day: That is correct.

The Chair: I have to check that.

Senator Day: Yes. Clause 33, I think it was.

The Chair: I can take vote No. 9, which was the seven-five, or I can take it on division. Alright, the seven/five recorded.

That is carried. Is there anything further on clause 44?

Senator Day: I have a few here.

The Chair: Shall clause 44 as amended carry? Carried.

Shall clause 45 carry?

Senator Day: Yes.

The Chair: Carried. Shall clause 46 carry?

Senator Day: Yes.

The Chair: Shall clause 47 carry?

Senator Day: Yes.

Senator Segal: I would like to be listed as an abstainer on clause 47.

The Chair: Senator Segal is abstaining on clause 47.

Shall clause 48 carry? Carried.

Senator Day: Just a second now. Yeah, I am okay on that one.

The Chair: Shall clause 49 carry? Carried.

Senator Day: Yes.

The Chair: Shall clause 50 carry? Carried.

Shall clause 51 carry?

Senator Day: That is the one I have some changes on. Clause 51 is not a significant one. Well, they are all significant, but it is not large one. It is on page 28. It is my amendment No. 14. It is in clause 51 on page 28, replacing line 20. The difficulty here was just in the wording. I would call this a technical drafting amendment. I am proposing to add under subclause (a): ". . .the person is liable to pay the amount set out in the. . ."

When I read this many times, it was not entirely clear to me. Subclause 5 says:

Once provided with the notice of default, the person may not deduct from the amount set out in the notice any amount they spent under the compliance agreement and,

and then it is a subclause (a). I am suggesting we put the words "the person is liable to pay the amount. . ."

I believe that is what intended.

The Chair: You already have that in the preamble to that in 5. Why do you need it again?

Senator Day: From a legal drafting point of view, when you talk about someone being liable, you do not want to have to go back and guess that you are talking about something in the earlier portion.

The Chair: It says:

Once provided with the notice of default, the person may not deduct from the amount set out in the notice any amount they spent under the compliance agreement and"

And "(a) the person is liable to pay the amount. . ."

That seems to be talking about the same person.

Senator Day: Why do we not ask Ms. Labelle? From a legal drafting point of view, would you be happy to leave out the words "the person" in front of that? If you tell me you are happy, you will be using this to enforce the act. I am trying to help.

Mr. Glover: Mr. Chair, your interpretation is correct.

Senator Day: I withdraw that one. Thank you.

The Chair: Shall clause 51 carry? Carried.

Shall clause 52 carry?

Senator Day: Yes.

The Chair: Shall clause 53 carry?

Senator Day: Yes.

The Chair: Shall clause 54 carry?

Senator Day: Yes.

The Chair: Shall clause 55 carry?

Senator Day: Yes.

The Chair: Shall clause 56 carry?

Senator Day: No. We were progressing nicely, though.

The Chair: I was hoping I would get all the way through.

Senator Day: This is my amendment No. 15. You will recall this one relates back to what I pointed out to you a short while ago with respect to defences. This reads now:

(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

I think that is far too heavy-handed and unnecessary. I am suggesting:

56. (1) In a proceeding in relation to a violation, it is a defence for the person named in the notice of violation to establish

And then either "that the person exercised due diligence" or "reasonably and honestly believed."

The Chair: Anybody else have a comment on this? Therefore, due diligence would be allowed as a defence, is that what you are saying?

Senator Day: Yes, it says it is not, and I am suggesting it is. It should be, and due process.

Senator Eaton: I do not agree. I think if you remove that, you are taking the sense of responsibility away from the manufacturers or the distributors to distribute to ensure their product is absolutely safe. Anybody can turn around and say, "I had it tested in Istanbul and it came back and it is just fine." Then you get into quarrels over standards of testing, and where it was tested and when.

If they sell a product, they have to be responsible for what they are selling to ensure the people providing the ingredients that go into that product are safe and that the product is safe. The whole bill is about responsibility.

Senator Ogilvie: Question.

Senator Cordy: I think the whole point of the bill is that an inspector can order someone be inspected. I have the presumption that the majority of business people are good, honest people. If there is a problem, the inspector will go in and inspect it and take it off the shelves or seize it or do all of the things previously part of this bill. That is why we have Bill C-6.

I do think there are situations where due diligence, in the court of law, is allowable. Why should it not be allowable? I was surprised to see the due diligence, reasonableness and honesty specifically put into the bill; someone who reasonably and honestly believed in the existence of the facts. I was surprised to see it in the bill.

We have gone through the bill and are now at clause 56 and saying all of the process that we go through, if we believe that a bill is safe. Saying "Well, I had it tested in Istanbul" is difficult to imagine because of what we have already passed as a committee.

I think the majority of business people are good, honest people and I believe that, in the country of Canada, due diligence should be a legal defence.

Senator Day: I would like to remind honourable colleagues that clause 38(2) says: "Due diligence is a defence in a prosecution for an offence under subsection (1)."

However, when you come to a violation, which is an administrative thing, it says you do not have the same protection. That does not make sense to me. If it is a defence before the courts, it is a defence when you are in an administrative process, as far as I am concerned.

Senator Keon: What if the due diligence were defective? We see it every day. I would think once you have moved beyond that, it does not mean a thing.

Senator Day: Due diligence must be established to the satisfaction of the opinion of the person making the decision; that you are pleading due diligence to someone. Then, if you make some silly

statement like you took your product to Afghanistan to have it tested and anybody knows it would never have been tested there, that is not due diligence.

Senator Keon: Even if it is tested in America or Canada –

Senator Day: I thought you were going to say the Maritimes for a second.

Mr. Glover: Thank you, Mr. Chair. The reason for this is very deliberate. We are talking about a violation, as the honourable senator has pointed out. As has been pointed out through this, that violation would occur after a series of interactions between the inspector and the agency.

There would be written notice that says the corrective action required is X. The company has a chance to be consulted on that and say, "Yes I agree." It is all done in writing. They have a time frame within which to comply. In a sense, we are saying "Let us talk about what the problem is and agree on the solution." You agree, we give you time do that, and then excuse you from all those previous agreements. That is what this would do.

The Chair: This is something where an agreement has been entered into.

However, you are saying due diligence does not apply in this case.

Mr. Glover: Correct. It is, in a sense, we inspect, in theory, something you or your company is doing. We see a problem; let us say it is labelling their English only. We say just a sticker that says English and French labels would be appropriate. You agree and we confirm that in writing and give you 10 days to print the labels and put them on those things. Then you say, "Thanks, I concur." When we come back to inspect, it is not done. We have already agreed. It is not criminal; it is a violation of an agreement negotiated between the two parties. We are saying, in that instance, why would there be a due diligence defence?

The Chair: Senator Day, how do you see the due diligence applying then?

Senator Day: I think due diligence is in the eyes of the beholder, the person making the decision. Take a look at subsection 2 of this. The heading is "Rules of Law." Subsection 1 talks about a violation and excludes fundamental and basic rights. Subsection 2, which talks about a charge for an offence, meaning you are before a court process, you would not dare take those fundamental rights away because this whole act would be struck down. You are saying fundamentally every rule and principle of common law applies if you are in a court process, but if you are in an administrative process, you do not have any of those fundamental rights, and that is absolutely wrong.

Mr. Glover: That is also deliberate to ensure that if, on subject of disagreement, misinterpretation of those words, you wish to take this and have it reviewed by the court, you have the defence of due diligence if you choose to apply it to the court. It returns that right when you want to go there, but in terms of the agreement between us, it has been agreed and exists. We would not want to renegotiate. You must comply with it. If you did not --

The Chair: I do not understand why you would say you would have the due diligence right in the court but not in your process.

Senator McCoy: The courts would not allow it.

Senator Day: They would never allow it. They would strike this whole act down.

Senator Segal: To be fair, we are talking about the way in which the law would be enforced relative to someone who has been given every opportunity to comply, where a compliance agreement has been reached in good faith between the parties --

The Chair: I am hearing that.

Senator Segal: -- and the public has been reassured that the matter has been resolved. Then, 10, 15, 20 days later, there is absolutely no compliance on the part of the targeted purveyor. If they have a due diligence defence, at that point we are into an endless cycle. As Senator Day will know, due diligence with respect to corporate law and fiduciary responsibility is a matter litigated all the time, and there is a huge debate over what constitutes due diligence, evidence of or not.

To put it in would create a huge legal loophole for those who are the bad actors. I agree with Senator Cordy that it is a small amount of folks who could, through their lawyers and counsel, keep this thing rolling and prevent Her Majesty from protecting the public, and I do not think that is our intent.

Senator Cordy: I look at the example of the labels. You have been in contact with them, written to them, told them they have to change the labels, and then you are saying if they use due diligence, if they have been in contact with the department, they have gotten the letter in writing, then it is not reasonable to say that they were not aware of the existence of the law. We are speaking of people who genuinely are not aware of it and generally should be exercising due diligence; but in the example you gave us where the person was fully informed, everything was explained to them by the department, I do not think anyone would suggest that they should be given the credibility that they did not know of the existence of the facts, that they were not given to them. The facts would have been given to them in this case. The example you used, to me, would not apply to this section anyway.

Senator Segal: Under all the provisions of most laws, not being aware of provisions of a law does not constitute a defence. Whether under the Tax Act, the Highway Traffic Act, none of those circumstances allow you to say "I did not know." It may be an honest answer by a decent human being who got caught in a jam, but that is not an established, accepted defence. There may be other defences which make good sense, but not knowing is not one of them. It is unfair to load that as a bureaucratic burden on this act.

Senator McCoy: That is ignorance of the law. On that point, ignorance of the law is never a defence. Ignorance of facts or belief in facts is an entirely different matter, and subsection 56(1)(b) talks about existence of facts. Senator Segal's point is well taken.

Senator Day: But it is entirely wrong.

Senator McCoy: The distinction is manifest.

Mr. Glover: In responding to the senator's observations with respect to my example, I apologize if in any way my comments misled the committee. I would like to clarify.

In order for there to be a violation, there must have been an order. That order must have been done in writing. To arrive at this point, there is no way that the company could ever say there was not interaction with them. They would have to be notified via the order what the problem was and then be in violation of that order. In fact, it is the correct example because in all cases, to reach this point, a corrective order must have been given in writing for which there is then a violation. To be clear here, that is the instance when this would apply.

The Chair: Anything else on this? Shall that amendment carry?

Senator Day: Agreed.

Some Hon. Senators: No.

The Chair: On division?

An Hon. Senator: Recorded vote.

The Chair: A recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Abstain.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Abstain.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: Absolutely.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: No.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: No.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: No.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: No.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Abstention.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: No.

Mr. Lafrenière: Yeas, four; nays, five; abstentions, three.

The Chair: That does not carry.

Is there anything further on clause 56? Carried.

Senator Day: Could I have that on division? In fact, my vote is recorded on this matter?

The Chair: Okay. Clause 56?

Senator Day: Clause 56, yes.

The Chair: We have your amendment recorded.

Senator Day: You have the amendment that I voted for.

The Chair: You want clause 56 recorded?

Senator Day: Yes, I would like clause 56 voted on.

The Chair: The clause as it stands, unamended.

Senator Day: Yes.

The Chair: Clause 56?

Senator Day: That is so fundamental.

Senator Cordy: I would like to see division on that clause also.

The Chair: On division or recorded? Recorded vote.

Mr. Lafrenière: The Honourable Senator Eggleton, P.C.

Senator Eggleton: Yes.

Senator Day: Believing this is contrary to fundamental justice.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Abstain.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: No.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Abstain.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: Yes.

Mr. Lafrenière: The Honourable Senator Fairbairn, P.C.

Senator Fairbairn: Abstain.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: Yes.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: Yes.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: Yes.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: Yes.

Mr. Lafrenière: Yeas, eight; nays, one; abstentions, three.

The Chair: Clause 56 therefore is carried.

Clause 57?

Senator Day: I have an amendment to clause 57. Honourable senators will recall the question I posed to various witnesses. This reads that the minister must establish on a balance of probabilities. To whom is the minister establishing on a balance of probabilities? The minister is a judge and prosecutor in this instance. In my respectful submission, this clause has been poorly drafted and should be changed so that the minister is satisfied on a balance of probabilities that the person committed the violation. The minister is not establishing anything.

The Chair: Is there anything else on this?

Senator Day: We should hear from our advisers on this because I could be quite wrong.

Mr. Glover: May I have a moment to examine the amendment more closely, Mr. Chairman?

The Chair: Does anyone else want to speak while they examine the amendment? We will wait.

Mr. Glover: The view of officials is that while the words are different, they have the exact same meaning.

The Chair: I take the amendment.

Senator Day: That is an endorsement of my proposed change.

The Chair: I would not go that far.

Senator Day: I want to hear it once.

The Chair: We heard the answer. The amendment.

Senator Ogilvie: I want the vote recorded.

Senator Eggleton: Yes.

Senator Callbeck: Yes.

Senator Cordy: Yes.

Senator Day: Yes.

Senator Dyck: Yes.

Senator Eaton: No.

Senator Fairbairn: Yes.

Senator Keon: No.

Senator Ogilvie: No.

Senator Pépin: Abstain.

Senator Segal: Abstain.

Mr. Lafrenière: Yeas, 6; Nays, 3; Abstentions, 2.

The Chair: The amendment carries. Shall clause 57, as amended carry? Carried.

Clause 58?

Senator Day: Mr. Chair, to give everyone a little relief, I have no other amendments to propose, but we have to go back to the ones at the front.

The Chair: Yes, I recognize that.

Senator Day: Here on out, I am sailing with everyone else.

The Chair: Then we can go pretty quickly here.

Shall clause 59 carry? Carried.

Shall clause 60 carry? Carried;

Shall clause 61 carry? Carried.

Shall clause 62 carry? Carried.

Shall clause 63 carry? Carried.

Shall clause 63.1 carry? Carried.

Shall clause 64 carry? Carried.

Shall clause 65 carry? Carried.

Shall clause 66 carry? Carried.

Shall clause 67 carry? Carried.

Shall clause 68 carry? Carried.

Shall clause 69 carry? Carried.

Shall clause 70 carry? Carried.

Shall clause 71 carry? Carried.

Shall clause 72 carry? Carried.

Shall schedule 1 carry? Carried. Shall schedule 2 carry? Carried.

We need to go back to clause 2, Senator Eaton's request, if I recall.

Senator Segal: Is it consequential or inconsequential?

The Chair: We postponed clause 2. Was that one of the consequential amendments?

Senator Day: It is clause 2 at page 4.

The Chair: It is clause 8. What is your amendment on clause 8?

Senator Day: Have in mind that there is a change before that, Mr. Chairman, but I will go to page 8.

The Chair: No, it is clause 8, not page 8.

Senator Day: I had an amendment to clause 7, which passed.

The Chair: Yes, you had an amendment to clause 7 that carried and Senator Eaton requested a postponement on clause 8. I believe your amendment to the clause is 8(b).

Senator Day: We talked about it before and said we would hold it. It results from the amendment to clause 34.

Senator McCoy: It is a different one.

Senator Day: It is about the minister doing the recall on dropping section 34 out of that reference.

Senator McCoy: From the review.

The Chair: Is it one of the clauses that carried?

Senator Day: Yes.

The Chair: Does it relate to clause 34?

Senator Day: Let me jump ahead.

The Chair: It talks about clause 30.

Senator Day: Yes, clause 30.

The Chair: Clause 30 was amended. Should I take the usual consequential vote 9?

Senator Day: Thank you.

The Chair: Yes, okay. It is recorded as such. Then that is done.

Shall clause 8, as amended, carry? Carried .

We will go back to --

Senator Day: There is another one I am trying to tell you about.

The Chair: Clause 2 was suspended as well.

Senator Day: Clause 2, at page 4.

The Chair: That is about "review panel."

Senator Day: Exactly.

The Chair: That change carried, did it not? It was clause 33. This is a consequential amendment to clause 2. May I take the usual consequential amendment vote of 7 to 5?

Senator Day: Thank you.

The Chair: That amendment is carried.

Shall clause 2, as amended, carry? Carried. We are not holding any others?

Senator Segal: That is the same vote is it?

The Chair: Yes, it is the same vote: 7 to 5.

Shall the preamble carry? Carried.

Shall clause 1, the short title, carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Hon. Senators: Agreed.

The Chair: Abstention by Senator Segal. The bill is carried, on division.

Senator Martin: I want a recorded vote, please.

The Chair: Shall the bill, as amended, carry?

Senator Eggleton: Yes.

Senator Callbeck: Yes.

Senator Cordy: Yes.

Senator Day: Abstain.

Senator Dyck: Yes.

Senator Eaton: No.

Senator Fairbairn: Yes.

Senator Keon: Wait a minute. This is a government bill.

The Chair: The bill, as amended.

Senator Keon: It is still a government bill, so I say, yes.

Senator Martin: What happens if we defeat it here?

Senator Eaton: Can you explain what "as amended" means? If we do not like the bill and the fact that it has amendments.

The Chair: You have to come to decide whether you think the bill is worth pursuing. Senator Keon has taken the position that it is a government bill and should be forwarded to the Senate. The Senate can deal with the amendments if it so wishes. You have to make that determination.

Senator Eaton: What if we want it to go to the Senate because we do not like the way it has been amended?

The Chair: We have to report back to the Senate on the bill. You have to determine whether the bill, as amended, is worth carrying.

Senator Martin: No.

The Chair: Has it been so amended that you cannot support it?

Senator Eaton: I cannot support it.

Senator Ogilvie: If the committee were to vote down the bill, as amended, then it would be dead; is that correct?

The Chair: It has to be reported to the Senate.

Senator Ogilvie: Would we report back simply that the committee voted against it and would the Senate then consider it?

The Chair: How does a committee kill a bill when it has been given second reading in the Senate? I think we have to report back as a committee one way or the other. We will check in the book. Does anyone want to make representation on it further?

Senator Keon: From where I sit, it is a government bill. It has been amended to the point where it is dysfunctional, but I think the bill should be sent back to the Senate, where it can be dealt with further.

Senator Ogilvie: Mr. Chair, I wish to speak to this matter as well. I agree entirely with Senator Keon, and I will vote in support of the bill as amended.

The Chair: Rule 100 in the *Rules of the Senate of Canada* reads:

When a committee to which a bill has been referred considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons. If the motion for the adoption of the report is carried, the bill shall not reappear on the *Order Paper*.

Senator Segal: Do you want to recall the vote?

The Chair: Okay. We could start over again. People were not sure of what the rule was.

Senator Day: When people are voting, they should be sure of what they are doing. That is why we are here.

Senator Ogilvie: With respect, senator, you were not entirely sure about one of your amendments and we gave you time to consider it.

The Chair: I will rule that we will take the vote over.

Senator McCoy: There is a procedure to withdrawing a vote. It has to be by leave. It is a perfectly valid thing to do. A senator can withdraw a vote, but it has to be with leave.

The Chair: Do you mean with leave here to take a vote again?

Senator McCoy: Yes.

The Chair: Do we have leave to take the vote again?

Hon. Senators: Agreed.

The Chair: Yes, we do. Proceed.

Mr. Lafrenière: The Honourable Senator Eggleton.

Senator Eggleton: Yes; the adoption of the bill as amended.

Mr. Lafrenière: The Honourable Senator Callbeck.

Senator Callbeck: Yes.

Mr. Lafrenière: The Honourable Senator Cordy.

Senator Cordy: Yes.

Mr. Lafrenière: The Honourable Senator Day.

Senator Day: No.

Mr. Lafrenière: The Honourable Senator Dyck.

Senator Dyck: Yes.

Mr. Lafrenière: The Honourable Senator Eaton.

Senator Eaton: Yes.

Mr. Lafrenière: The Honourable Senator Fairbairn.

Senator Fairbairn: Yes.

Mr. Lafrenière: The Honourable Senator Keon.

Senator Keon: Yes.

Mr. Lafrenière: The Honourable Senator Martin.

Senator Martin: Yes.

Mr. Lafrenière: The Honourable Senator Ogilvie.

Senator Ogilvie: Yes.

Mr. Lafrenière: The Honourable Senator Pépin.

Senator Pépin: Yes.

Mr. Lafrenière: The Honourable Senator Segal.

Senator Segal: Abstain.

Mr. Lafrenière: Yeas, 10; nays, 1; abstentions, 1.

Senator Day: I want to explain my "no" vote. I understand the significance of it is that I feel there are certain clauses of this bill that we are sending back that should have been amended but were not. It was for that reason that I voted negative. However, I do want to thank my honourable colleagues for the many improvements that we did make to this bill.

The Chair: The next question I have: Does the committee wish to proceed in camera to discuss observations that could be appended to the report on the bill?

I do not have any requests to deal with observations, and so I would propose that I just report back the bill with the amendments. Is that okay? Are we agreed? We will not go in camera to discuss a report; we will just deal with what we have before us.

Okay, no observations. Is it agreed that I report the bill to the Senate as amended? That is it, period. Is that agreed?

Hon. Senators: Agreed.

The Chair: Carried.

I have a note here. I need to seek approval that the minutes indicate Senator Segal's abstentions to certain clauses even though there was no recorded vote. Is that agreed?

Hon. Senators: Agreed.

The Chair: Carried.

Senators, I know it will be hard to get your mind around a separate subject, but we have a time slot for meeting tomorrow and I had thought we could ask Senator Grafstein to come in. We have had a referral of his bill to our committee. I do not know of any other time slot where we could accommodate him prior to his retirement.

This is bill on the portrait gallery. It was referred to this committee by the Senate. Do senators want to hear from Senator Grafstein tomorrow? It would be a short meeting just to hear from him.

Senator Segal: Is the Senate not sitting tomorrow morning?

Senator Eaton: I have something saying we are not meeting tomorrow at 9:00.

The Chair: Is it agreed we have our meeting tomorrow at 10:45 to hear from Senator Grafstein?

Senator Ogilvie: We will follow you anywhere, sir.

Hon. Senators: Agreed.

Senator Cordy: I would like to say, in regard to this legislation -- and our committee normally does not get as much legislation as we have been getting this fall and we have another bill tomorrow -- that the committee worked extremely hard and everyone around the table took the responsibility for this bill extremely seriously. Everyone read the bill. Whether you agree with what happened or do not agree with what happened, everyone voted for the right reasons. Everyone worked extremely hard. It is a pleasure to be a part of this committee.

The Chair: Agreed. Thank you. On that note, the meeting is adjourned.

(The committee adjourned.)