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(HANSARD)

Wednesday, October 17, 2001

THE HONOURABLE ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

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THE SENATE

Wednesday, October 17, 2001

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

SENATORS' STATEMENTS

THE LATE BRIGADIER-GENERAL WILLIAM DENIS WHITAKER, O.C.

Hon. Francis William Mahovlich: Honourable senators, Brigadier-General William Denis Whitaker, one of Canada's most highly decorated commanders of World War II, passed away peacefully on May 30, 2001, in Oakville, Ontario. General Whitaker was awarded the Distinguished Service Order at the rank of captain for his achievement in the Battle of Dieppe in 1942. He was the only one of the 100 officers who landed on the beach to fight his way into town and escape unwounded.

Whitaker commanded the Royal Hamilton Light Infantry in 1944 and 1945 throughout most of the fighting in northwest Europe. In April 1995, with the approach of the fiftieth anniversary of VE Day, the French government awarded General Whitaker the prestigious Order of the Legion of Honour for his role in the liberation of France.

In addition to being a war hero, Whitaker also excelled in business, where he advanced from executive positions in radio advertising to then become the CEO of the O'Keefe Brewery Company. He was also the president of Major Market Advertising and a financial consultant with Nesbitt Burns. He was named Member of the Order of Canada in 1989, was inducted into Hamilton's Gallery of Distinction in 1995 and was one of the first RMC graduates to be awarded an honorary doctorate in military science. He also co-authored four books on Canada's war history with his wife of 28 years, Shelagh Whitaker.

Denis' sports career was equally illustrious, beginning with captaincy of the RMC hockey and football teams. He led the Hamilton Tigers in 1938 and was named all-eastern quarterback. He was named to the Canadian Forces Sports Honour Roll and was a national senior squash champion. He chaired the Canadian Equestrian Team for 20 years, and under his guidance the team won two Olympic, 15 Pan-American and two World Championship gold medals. He was a founder and member of the Olympic Trust of Canada. In 1990, Denis and I were inducted into Canada's Sports Hall of Fame, at which time I was privileged to meet this fine Canadian gentleman.

Honourable senators, Denis Whitaker was a Renaissance man, as modest as he was accomplished. "He was not an officer, he was a gentleman," said one of his close friends. To Canadians, he was both an officer and a gentleman.

[*Translation*]

ADVANTAGES OF CHRYSOTILE ASBESTOS

Hon, Raymond C. Setlakwe: Honourable senators, those of us who have reached the age of wisdom have learned in various ways just how strangely powerful myths can be.

That power is all the more fascinating because a myth is, by definition, nothing but a pure invention, something along the lines of a fable, a representation of facts that have been deformed or magnified by the imagination. We are told that myths play a major role in individual or collective behaviour and perceptions.

Honourable senators, it has been proven that the bad reputation of chrysotile asbestos is indeed a myth, a pure invention, a deformation of reality. This is a product of a major Canadian industry, one that used to be prosperous and will be again, one that sustained the economy of a region of Quebec I know well — it being my region — and one whose potential export value justifies another vigorous effort of development.

Proof of this has been provided here in the Senate by Senator Morin, when he reviewed the convincing facts that demonstrate a marked difference in toxicity between the amphibole asbestos used in the past and the chrysotile asbestos used today.

This proof has been clearly established on the industrial level by numerous specialists who consider chrysotile asbestos more effective, and safer, than alternative products, which certain governments seem to be promoting merely as a rather strange form of protectionism.

This proof has also been recognized by the highest court in Brazil as well as by its Chamber of Deputies. In a recent decision relating to the banning of asbestos by three Brazilian states, these bodies came out in favour of maintaining the controlled use of asbestos in their country.

• (1340)

Therefore, the myth that asbestos is toxic is gradually being dispelled, thanks in particular to the efforts of our government and to the Prime Minister's initiatives both here in Canada and abroad.

This myth is being debunked thanks to the sustained efforts of the Asbestos Institute, and to the confidence and determination of the people in the areas of Thetford and Asbestos, who depend on a safe and viable industry for their economic prosperity.

It is thanks to their tenacity, their persuasiveness and their good work that the Minister of Public Works and Government Services announced in the other place the development of a policy for the safe use of asbestos in government buildings.

So I am full of hope, hope that is shared by workers and businesses that depend on the industry, that this policy will contribute in large part to re-establishing chrysotile asbestos, both here in Canada and in countries to which we export, as a safe product, in terms of health, and as superior to other substitutes, in terms of the industry.

[*English*]

YWCA CANADA WEEK WITHOUT VIOLENCE

Hon. Vivienne Poy: Honourable senators, every year during the Week Without Violence, the YWCA organizes events across the country to raise awareness of the effects of violence on individuals, families and society. People take part in these activities to show others the impact that violence has had on their lives and how the effects are felt from generation to generation. The YWCA pays particular attention to the education of children and young people in the hope that violence can be stopped before it starts. During this week, youths write stories in schools, services are held in churches and art is displayed as a protest against acts of violence.

In the wake of the events of September 11, this week has taken on new significance for many Canadians. The tragedy in New York City has left an indelible mark on people everywhere. We are seeing the emergence of acts of violence against those of Middle Eastern origin in Canada, in the United States and around the world. As Canadians, we have always prided ourselves on our tolerance and respect for others. We should remind ourselves that the criminal acts of a few terrorists are no excuse for racial intolerance in our country.

I congratulate the Prime Minister for his efforts to reach out to all groups of society during this difficult time. His visit to a mosque in Ottawa and his many statements on this issue will help to curb the voices of intolerance. Nevertheless, I would ask that we listen to the words of Martin Luther King, Jr., who said that hate will only lead to more hate and violence to more violence.

In this Week without Violence, I ask all honourable senators to join me in promoting tolerance and peace for the sake of the human race.

[*Translation*]

ROUTINE PROCEEDINGS

ADJOURNMENT

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(*h*), I move:

That when the Senate adjourns today, it do stand adjourned until Thursday, October 18, 2001, at 1:30 p.m.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That the date for the presentation by the Standing Senate Committee on Human Rights of the final report on its study into issues relating to human rights and, *inter alia*, the machinery of government dealing with Canada's international and national human rights obligations, which was authorized by the Senate on May 10, 2001, be extended to Friday, December 21, 2001; and

That the Committee be permitted, notwithstanding the usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITION

Hon. Lorna Milne: Honourable senators, once again I rise to present 422 signatures from Canadians in the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, New Brunswick, and Nova Scotia who are researching their ancestry, as well as signatures from 245 people in the United States and two from Switzerland who are researching their Canadian roots. A total of 669 people are petitioning the following:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

These signatures are in addition to the 11,710 that I have presented in this calendar year. The total, so far, is 12,379 signatures to this Thirty-seventh Parliament and over 6,000 names to the Thirty-sixth Parliament, all calling for immediate action on this important matter of Canadian history.

QUESTION PERIOD

CITIZENSHIP AND IMMIGRATION

MEMORANDUM OF CHAIRMAN OF IMMIGRATION AND REFUGEE BOARD REGARDING IMMIGRATION AND REFUGEE PROTECTION BILL

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. I should like to ask if she has been able to contact the Minister of Citizenship and Immigration to convince that minister that the decision of the Chairman of the Immigration and Refugee Board was completely irregular, to say the least, to request applications for a position that has yet to be approved by Parliament.

Following on that, has the Minister of Citizenship and Immigration agreed to instruct the chairman to withdraw his memorandum seeking applications for candidacy until the position has been approved by Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. I want the Senate to know how seriously I took this matter yesterday afternoon. I immediately sought a meeting with the Minister of Citizenship and Immigration. I raised the matter with her. The agreement made was that she would request an immediate amendment to the circular so that it would be in line with other circulars that have gone out "pre-passage" of legislation. The amendment would indicate clearly that the legislation has not yet been passed and that should it be passed, the following position would be available to potential candidates.

• (1350)

Senator Lynch-Staunton: Honourable senators, does the amendment to the memorandum soliciting candidacies also amend the date that was set as the deadline in the original memorandum, being May 22, since we know the bill will probably not be before us for third reading until October 31? It is to be hoped that the memorandum will stipulate that, subject to the situation, the position will be available and candidacies will be examined only after Parliament has given its consent and Royal Assent has been given to the bill.

Senator Carstairs: Honourable senators, as Senator Lynch-Staunton has indicated, the date on which the chairman of the board was seeking potential applicants was October 22. We have committed to passing this legislation through this chamber on October 31. I passed on to the minister the exact suggestion made by the Honourable Leader of the Opposition. I have not yet seen the revised circular. When I do so, I will share it with the Leader of the Opposition.

Senator Lynch-Staunton: Honourable senators, as a comment rather than a question, I find it extraordinarily disturbing that ministers make basic corrections when they are in what I consider to be contempt of Parliament only when Parliament raises the matter. Had Parliament not raised the matter, the situation of the minister having already applied the bill and the chairman of the board asking for candidacies for a position that does not exist would still be taking place.

That is a serious flaw and it is not the first time it has happened. If it happens again, all honourable senators should participate in some form of action to impress upon the government our serious concerns about superseding the wishes of Parliament, even before those wishes are known.

Senator Carstairs: Honourable senators, I should like to add the following to the comments of the Leader of the Opposition: There seems to remain a misunderstanding in some quarters of this venerable institution about the necessity for legislation to be passed by both the House of Commons and the Senate before that legislation becomes law. I assure the Honourable Leader of the Opposition that I am making every attempt to clarify this misunderstanding.

THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE—APPEARANCE OF GOVERNMENT OF QUEBEC REGARDING YOUTH CRIMINAL JUSTICE BILL

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is directed to the Chairperson of the Standing Senate Committee on Legal and Constitutional Affairs. Yesterday I asked whether the Government of Quebec would be a witness before that committee during its study of Bill C-7, the youth justice bill. The answer given was that it would be.

Could the chairperson reconfirm that? I have heard rumours that the Government of Quebec will not attend.

Hon. Lorna Milne: Honourable senators, I will read the list of witnesses and indicate whether they have been confirmed.

Next Wednesday, we are hearing from the Canadian Criminal Justice Association, the Association des centres de jeunesse du Québec, the Quebec Coalition of Alternative Justice and the National Association Active in Criminal Justice.

On Thursday, we will hear from the Aide juridique du Québec, the Criminal Lawyers' Association and the Canadian Council of Criminal Defence Lawyers.

On Tuesday, October 30, the first panel will be provincial officials. I do not yet have a full listing of which provincial officials will appear. Letters have gone out and I know that both the Province of Quebec and the Province of Ontario wish to appear. If they are not able to appear on Tuesday, October 30, we will make every effort to ensure they can appear at another time.

The second panel that day will be all the Ontario provincial organizations that have requested to appear, and there are a lot of them.

On Wednesday, October 31, we will hear from the John Howard Society, the Canadian Association of Elizabeth Fry Societies, academic experts, and then officials from the Department of Justice and the minister.

These people have been invited. They have indicated that they want to appear, although I have not yet received a formal response from them.

Senator Kinsella: I thank the honourable senator for that information. The question is asked with reference to the Government of Quebec because that government has indicated that it is taking court action with reference to this legislation. That action colours our analysis of the bill before the committee. The chair has assured us that the Government of Quebec has been invited and we were told yesterday that it is appearing.

Should there be a change in plans with regard to that one witness, I would ask that the chair advise the house.

Senator Milne: I will certainly do so.

[*Translation*]

TREASURY BOARD

PUBLIC SERVICE COMMISSION—ANNUAL REPORT 2000-01

Hon. Jean-Robert Gauthier: Honourable senators, my question is for the Leader of the Government in the Senate. In its report for 2000-01 tabled yesterday, the Public Service Commission informs us in the last paragraph at page 58, and I quote:

> Commissioners also spent time on internal management issues, namely organizational renewal for the PSC as a department.

As we know, the Public Service Commission has operated, since its establishment in 1967, independently and at arm's length from the government in office. The role of the commission is to ensure full compliance with and application of the merit principle in the hiring of public servants. I have not heard in over 30 years a single proposal that the public service be administered by a federal department. It is the case in the United States, but not in Canada.

Could the minister tell us whether this proposal has the support of the government, and, if so, what the advantages of such a reorganization would be?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the Speech from the Throne made a strong commitment to make our public service the best public service in the world, and we are acting upon that commitment. A task force was mandated to look at all statutes that govern human resource management, including the roles and responsibilities of the various players.

It is my understanding that the task force is examining all options, and one of the options that it is apparently prepared to review is having the Public Service Commission become a separate ministry. However, the task force will simply make recommendations. The government has reached no conclusions on what those recommendations will be, since the task force has yet to report. It has not even had any discussions about the establishment of a separate ministry.

This is a report. Among its recommendations, the reports asks for a task force. That task force has been set up. The task force is examining the recommendations, but I suggest that we not leap to any conclusions at this time.

[*Translation*]

Senator Gauthier: Honourable senators, the minister will acknowledge that the act is not being reviewed by the committee, but rather by the Public Service Commission, which says clearly:

> We are working on organizational renewal for the PSC as a department.

So it is settled. I think this language is neither acceptable nor clear, and if it is clear, I do not believe that this will work as a department.

[*English*]

Senator Carstairs: Honourable senators, let me make it very clear that it is not a fait accompli. It is nothing more than a recommendation. The recommendation is also being reviewed by the task force, but it is not a recommendation that the cabinet is studying.

• (1400)

Hon. Lowell Murray: To whom will this task force report?

Senator Carstairs: My understanding is that they will report to the President of the Treasury Board.

Senator Murray: Will the report be public?

Senator Carstairs: I cannot answer that, but I assume that, in due course, it will be public.

STATUS OF WOMEN

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN—FALLOUT FROM COMMENTS BY FORMER PRESIDENT ON UNITED STATES—FUTURE FUNDING

Hon. Gerry St. Germain: Honourable senators, I have a question for the Leader of the Government in the Senate. It relates to my question of October 3 about the speech made by Ms Thobani at the Women's Resistance Conference held in Ottawa.

I wish to read into the record an e-mail that was sent to the Premier of British Columbia, senators from the province, and the Minister of Finance. It is from Mr. Douglas Hensler, Professor of Management, University of Colorado, Boulder, Colorado:

> I am writing to inform you that my colleagues and I have cancelled our conference scheduled to be held in Vancouver, B.C. the first weekend of November. We are doing so because of the remarks of Sunera Thobani and most assuredly because of Secretary of State Hedy Fry's failure to immediately react to those comments. We are re-scheduling our conference...and holding it in the United States at some location in the Pacific Northwest.

Honourable senators, the federal government no longer funds the National Action Committee on the Status of Women, but they do fund it on a project-by-project basis. In light of the horrific damage that has been done in my province, especially in the region that I represent, as a result of this individual's comments, is there any serious reconsideration being given to suspending the funding of these types of organizations that are, basically, allowing hate-mongers to participate?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I shall be clear on this point: I disassociate myself from the comments of Professor Thobani in the same way that Minister Hedy Fry, Senator Pearson and the Prime Minister disassociated themselves from those comments. Ms Thobani did not attend the conference as a representative of the National Action Committee for the Status of Women, although she happens to be a past president of that organization.

Honourable senators, to damn an organization because a past president made comments of which we do not approve would seem to be entirely inappropriate. More important, I find it deeply regrettable that an academic organization — I presume that it is — would cancel a conference because they did not value free speech.

I may not agree with Ms Thobani's comments — and I certainly do not — but I do agree with the concept of free speech. If there is not academic free speech in Canada, then we are in serious trouble.

Senator St. Germain: Honourable senators, I will stand beside the minister and defend free speech at any given moment in any given place in Canada. However, we have a law in this land that prevents actions of this nature. We have prosecuted, in the past, those who have taken advantage of free speech. There is a loophole in this law concerning the place of origin. Apparently, the Ontario Human Rights Commission covers this area, and it is my understanding that it is possible that action may be taken against Ms Thobani under the Ontario legislation.

Honourable senators, I do not believe in hiding behind the right to free speech. The fact is that the organization from Boulder, Colorado has cancelled their conference. Some may say that they are surprised by that action by an academic group. I do not know if they are an academic group or a professional group. The letter indicates that they are a "dental task force." There are other groups that have cancelled events as well, and that sends a clear message that the government must not only appear to distance itself, but must distance itself in such a manner as to ensure that these organizations will not cancel their conferences in the future.

The premier's office has reported that other conferences have been cancelled. The economy of British Columbia is being challenged now, as the honourable senator is aware. I am urging the government to distance itself further so that more of these cancellations will not occur. Is the Honourable Leader of the Government in the Senate prepared to take my suggestion to cabinet?

Senator Carstairs: I thank the honourable senator for his question. With the greatest respect, I am not prepared to take that matter to cabinet. An attack on the National Action Committee for the Status of Women because of the actions of one former president is not appropriate. It is not any more appropriate than it would be for me to attack the PC party because the honourable senator used to be the president.

Senator St. Germain: Honourable senators, during the Meech Lake Accord, the leader chastised and criticized the Senate to the greatest extent, and now she stands up and make such a statement. I find that to be shameful. If we are to have proper dialogue in this place, these cheap shots are inappropriate.

Honourable senators, the fact remains that I am not attacking the National Action Committee on the Status of Women. Rather my comments are directed towards the funding of such groups, whether they be the Women's Resistance Conference or other groups. That is what I urge honourable senators to consider.

Senator Carstairs: Honourable senators, I have certainly expressed, over the years, my belief in a reformed Senate. Since my father was a member of this venerable institution for 25 years, I have valued the Senate. I was a child of 13 years when I used to run up and down these corridors. You cannot find anything on the record to indicate that I have criticized this institution. I have indicated that I believe this institution has not reached its fullest potential.

Hon. David Tkachuk: Honourable senators, I have a supplementary question. Did Ms Thobani receive a standing ovation from the majority of the people at that conference who listened to her speech?

Senator Carstairs: Honourable senators, I was not in attendance at that conference. My understanding is that there were individuals who gave her a standing ovation. I certainly would not have given her a standing ovation. I understand that Senator Pearson, who was present, did not give her a standing ovation; and I understand that the Honourable Minister Fry did not give her a standing ovation. Thus, it was clearly not unanimous. If some individuals in that audience gave her a standing ovation, that was their right as Canadians. I do not agree that that speech deserved anything but condemnation.

Senator Tkachuk: Honourable senators, I did not deny that they had a right to give Ms Thobani a standing ovation if they wished. However, if there was a standing ovation, could the honourable leader inquire as to whether there was one or many standing ovations? If there were many standing ovations by the people who participated in that conference during Ms Thobani's speech, that will answer my question.

Senator Carstairs: I thank the honourable senator for his question, but it is not within my purview to obtain that information because it was not a government conference. The conference at issue was for an organization that brought together people to talk about victims of violence. That was the purpose of the conference. This week, we are celebrating the YWCA's Week Without Violence. I wish to be on the record as supporting that, but at the same time, I wish to condemn the remarks of someone who made inappropriate comments at a conference dealing with women and children, not international and foreign affairs.

Senator Tkachuk: Did the federal government fund this conference?

Senator Carstairs: Yes, we did fund the conference, as we fund many conferences, but we do not monitor each one of those conferences. We do not have individuals in attendance to indicate whether or not there were standing ovations. I can only assume from the media reports, as I indicated, that there was a standing ovation. I cannot indicate how many in the audience participated in that standing ovation, and I suspect neither could anyone else.

• (1410)

NATIONAL DEFENCE

AFGHANISTAN—SHIPS ASSIGNED TO MIDDLE EAST

Hon. Terry Stratton: Honourable senators, I have a question for the Leader of the Government in the Senate as a follow-up to yesterday's discussion. This will be a change of topic.

Since the Prime Minister is in Halifax today seeing off our troops, perhaps the Leader of the Government can confirm which ships, as named by the Department of National Defence, are actually going to sea. To my understanding, as of yesterday, they are the frigates *Halifax*, *Charlottetown* and *Vancouver*; the destroyer HMCS *Iroquois*; and the supply ship HMCS *Preserver.* Those were the five ships, but the minister announced there would be six. Can the leader inform us today which was the sixth ship?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the sixth ship has not yet been identified. Three ships will leave today and the others will leave in due course.

While I am on my feet, I wish to follow up on a question yesterday from Honourable Senator Tkachuk about whether there have been government press releases or statements about the activities of the Taliban. We did a Web site check to see what we could find and determined that one statement dealt with the identification of religious minorities. There may well be others, but the government has been very clear in responding to certain activities by the Taliban in the past.

Senator Stratton: Honourable senators, is there a reason why the government has not named the sixth ship? We keep hearing reports that, perhaps, no other ship is ready to sail. Perhaps there is a shortage of sailors. Can the Leader of the Government in the Senate confirm why that sixth ship is not available and why it is not leaving now? If it is intended that it will depart, can the minister indicate the anticipated departure date?

Senator Carstairs: As honourable senators understand, certain security issues are involved here and I cannot give all the details that everyone would like to hear in a public forum. The sixth ship has not been identified in the sense that the partners have not yet decided what type of ship they want at this point in time.

FOREIGN AFFAIRS

CONFERENCE OF NATIONS OF ASIA-PACIFIC ECONOMIC COOPERATION—POLICY ON TREATMENT OF FALUN GONG

Hon. A. Raynell Andreychuk: Honourable senators, my understanding is that the Prime Minister will be going to the APEC meeting in Shanghai. On September 11, we learned, in graphic form, the lesson of the link between politics and the economy. Will the Prime Minister raise with his Chinese counterpart the brutal treatment of the Falun Gong in China?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the APEC meeting is still scheduled to begin on October 20. It is one of a few conferences that have not yet been cancelled. A number of issues will be raised, including the economies of APEC nations, particularly in light of September 11. The Prime Minister will seek allies in the war against terrorism, and terrorism will now become, perhaps, a more significant part of the agenda than it was previously.

As to the honourable senator's specific question with respect to the Falun Gong, I will make the Prime Minister aware of the fact that she and other honourable senators, I am sure, wish that that issue be raised.

ORDERS OF THE DAY

INCOME TAX CONVENTIONS IMPLEMENTATION BILL, 2001

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Poulin, seconded by the Honourable Senator Callbeck, for the second reading of Bill S-31, to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, a similar bill came to us about two years ago. One of the countries involved at that time, as it turns out, is now one of America's great allies in the war against terrorism, namely, Uzbekistan. It was pointed out that this country's human rights record was one of the most appalling imaginable. Canada has no great investment in that country and there are problems getting foreign currencies out. The question that arose at that time was this: Why do we have tax conventions with countries such as Uzbekistan? Doing so, to my mind and to the minds of others, sanctions activities in a particular country with which we are not at all sympathetic. The argument went so far that the bill was referred not only to the Banking Committee for study of the tax conventions themselves but also to the Foreign Affairs Committee for study of the human rights aspects. Those discussions were very valuable. It was hoped that when future bills of this nature came to us, like this one today, where there are six or seven nations involved, the human rights records of those countries would at least be included in the briefing book.

Perhaps the government is more gun-shy now because the reference to the human rights of each country in the current briefing book is much less expansive than it was in the book that covered the previous bill to which I just referred.

Fortunately, there are no glaring Uzbekistans in this list. We could quarrel with one or two countries, but not enough to make an issue of it. However, I should like to think that when we negotiate with countries with glaringly delinquent human rights records, the government will advise us of those records. We can get such information off the Internet through Amnesty International and other organizations, but the government has a responsibility to bring it to our attention.

For the record, I will raise this matter in front of the Banking Committee. However, I have no objection to this bill pursuing its ordinary course.

Hon. A. Raynell Andreychuk: Honourable senators, I wish to speak to this bill as well. The Foreign Affairs Committee has studied the issue. Previously, income tax conventions were signed with countries where a commonality of security or other linkages were sufficiently and traditionally entrenched so that we could have some confidence that their taxation systems mirrored ours. It was important that we proceeded with this type of initiative.

However, as Canada's influence expanded into other countries around the world, it became abundantly clear that while the tax department does a full and complete analysis of the acceptability of the taxation system and the procedures surrounding taxation, no analysis was being done country by country to determine whether other issues in those countries were receptive to such a close agreement.

One such issue is privacy. In Canada, we give a lot of information to our tax people. If a double-taxation agreement is in place, information can and often does get into the hands of the signatory countries. We have no idea whether they treat confidentiality and privacy in the same manner as we do. We also do not know whether their concept of good governance and the rule of law takes into account the same issues that we do, such as human rights and the ability to come before the courts to defend oneself against government action. No one in the system stands back and looks at whether these agreements are in Canada's national interest. All we are looking at is specific financial interest, country to country.

• (1420)

Consequently, we had two bills come before the Foreign Affairs Committee. In the first one, the taxation people indicated they do not do a countrywide assessment on all factors. They simply look at financial factors. There was an undertaking that perhaps it was valid to look beyond that. In the second bill, which included Uzbekistan, there was some analysis, but it was done as a result of our prodding. There were assurances given that this kind of countrywide view would be taken into account. This bill is going to the Banking Committee and, again, a unanimous recommendation made by a Senate committee is not being followed through.

From day to day, we do not know who our allies are or what progress is occurring in these countries. Uzbekistan may be one we want to look at in great detail. If we are part of the international community, we treat all our counterparts equally, and there should be some screening to prevent superficially identifying some countries as less worthy and some traditionally more worthy. Canada has always stood on being neutral in that we treat all countries equally. We do that by way of the process through which all countries must go if they are to sign a taxation agreement.

I do not believe that the taxation process is sufficient to look at Canada's national interests on more global questions, nor do I believe it protects and affords the kinds of assurances that the Canadian government should give to businesses and individuals in other counties, particularly in our global economy.

Again, honourable senators, I am extremely disappointed that the Foreign Affairs department has not seen fit to follow through on our recommendations, and I am extremely disappointed that this house will now move this bill to the Banking Committee, avoiding what I would consider to be appropriate scrutiny in the Foreign Affairs Committee.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, in the past, I have sponsored tax bills that concerned other countries where, indeed, the emphasis was not on human rights. It seems to me that Canada's philosophy has always been to promote the economic progress of these countries, because the more the wealth is shared, the more jobs and the more opportunities there are to educate the public.

This issue was not discussed by the Standing Senate Committee on Banking, Trade and Commerce, but it can be raised without any problem. The bill seeks primarily to serve the best interests of Canadian investors and not adversely affect them. It goes without saying that we support foreign trade, so as to allow those countries that are not fully developed to create quality jobs and allow us to export not only our loonies, but also our traditions and values.

Honourable senators, the Standing Senate Committee on Banking, Trade and Commerce, on which I sit, will review this bill very carefully to protect the best interests of Canadians.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[*English*]

THE SENATE

MOTION TO APPOINT SPECIAL COMMITTEE ON ANTI-TERRORISM BILL ADOPTED AS AMENDED

Hon. Sharon Carstairs (Leader of the Government), pursuant to notice of October 16, 2001, moved:

> That a special committee of the Senate be appointed to examine the subject matter of Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism, in advance of the said bill coming before the Senate;
>
> That the bill be referred to the said special committee in due course;
>
> That the following Senators be appointed to serve on the Special Committee: namely the Honourable Senators Andreychuk, Bacon, Beaudoin, Fairbairn, P.C., Fraser, Furey, Jaffer, Kelleher, P.C, Kenny, Murray, P.C. Stollery and Tkachuk, and that four members constitute a quorum;
>
> That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers and evidence from day to day as may be ordered by the committee;
>
> That the committee have power to sit during sittings and adjournments of the Senate;
>
> That the committee have power to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings;
>
> That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee; and
>
> That the committee be permitted, notwithstanding usual practices, to deposit any report related to its study of the subject-matter of the Bill with the Clerk of the Senate, if the Senate is not then sitting, and that any report so deposited be deemed to have been tabled in the Chamber.

She said: Honourable senators, the government has been responding to the events of September 11 with a wide variety of initiatives, from increased funds for certain departments and agencies to the creation of a more secure identity document for permanent residents, to Operation Apollo, the largest deployment of Canadian Armed Forces since the Korean War, involving more than 2,000 men and women. The deployment of troops is a difficult decision for any government under any circumstances, and I can assure honourable senators that the decision was not taken lightly. The introduction of Bill C-36, the Anti-terrorism Act, on Monday of this week in the House of Commons was another important step in Canada's fight against terrorism.

Honourable senators, we gave careful consideration to the possibility of a pre-study before deciding to propose it to the Senate. It must be noted that in recent times, the Senate has rarely resorted to pre-study, preferring instead to conduct its full committee process on government bills only after they have passed the other place. Pre-study used to be a prominent feature of the Senate's work, but it has waned in the past decade.

In the view of the government, and I dare say a good number of my colleagues on all sides of the Senate who have spoken to me privately, the need to take steps to ensure the security of Canadians and Canadian interests deserves our best effort to deal with Bill C-36 in an expeditious manner. The events of recent weeks have impressed upon all of us the need to respond in a timely way to reassure Canadians that everything that can be done is being done to guarantee their safety and liberty.

Pre-study is one way of ensuring timely passage of this bill while at the same time maximizing the Senate's capacity to make a real contribution to the legislative process. I am confident that our committee will be able to make a very important contribution. As a Minister of Crown, I assure honourable senators that when the Senate committee speaks, the government will be listening, and listening carefully.

The Hon the Speaker *pro tempore***:** I apologize for interrupting the Honourable Senator Carstairs, but I am having problems hearing. Please, honourable senators, out of respect for senators who are speaking, take your conversations to the reading room.

Senator Carstairs: On this point, let me quote the Prime Minister when he spoke in the other place on Monday of this week:

> ...we all recognize that the legislation has of necessity been prepared quickly. Therefore, the role of the justice committees of the House and Senate in scrutinizing the bill will be of particular importance. It must examine the bill through the lens not only of public safety but also of individual rights.

I can assure the House that the government will pay close attention to the findings and recommendations of the committees. I want the committees to give the bill a thorough study, while obviously taking into account the need to pass legislation as quickly as possible.

Being mindful of the need to deal with the bill in a timely way, I am sure honourable senators will agree that, in this case, a pre-study is warranted. By choosing this route, we will preserve the Senate's capacity to have input in the development of the bill, while making it possible to proceed more quickly than if we dealt with the bill through our more ordinary procedures.

For that reason, I ask all honourable senators to support this motion, which would establish a special committee of the Senate for the purpose of the pre-study. I note for senators' interest that it is our intention to refer the actual bill back to the special committee once it passes second reading in the Senate. This motion reflects that intention. In no way is this process meant to stymie debate when we receive that bill in its appropriate form.

I will be addressing the bill itself in detail when it eventually arrives in the Senate. However, let me take this opportunity to place on the record a brief overview of the initiatives contained in Bill C-36.

• (1430)

This legislative initiative helps us ensure that the most effective tools possible are in place to help our police, prosecutors and courts to deal with the terrorist threats. Criminal Code provisions governing acts such as hijacking, attacks on aircraft and murder remain important tools that will continue to be available for prosecuting criminal acts committed by terrorists.

However, the events of September 11 call for additional tools to be made available to facilitate those efforts. It is not enough to improve our ability to bring terrorists to justice. We must find ways to incapacitate terrorist groups, even before they can attack, by striking at their organization and financing. With the passage of this legislation, it will be an offence under the Criminal Code to knowingly participate in the activities of a terrorist group.

It will also be a crime to finance terrorism and, more specifically, it will be an offence to provide or collect property with the intention of using it to carry out terrorist activity. In this regard, the bill will implement, fully and effectively, the International Terrorist Financing Convention and United Nations Security Council Resolution 1373. The bill defines "terrorist activity" in accordance with the offences in the United Nations conventions and the definitions used by our allies, but also takes into account Canadian values. Based on this definition, the bill allows the government to freeze the assets of terrorists and terrorist groups as required by the UN convention and UN Security Council. Further, not only will we freeze the assets of terrorists, we will in this bill create measures to permit the seizure and forfeiture of those assets.

The challenge in developing this legislation has been to respond in a way that reflects our core values of freedom, democracy and equality. The attacks of September 11 may have caused us to re-examine the balance between freedom and security, but rather than retreat, we will proceed in way that reflects our deepest values and does not abandon them.

This bill balances the need to protect Canadians from terrorist harm with the need to respect, preserve and promote the fundamental Canadian values guaranteed in the Charter of Rights and Freedoms. It will provide meaningful protection of civil liberties through the inclusion of important due process guarantees, including judicial oversight, access of individuals to effective means of redress, acknowledgment of rights, privileges and immunities, and other recognized safeguards.

The bill also reflects the importance of re-examining the necessity and effectiveness of these measures on an ongoing basis and calls for a parliamentary review after three years.

In developing this legislation, we have paid close attention to what other democratic countries are doing in the fight against terrorism. It is important that we act in a way consistent with the approach of other democratic countries and that conforms with international law, and above all, it is important to reflect our values as Canadians.

In order to ensure that we respect and protect Canadian values, we must engage in a robust debate about these and other measures that the government will put before Parliament and the Canadian people. The need for an honest, open and inclusive debate has perhaps never been more pressing than it is now, as we move forward in the fight against terrorism. By agreeing to participate in a pre-study, the Senate from the very outset will be able to make an important contribution to this essential public debate.

Many of us have been horrified to learn that, subsequent to the attacks on the United States, some groups and individuals have been the target of racial and religious slurs, and even violent attacks. There is no place for this behaviour in our country. The anti-terrorism bill contains two proposals that will strengthen the protection of religious freedom and act to counter hatred based on race, religion and ethnic prejudice.

The Criminal Code already contains strong measures to combat hate crimes. We are proposing in this legislation the creation of a new offence in relation to a place of worship — a church, a synagogue, a mosque, a temple or similar place — where it is proven that the attack was motivated by hate based on religion. The maximum penalty for this new offence will be ten years imprisonment. The new offence sends a clear signal that attacking a religious institution is a serious offence.

The bill also introduces an amendment to the Canadian Human Rights Act to combat hate propaganda. The act already prohibits the use of telephone communications to expose people to hatred or contempt because they are identified as being of a particular religion or ethnic origin. It will now be amended to ensure that it covers the spreading of hate messages via the Internet and other computer systems.

I have already touched on the Charter several times in this speech, but let me say that anyone who follows the work of the Senate would expect nothing less from this institution than careful scrutiny of this bill through the lens of the Charter of Rights and Freedoms. For that reason, I should like to take a few moments to highlight some of the many checks and balances designed to ensure consistency with Canada's legal framework, including the Charter of Rights and Freedoms. I will mention just a few of the safeguards that are set out in this bill.

The scope of the provisions of the bill is clearly defined so that the provisions are targeted at terrorists and terrorist groups. Legitimate political activism and protests are thereby protected through the precise definition of terrorist activity.

Under the participation and contribution offences, the burden of proof will be on the state to establish that there was intent on the part of the accused, that the activities were "for the purpose of facilitating or carrying out terrorist activity."

The process of adding a group to the list of terrorists incorporates a number of protections, including provisions for removal, judicial review, and safeguards to address cases of mistaken identity. As well, the list must be reviewed every two years by the Solicitor General.

Procedural safeguards built into the civil forfeiture scheme include court protection of the interests of family members in the principal residence, access to the property in order to meet reasonable living or business needs and legal expenses, and appeal procedures.

The Attorney General must consent to prosecute the financing of terrorism offences. It is the state that carries the burden of proof for establishing that the accused knew or intended that the money or resources were being used to plan, facilitate or carry out terrorist acts.

In fulfilling its mandate to collect foreign intelligence, the Communications Security Establishment must receive authorization from the Minister of Defence to intercept any communication to or from a foreign target located outside of Canada that originates or ends in Canada. The minister must be satisfied before issuing such authorization that measures are in place to protect the privacy of Canadians.

Police may use preventive arrest provisions to bring a suspected terrorist before a judge, where there are reasonable grounds to believe that a terrorist activity will be carried out and reasonable grounds to suspect that imposing conditions or arrest is necessary to prevent the carrying out of the terrorist activity. The threat must be specific and involve a specific individual. Except in exigent circumstances, the Attorney General must consent to the arrest. In all cases, the detention after arrest must receive judicial review within 24 hours. In addition, the consent of the Attorney General is required before a judge can be asked to impose supervisory conditions on the release of the person or detain the person for any longer period, up to a maximum of an additional 48 hours.

I would note, for the interest of honourable senators, that the media reports mentioning arrest without warrant for up to 72 hours have failed to mention the judicial process that must be invoked within 24 hours to detain a person for that length of time.

Under the investigative hearing provisions, a judge may order the examination of a material witness. In order for an investigative hearing to occur, the judge must be satisfied that the consent of the Attorney General was obtained and that there are reasonable grounds to believe that a terrorist offence has been or will be committed. In addition, during the hearing, people are protected from self-incrimination, and laws relating to privilege and the non-disclosure of information, as well as the right to counsel, will continue to apply. The legislation also provides the judge with the authority to include terms and conditions to protect the interests of the witness, third parties and any ongoing investigations.

These examples are just an illustration of the special care that has been taken to preserve the rights of Canadians throughout this bill. I know that our Senate committee will want to examine each of these protections carefully as it studies the subject matter of Bill S-36.

• (1440)

Honourable senators, let me be clear. The government recognizes that the preparation of this legislation was accomplished in a very short period of time. We want to get it right. The work of the committees of both Houses will be invaluable to the government as we move forward with this initiative.

For the Senate to make its maximum contribution, our wish is to set in motion a pre-study that will enable the Senate's deliberations to be taken into account before the bill passes in the other place. In that way, we can maximize the potential to bring our diverse expertise to bear on these significant initiatives, while helping to move the bill along in a timely way. I ask honourable senators to support this motion.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to make some comments on this motion before the house. I wish to begin by making it clear that the opposition intends to support this motion.

The comments I would add at this time cover four areas. First, I want to speak about the practice of pre-study. Second, I want to speak about the substantive issues alluded to by the Leader of the Government in the Senate that are found in the draft Bill C-36. Third, we must examine the conditions that ought to be present when the state assumes extraordinary powers, such as in times of emergency. Finally, I should like assurance that we will have sufficient mechanisms in place to give the kind of oversight required in a free and democratic society when we give the state extraordinary powers.

Let me begin, honourable senators, by pointing out that on September 18, when we had our debate on the challenges facing us after the horrible, evil events of September 11, some of us on this side underscored the importance of the Senate of Canada taking immediate concrete steps. There is a responsibility, indeed, a duty on behalf of this branch of Parliament to ensure that we have the infrastructure in place to deal with the challenges of this new international environment, which includes, regrettably, horrific acts of terrorism.

We suggested that a pre-study of Bill C-16 might have been an important concrete step. Bill C-16 dealt with the matter of fundraising. We are quite pleased that the government has seen fit to use this mechanism of pre-study, and it should not be dissuaded from using it, notwithstanding the view of some honourable senators who have held positions of leadership in this place on the other side.

I point out, however, that the pre-study process is effective only if the Senate committee doing the pre-study gets its work done in a timely fashion. By "timely fashion," I mean in time for the report of our special committee to be in the hands of the members of other place, preferably, when the bill is still at committee stage.

In terms of a practical time line, I would encourage the honourable senators who will constitute the membership of the special committee to aim for a date in early November. It is my understanding that the report stage in the other place may come anywhere between November 1 and November 6.

My recommendation to the special committee is that it keep an eye on the time line being followed in the other place in order that a report or interim report could reach the Senate in time so that our recommendations might influence any changes we feel would be needed in this bill before the bill is out of committee stage in the other place.

My second point is that our participation in pre-study does not imply any commitment to an abbreviated process the Senate might undertake to follow when we receive the bill. We do not know what will be the content of the bill when it comes from the House of Commons. We must maintain our right to examine that bill. Clearly, we will be better informed on the content and the subject matter having done some pre-study work and having had a report from the special committee, but the bill will have to go through the normal process when it is received here.

In terms of the substantive issues in this bill, honourable senators, my hope is that the special committee takes a careful look at what appears to be a failure in the bill as currently written to define terrorism. There is no definition of terrorism in the bill. Terrorist activities and terrorist groups are defined, but not terrorism.

Honourable senators, this is not an issue of relativism — the one man's terrorist is another man's freedom fighter argument — as there are working definitions of terrorism. National liberation movements are well defined and well understood in terms of international law.

[Senator Kinsella]

In his book on terrorism, Paul Wilkinson defines terrorism as premeditated. He writes that it aims to create a climate of fear directed at a wider audience or target than the immediate victims, involving attacks on random and symbolic targets, including civilians, and acts of violence that breach social norms, thus causing outrage. Terrorism is used to influence political behaviour.

I point this out to highlight that the committee should look at whether it would be wise to provide in the statute a clear definition of terrorism. We have a bill right now which sidesteps that matter and gives merely a definition of terrorist acts.

Honourable senators, I would hope that the committee and all Canadians would not hesitate to criticize the government for its failure to ratify two of the UN conventions dealing with terrorism. The bill provides for the ratification of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Suppression of Terrorist Bombing. That should have been done some time ago. Canada negotiated and signed these conventions two years ago, but this government failed to ratify them.

Certain members of cabinet have suggested that the cabinet itself was worried about offending minority constituents. Whatever the reasons, I simply make the point that the government is not without some fault in not keeping up to date. Those conventions ought to have been ratified some time ago.

Another issue I hope the committee will focus on and explore in its examination of witnesses is the seizing of assets of groups deemed to support terrorist organizations. Similar American acts regarding the seizure of assets of narcotics traffickers have been subject to widespread abuse. Police have been accused of planting small amounts of drugs in vehicles in order to seize these vehicles and then purchase them cheaply at auction. An amendment to the bill giving Parliament a more active oversight role should include an oversight of the disposal of assets of terrorist groups.

• (1450)

In terms of some of the substantive issues that I see in Bill C-36 that the committee might examine, my last point relates to the Official Secrets Act. Amendments to the Official Secrets Act do not include a removal of the reverse onus in the act. As it stands, the burden is on the accused to prove that he or she is not in possession of secrets to which they are not privy or information that he or she has legally divulged to which he or she is privy. This is in contradiction to the Charter, which puts the onus on the state. Due to the high probability of a successful challenge under the Charter, prosecutions under the act are non-existent.

I believe it was back in 1982 that there was an attempt at a prosecution. Violations are addressed administratively. If removal of the reverse onus is not included in Bill C-36, then the Official Secrets Act amendments are the weakest link and, perhaps, the bill will run into some major difficulties before the courts.

The third point, honourable senators, is that we must stand back a little bit. I hope the committee will use this approach, in part, as a frame of reference, as it does its work. No state of emergency has been declared. We in Canada are not in a state of emergency. Therefore, the kinds of extraordinary powers that are made available by democracies to the state cannot be taken on by the state without such a declaration. In the last few days, we have heard many references from government spokespersons that in the drafting of this bill it has gone through the Charter wringer over and over again. It is a nice metaphor. I hope they are right when they say that this bill is Charter-proof.

However, honourable senators, there are lacunae in our Charter. Our Charter has an important place in our democracy, but it is not the perfect instrument. For example, our Charter does not speak of the derogation of rights in times of national emergency. I want to draw to the attention of honourable senators the International Covenant on Civil and Political Rights ratified by Canada in 1976. In particular, I wish to draw to the attention of honourable senators article 4 of the convention which speaks directly to times of national emergency, when the life of the nation itself is threatened.

What does the international covenant say? It is an international treaty to which Canada is bound under international treaty law with the written agreement of every government of Canada. All the governments of Canada said, "Yes, we wish Canada to ratify this covenant, this treaty. We will respect the rights and freedoms to which it speaks."

Article 4 states:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State's Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

That is the principle. It is the standard. If there is to be derogation, even in times of proclaimed national emergencies, when some derogation may occur, it can never be derogation from the right of non-discrimination.

Subsection 2 states that there shall be no derogation at all from article 6, which deals with the right to life, or from article 7, which deals with torture. In the bill, for example, there is the provision that a person could be brought before a judge and made to talk. I am of the view that we would never see the situation in Canada where people have electrical currents run through them to make them talk — God forbid. However, let us ensure that the law will be such that it can never derogate from the right to non-discrimination, from torture, servitude or slavery. I will not go into all the arguments.

The point I want to make is simply this: We are not dealing with any declared state of national emergency.

The Hon the Speaker *pro tempore***:** I am sorry to interrupt the Honourable Senator Kinsella; however, his alloted time has expired.

Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

Senator Kinsella: I thank honourable senators.

What we are dealing with here, honourable senators, is not a state of national emergency where the life of the nation is threatened. We are dealing with a serious problem, but the committee might want to keep in mind that type of consideration.

Finally, honourable senators, I wish the committee to be encouraged in its work to pay particular attention, as Senator Carstairs has alluded to, to the protection of human rights and civil liberties, that the mechanisms that the bill provides for, up to this point, are the ordinary mechanisms. If this is a special circumstance, a special infrastructure may be necessary to provide appropriate oversight for the exercise of these extraordinary powers.

In my own view, honourable senators, at this early stage, I would like to see a joint parliamentary commission established for the life of this act that would provide ongoing oversight from the day it receives Royal Assent, such that the rights and freedoms of Canadians may be secured. Those who will be exercising these extraordinary powers will know that there is a parliamentary committee of the two Houses keeping an eye on the exercise of these powers. This may be plowing new ground. However, the bill before us is plowing new ground. I am not sure whether that is the best model. I encourage the committee in the examination of witnesses to see whether we can come up with a type of oversight mechanism that would provide for the kind of security and protection that exists under the CSIS Act in the form of the Security Intelligence Review Committee.

• (1500)

That committee is composed of a few members of the Privy Council; therefore it has the security in respect of the public interest. The CSIS Review Committee has done a good job in providing the oversight — not the micro-management of the work of the agency, but rather that broader overview to ensure that the rights and freedoms of Canadians are not arbitrarily interfered with, given the extraordinary powers held by the officers of CSIS. Perhaps something of that nature would be appropriate under this act.

Clause 145 provides for a review after three years. That model, perhaps, could be worked on by the committee allowing a review of the operation to commence immediately following Royal Assent, rather than after three years. I would encourage the honourable members of the committee to determine whether a mechanism might be identified to bring an amendment to that effect to the bill.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to move an amendment to the motion before us. I move, seconded by the Honourable Senator Stratton, that the motion be amended by adding after the first paragraph the following:

> That the committee in its examination shall *inter alia* explore the protection of human rights and civil liberties in the application of this Act;

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

Hon. Senators: Agreed.

Motion in amendment agreed to.

The Hon. the Speaker: Honourable senators, the debate may continue on the motion as amended.

Hon. Anne C. Cools: Honourable senators, I have a question for Senator Kinsella.

An Hon. Senator: No.

Hon. Jerahmiel S. Grafstein: Honourable senators, I rise to note and reiterate my objection, which should come as no surprise to many senators, to a Senate committee pre-studying bills in parallel with the House of Commons. The Senate should be free to examine and exercise its sober second review, only after the Commons has done its work, in respect of the government's response to this threat of terrorism. The Senate has demonstrated in the past that it can fashion its practices in a timely way and yet not rush to judgment.

This bill contains many admirable provisions, yet it grants awesome new powers to the state. These new powers should be carefully studied by the Senate, after the Commons does its work, to determine if the response by the other place is in keeping with the nature of the threat as it applies to Canadian security. The Canadian public expects the Senate to carefully consider this bill, especially in turbulent times such as these.

Honourable senators, as a question of principle, I disagree with the practice of the pre-study of bills by the Senate because it is inconsistent with the Senate's carefully crafted constitutional mandate of sober second thought.

I should hope that those honourable members selected to this special committee would consider that the bill's granting of such extraordinary powers is finite and should expire after five years, after ensuring that there is no further clear and present danger to Canadian security.

Honourable senators, if we in the Senate have learned any lesson, it is that the principles and practices of the Senate march best when they march together.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I wish to second the amendment of Senator Kinsella. There are some who may say that the amendment is unnecessary, first, because all legislation must respect the Charter of Rights and Freedoms since it is part of the Constitution and, second, because Bill C-36 on terrorism does not contain a notwithstanding clause. For that I am deeply grateful.

However, I second the amendment because it is good to ensure that the special committee on terrorism, which the Senate is being asked to strike today, keeps rights and freedoms firmly in mind. I wanted to say that it is entirely possible to ensure the safety of all Canadians and still respect our constitutional Charter, which greatly enhances our democratic values.

We quite rightly defend our rights and freedoms. We must also respect them in all our legislation.

[*English*]

Hon. Serge Joyal: I rise this afternoon to speak to the motion. As the Honourable Leader of the Government in the Senate mentioned in her presentation, the committee will report to this house and then will consider what the other place has done with the bill. The bill will then proceed, as I understand, expeditiously.

There are concerns that I wish to share with honourable senators, because a member of the committee is in a better position to express and relay that information. As a senator, I can speak freely at any sitting of the committee and I intend to do so.

Honourable senators, Bill C-36 is important, not only in size but in terms of implications. I am certain you remember that two weeks ago I spoke to Bill C-24 in respect of the anti-gang legislation. That is another complex bill that concerns the issues of rights and rules of law. As well, there is Bill C-7 in respect of youth criminal justice, which also concerns Charter issues and international covenant issues, because it is the object of a reference in the Quebec Court of Appeal on those specific points.

Honourable senators, those three bills are now before us. We are dealing with them in various committees. My opinion is that they "cut short on the skin of the Charter." In fact, they are almost unconstitutional. One of the bills, as I mentioned, is already before the Court of Appeal of Quebec, and earlier today questions were raised about that matter during Question Period.

• (1510)

Bill C-24 raises the importance of monitoring the criminal activities of police during the course of investigations. This is a very important bill. I studied the issue last summer during the recess. In my comments following Senator Kelleher's speech, I gave the example of the Police Act of Great Britain. It provided a mechanism to monitor decisions of the police to ensure that if, in extraordinary circumstances, the police must resort to criminal offences in the course of normal activities, they could be monitored so that the ordinary citizen is protected.

This bill, which is also an important bill, has a preamble. The sixth paragraph of the preamble, as the Honourable Senator Carstairs has stated, refers to the Canadian Charter of Rights and Freedoms and the values that underpin the Charter. This is broader than the values underpinning the Charter. Those of us who have been participating for more than 20 years in the discussions related to the Charter — and I see Senator Fairbairn will be chairing the special committee — will remember that the whole concept of the Charter was based on a fundamental principle that is the rule of law. The Supreme Court Canada in the *Reference re Secession of Quebec* was clearly eloquent on the process of the rule of law. I should like to read two lines from paragraph 70 of their opinion. It states:

> 70. The principles of constitutionalism and the rule of law lie at the root of our system of government. The rule of law, as observed in *Roncarelli v. Duplessis*...is "a fundamental postulate of our constitutional structure."... It provides a shield for individuals from arbitrary state action.

None of us deny that different circumstances prevail today in the fight against organized crime or in the fight against terrorism. I am of the opinion that the principle of the rule of law is paramount in the examination of any extraordinary power given to police forces. When I read the clauses of the bill dealing, for instance, with the interception of communications, with the interception of e-mail, with communication between Canadians or someone in Canada and abroad, things that are now covered with this bill, and when I read in the bill that the authorization for the invasion of privacy is extended from sixty days to one year, I ask: What kind of control is placed on those special authorizations to ensure that there is no "bavure"? We all know — and I quoted from it two weeks ago — that in 1981, the McDonald commission established a set of principles that should guide anyone dealing with the control of police activities that might be against the rule of law.

I want to refer again to a principle of the McDonald commission. I think it is important for honourable senators to have this principle in mind because it is paramount to any discussion that we will have on this bill. The McDonald commission states clearly that nothing should prevail over the rule of law. The needs of national security and national defence should not prevail over the rule of law. To me, this is fundamental. In fact, so fundamental is the interception of Internet and e-mail communications, given the advent of modern devices that we know terrorists use extensively, we must be sure that there is a monitoring capacity. I do not think we should invent that monitoring capacity.

Honourable senators, we must learn from the example of the British House of Commons and House of Lords. Their report of June 1999 chronicled an extensive consultation on the interceptions of communications in the United Kingdom. The report recommended a procedure to monitor the interception of communications, a code of practice, a compensation mechanism and the appointment of an independent commissioner who reports to the Prime Minister, who tabled the report in Parliament. There is control over what is clearly an invasion of the privacy rights covered in our Charter.

Honourable senators, I do not wish to prolong the debate, but this matter is of paramount importance. As I stated earlier, we are close to crossing, as the French expression states:

[*Translation*]

"le Rubicon des droits et libertés" or the Rubicon of rights and freedoms. If there is one important feature of our democratic system, one key component of our rights and freedoms, it is the constitutional protection afforded us by the Canadian Charter of Rights and Freedoms and the international instruments Canada has signed.

[*English*]

Let me quote again Lord Chief Justice Woolf of Great Britain, who declared in September, in the wake of the evidence we are all aware of, that:

> We are a country governed by the law and we mustn't allow the stresses and tensions, which are understandable, to deflect us from that...

Honourable senators, if there is an institution of Parliament that can exercise that sober second thought, it is the Senate of Canada. Essentially, that is why we are here. We are here to exercise an independent, long-term perspective, a monitoring capacity over the direction that this country is taking. This country finds itself in an evolution, and we may look back and say, "What have we been doing? Where are we as a society?" This is an extremely important point.

I now want to go over the last point made by Senator Kinsella. If we are to give exceptional power in this bill to the police forces and to the investigative authorities generally, then we should reflect on what the Americans did last week. What did the Congress do last week when they adopted special powers for their police? The compromise between the Senate and the Congress was an expiration clause of those powers.

A number of clauses in this bill could remain in our statute books because they are needed to recognize the conditions in which the police forces operate now, but other powers are in front of us today because of exceptional circumstances. When those exceptional circumstances are dealt with in the appropriate time — and in the U.S. Congress it is five years — those powers will lapse.

This bill contains a sunset clause, as Senator Carstairs has mentioned and as Senator Kinsella has echoed. It is an important clause, but we could go a step further in committee deliberations to protect the unique character of Canada.

I shall end by quoting from Justice Earl Warren. He was a famous American judge who, in 1967, had to judge the important *Robel* case. He said:

> It would be ironic indeed if, in the name of national defence, we would sanction the subversion of those liberties...which make the defence of the nation worthwhile.

In other words, to use another common image, it would be the snake that bites its tail. We want to protect our freedom and liberties, but in so doing we may go overboard.

• (1520)

I commend the Leader of the Government in the Senate for having recognized that this bill needs sober second thought because there are elements in it that raise questions, and if there is a fundamental role that we have as senators, it is to reflect on the long-term implications and the kind of society we are building by adopting those extraordinary powers.

Hon. Jim Tunney: Honourable senators, as you know, I am rather new to this place. We are talking about a pre-study, an experience which probably most honourable senators have not had before. What I wish to say is partly in the nature of a question, if Senator Kinsella would care to entertain it. Is it not slightly ahead of time to be putting forth an amendment before we have had a look at the bill? I want to read this bill in its entirety. I will be making some judgments on the contents of it. I am not saying I would oppose the senator's amendment. I may very well support that amendment, but I would not be surprised if in due course that same senator might want to change, add to or redo his motion in some way. That is my question, my concern. I am looking for a little bit of education here.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it should be recognized that, if I speak now, I will close the debate, but I wanted to take the opportunity to answer Senator Tunney's question either now or later.

The Hon. the Speaker *pro tempore***:** Is leave granted, honourable senators, for Senator Carstairs to respond to Senator Tunney?

Hon. John Bryden: Honourable senators, I find myself once again concerned by the use of the phrase "the rule of law." Whatever we do in consideration of this significant piece of legislation, we must be governed by "the rule of law." I have never been able to settle clearly in my mind what the rule of law is. I understand in part what the rule of law is, but is there a superior rule of law? Presumably, if we pass this bill and it becomes law, then the people who act under it and who act in accordance with it will be acting in accordance with the rule of law. As I understand law, the bill will be, at that stage, a law. People are not acting arbitrarily; the state is not acting arbitrarily; they are acting in accordance with the new law.

Then we get thrown back, and I have heard this so many times, right from the old days of the Pearson bill: "Whatever happens, it must be done in accordance with the rule of law because there is a reference to the rule of law in the Charter of Rights and Freedoms."

I am hoping that the case before us is so significant that the committee, and the chamber when the matter comes back to us later, will have an opportunity to consider how this rule of law operates. Let me give you a very brief idea of why I find it a difficult concept to put in context.

[Senator Joyal]

In the first "whereas" section of Bill C-36, it states:

> WHEREAS Canadians and people everywhere are entitled to live their lives in peace, freedom and security...

I believe the next "whereas" clause could have been inserted as follows:

> WHEREAS the Constitution of Canada empowers the Parliament of Canada to make laws for the peace, order and good Government of Canada...

Then all other "whereas" clauses could flow from that. If ever there were a time in Canada for Parliament's preeminence to make laws in the interests of the peace, order and good government of Canada, we are probably in such a state at the moment.

Presumably, if our Parliament makes a law in furtherance of its Constitution — which empowers it to make those laws for the peace, order and good government of Canada — it is acting in accordance with the rule of one of our superior laws, if not the supreme law, being the Constitution Act, 1867.

At the end of the "whereas" clauses, it states that we are also to be concerned with the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms. This is the question that comes to my mind: If the Parliament of Canada, acting in the interest of peace, order and good Government of Canada, makes a law that comes into apparent conflict with the Charter of Rights and Freedoms in certain circumstances, in what sense are we acting in accordance with the rule of law and in what sense are we acting in contravention of the rule of law?

I want to make one other comment. I know I am not being very helpful here. As Senator Joyal indicated, one principal reason for the Charter of Rights and Freedoms is to protect the ordinary citizen from arbitrary actions by the state. My observation is, if what we arrive at through this bill does not act arbitrarily against the Charter of Rights and Freedoms, and it is in furtherance of our parliamentary right to peace, order and good government, then it is the Charter that would act as some sort of check to help us to avoid any arbitrariness. In that regard, do we then need a British procedure or another type of procedure? That country does not have a Charter of Rights and Freedoms under which to act to prevent arbitrary actions of the state against their citizens.

As I understand the little bit of history that I know, it is not accidental that the Constitution of the United States — and this is not precise — states that the Constitution's role is to preserve the life, liberty and pursuit of happiness of the individual. That is a paraphrase of the underlying principle of the U.S. national government. The underlying principle of the Constitution of Canada at the time of Confederation is not the same. The underlying principle was that the Parliament of Canada would act for the peace, order and good government of Canada, and they are not the same.

• (1530)

I put these comments on the record because this whole issue concerns me greatly. I have not done a great deal of work on constitutional law. Senator Beaudoin and Senator Kinsella will help me, but as we go through this bill, we must grapple with some fundamental issues in order to hit the proper balance as the Senate of Canada in exercising our sober second thought and our collective wisdom.

I would be very appreciative if the committee and this chamber could come to grips with some of these issues in reaching a final position on this bill.

Hon. Joan Fraser: Honourable senators, I cannot resist. As Senator Bryden was rising to speak, I was, in preparation for the work that lies ahead, reading the decision of the Supreme Court of Canada in the 1986 *Oakes* case. That was the case in which the Supreme Court set out the criteria that must be met if any law is to stand the Charter test under section 1.

Section 1 of the Charter of Rights and Freedoms guarantees the rights and freedoms set out in the Charter subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In the *Oakes* case, the Supreme Court explained the tests that must be met by any bill, including the one we will be looking at. To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective must be of sufficient importance to warrant overriding a constitutionally protected right or freedom. The standard, we are told, must be set high. Second, once a sufficiently significant objective is recognized, then the party invoking section 1 — the government — must show that the means chosen are reasonable and demonstrably justified.

To make that decision, one must check three components of the test. First, measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. Second, the means should impair as little as possible the right or freedom in question. Third, there must be a proportionality between the effects of the measures responsible for limiting the Charter right or freedom and the objective that has been identified as of sufficient importance.

The court goes on to say that the more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.

I thought it was perhaps worthwhile to recall those principles, honourable senators.

The Hon. the Speaker *pro tempore***:** Honourable senators, it is my duty to inform the Senate that if Senator Carstairs speaks now, her speech will close the debate. Do other senators wish to speak?

Senator Carstairs: Let me begin by thanking senators for their participation and reminding them that we are voting this afternoon not on the bill, not on the principle of bill, but simply on a motion to pre-study the bill.

Senator Kinsella, in his motion of amendment, which, by the way, has already passed, indicated that he wanted the breadth of the study to include issues of the protection of human rights and civil liberties. Quite frankly, the spirit of that amendment was one that I readily accepted when it was presented to me earlier today. The idea is that the committee will now go off and do its pre-study of the whole bill, but within that study, the committee will pay particular attention to the issues of human rights and civil liberties. With that, I am in full support. I hope the Senate will move in support of this motion.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Milne, that —-

An Hon. Senator: Dispense!

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

An Hon. Senator: On division.

Motion, as amended, adopted, on division.

BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Wiebe, for the second reading of Bill S-9, to remove certain doubts regarding the meaning of marriage.—(*Honourable Senator Wiebe*).

Hon. Jack Wiebe: Honourable senators, I rise today to speak in support of Bill S-9, to clarify the definition of marriage. If I am stopped after 15 minutes, I will sit down accordingly.

Bill S-9 will remove any doubt of ambiguity as to the historic and traditional meaning of marriage, which is a union of a man and a woman to the exclusion of all others. For myself, and I dare say the vast majority of Canadians, marriage is a spiritual as well as a physical union between a man and a woman. These are statements that are neither new nor are they earth-shattering, but it seems in this modern era that they bear repeating. I want to say again, it is my pleasure to take part in this debate on an issue that our modern world seems to have forgotten.

Without a union between a man and a woman, none of us would be here. The union of males and females of almost any living thing is required in order for the species to survive. Despite advances in science and reproductive technology, it basically can be no other way.

It goes without saying that marriage is not a brand new institution. From the very beginning of human life on earth, the union of male and female was recognized as necessary for the continuation of life, and this fact in itself is reason enough for its special designation.

The religions of the world can agree on very few things, but they can agree that the definition of marriage is a union between a man and a woman. Christians, Muslims, Hindus, Jews, Buddhists and those of other faiths of the world have reached consensus on this matter, and may I suggest so should our legislators.

I do not wish to mix church and state within this honourable chamber, but this is one area where I feel they are connected. Marriage has its roots in the religions for its ceremonies, in biology for the basis of family, and in the law for the clarity of meaning. In my own very strong religious beliefs, marriage is an institution established by God, and in some Christian and Orthodox traditions, it is considered a sacrament. The married state between a man and woman has long been recognized as a stable platform on which to build a stable family life. The biological nature of marriage is to have and raise children, building a new generation that enables Canada to have a strong and bright future. The ceremony of uniting a man and woman by vows, by commitment, by the recognition of this union by the Church and by the government is part of that very long tradition.

In recent years, there has been an emphasis on different relationships, and the traditional concept of what constitutes a marriage has been pushed into the background.

However, in June of 1999, the Department of Justice requested the Angus Reid polling company to conduct a poll. The poll found 67 per cent of Canadians supported the extension of benefits based on economic interdependency and need, but on the premise that the traditional definition of marriage as one man and one woman to the exclusion of all others remain the law of Canada. That is why Bill S-9, the clarification of the definition of marriage, is so important.

Honourable senators, we need a law that allows for a clear understanding that marriage is a coming together of a man and a woman to form a union. We need not allow the courts to misunderstand the law, and that is why clarifying the intent to follow nature and the traditions of our society becomes so very important.

This is why I agree with the recent decision of the British Columbia Supreme Court ruling by Justice Ian Pitfield that "politicians, not judges, should settle the matter" of the definition and the meaning of marriage. Judges are in a position to make incremental changes to the law to reflect changes within society. However, recognizing same-sex marriages would be a major change, not an incremental one. Justice Pitfield said:

> The change would affect a deep-rooted social and legal institution....A change of the nature proposed would create new issues of social concern.

The capacity to marry is within the federal government's constitutional jurisdiction, and it is the federal government alone that can enact legislation to clarify or redefine marriage or change the rules on the capacity to do so. We have an opportunity with this bill to clarify and maintain the definition of marriage.

It is important to note that marriage is not defined by federal statute, but there are two acts that touch upon the substance of the relationship. The first is the Modernization of Benefits and Obligations Act, 2000. Section 1.1 reads as follows:

> For greater certainty, the amendments made by the Act do not affect the meaning of the word "marriage", that is, the lawful union of one man and one woman to the exclusion of all others.

The Marriage (Prohibited Degrees) Act of 1990 does not define marriage, but it states that relatives, brothers and sisters cannot marry.

The Senate should take this opportunity to clarify and ensure that there is a clear definition of marriage.

The *Random House Dictionary* defines marriage as:

> ...the social institution under which a man and a woman establish their decision to live as husband and wife by legal commitments, religious ceremony.

Merriam-Webster's Collegiate Dictionary, 10th edition, defines marriage as:

> ...the state of being married; the mutual relation of husband and wife; the institution whereby men and women are joined in a special kind of social and legal dependence for the purpose of founding and maintaining a family.

Gage Canadian Dictionary simply defines marriage as:

> ...married life; living together as husband and wife.

The legal definition that is still applicable today of a marriage relationship is the judicial decision from *Hyde v. Hyde and Woodmansee* in 1866. Let me briefly quote from that decision:

> Marriage has been well said to be something more than a contract, either religious or civil — to be an institution. It creates mutual rights and obligations, as all contracts do, but beyond that it confers a status. The position or status of "husband" and "wife" is a recognized one throughout Christendom: The law of all Christian nations throw about that status a variety of legal incidents during the lives of the parties, and induce definite rights upon their offspring. What, then, is the nature of this institution as understood in Christendom? Its incidents vary in different countries, but what are its essential elements and invariable features? If it be of common acceptance and existence, it must needs have some pervading identity and universal basis. I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others.

For 135 years, the basic social unit of our society and its legal definition has not changed. It was the House of Lords that made that decision. Let our upper chamber maintain this important principle.

This is a case that will eventually end up in the Supreme Court. The Senate now has an opportunity to offer guidance and a clear definition of what marriage is.

Honourable senators, I heartily endorse Bill S-9. I urge all of us to respond to the judicial activism that is taking place in our courts. I urge your support for this particular legislation.

If another honourable senator wishes to speak, I will sit down, but it is my understanding that Senator Banks, who is unable to be with us today, wishes to speak to this motion.

On motion of Senator Wiebe, for Senator Banks, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I move that the Senate do now adjourn and that all items on the Order Paper and the Notice Paper that have not been reached stand in their place.

The Senate adjourned until Thursday, October 18, 2001, at 1:30 p.m.

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Wednesday, October 17, 2001