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(HANSARD)**

Wednesday, December 5, 2001

**THE HONOURABLE DAN HAYS
SPEAKER**

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THE SENATE

Wednesday, December 5, 2001

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

Prayers.

[Translation]

SENATORS' STATEMENTS

WORLD AIDS DAY

Hon. Lucie Pépin: Honourable Senators, on December 1, the 14th World AIDS Day was celebrated in every country around the globe. The event, which commemorates the identification of the HIV virus, was focussed on access to antiretroviral drugs and on public education.

According to a report by the UN on AIDS, despite progress in treatment, AIDS continues to make terrible inroads in industrialized countries and in developing countries. This devastating disease has already killed over 20 million people, and 40 million others have contracted it. In 2001 alone, over 5 million people, including 800,000 children, were infected.

Right now, HIV/AIDS is the primary cause of death in sub-Saharan Africa, which accounts for 70 per cent of the world's seropositive population. In some African countries, such as Malawi, Mozambique or Zambia, life expectancy has been cut by 20 years because of this disease. In Botswana, life expectancy has dropped from 62 to 37 years.

The rates of infection of the disease continue to climb as well in Asia, Eastern Europe, the Middle East, Latin America and the Caribbean. These countries are already overwhelmed by socio-economic problems, and AIDS poses a serious threat to their development and social stability.

We can draw only one conclusion from all this, which is that we cannot let our guard down. The fact that we hear less about AIDS does not mean that everything is resolved. On the contrary, the various epidemiological data indicate that the AIDS epidemic has not backed off and even threatens to start up again.

Canada's report on AIDS and HIV for 2001 concurs in this regard. It indicates that Canadians are vulnerable to HIV. According to the conclusions of this study, there is a possibility the epidemic may revive once again, especially among the Native population, gays and prison inmates.

It is unfortunate, but it seems that, in industrialized countries, advances in the treatment and handling of this disease have gone hand in hand with a relaxation of preventive measures. Despite

advances in treatment, prevention remains the best weapon against the HIV virus.

Let us not be alarmists, but let us be vigilant! We must understand that the problem has not been resolved, quite the contrary. The statistics show this clearly.

[English]

NATIONAL SECURITY AND DEFENCE

Hon. J. Michael Forrestall: Honourable senators, I have a brief comment or two that I would like to make, and on the basis of which I will ask questions tomorrow. This will be of interest to the Leader of the Government in the Senate. I have at hand a copy of an e-mail, I suppose, from David Lenarcic to Mark Mayhew, dated 6/12/01, 9:42 a.m:

Subject: Senate Defence Committee

Some items of interest.

1) We expect a call this morning from the Clerk —

— presumably the clerk of the Standing Senate Committee on National Security and Defence —

— informing us of the results of the Committee's future business meeting last night. We then plan to send an e-mail to OPIs —

— that is "very important people," incidentally —

— with further details regarding the 21 June information session and to get to work on scheduling some type of prep sessions. We already know, for instance, that the Committee wants presentations no longer than 15 min in order to allow a 45min question period. At this point, however, we're more interested in learning the fate of our proposed agenda.

2) The Defence Committee's budget 01-02 — a copy of which you saw last week — was adopted without debate by the Senate yesterday. It therefore looks like they will indeed travel in the Fall.

3) In response to yet another MHP question from Senator Forrestall yesterday, Sharon Carstairs revealed that she had had a "very thorough briefing" on the subject that morning (It went on for an hour and a half, she said). She added: "It is the kind of information that I hope we can make available to all members of this chamber when the Committee of the Whole meets next fall." We've left a message with Paul LeBrosse — (MHP PMO) asking if he knows anything about this briefing.

THE LATE DONALD MCPHERSON

Hon. Francis William Mahovlich: Honourable senators, a great Canadian trivia question is: Who won the men's world figure skating championship in 1963?

Canadian world champion figure skater Donald McPherson, of Stratford, Ontario, has passed away at his home in Munich, Germany. In 1959 he was the Canadian junior men's champion. The next year, he finished in 10th place at the Winter Olympics in Squaw Valley at 14 years of age: a remarkable achievement.

In 1963, he was the first man to win the Canadian, North American, and World Senior Men's title all in one year, without ever having won any of them before. He was also the first man to jump from fourth to first place in the world championships and remains the youngest man ever to win the world title. Two years later, he won the Men's World Professional Championships.

• (1340)

After winning the world's championship, he toured Europe for 10 years with Holiday on Ice where he dazzled audiences with his unique footwork, eventually becoming a highly respected coach and skating director for the tour. Inducted into the Canada Sports Hall of Fame and the Canadian Figure Skating Hall of Fame, he leaves behind many friends in the skating world, and will never be forgotten.

CORRESPONDENCE IN OPPOSITION TO ANTI-TERRORISM BILL

Hon. Gerry St. Germain: Honourable senators, since the tabling of Bill C-36, my office, along with most other senators' offices, have been receiving correspondence on these anti-terrorism measures. In the past two weeks alone, I have received hundreds of e-mails. Apparently, it is not unusual for us to receive opinions for and against various subjects that come before us. What is different is that I have not received, apparently, from the correspondence I have seen, one comment in support of this legislation.

While everyone agrees that we desperately need to strengthen our security mechanisms so that terrorist actions on our soil are prevented, the Canadian public is clearly concerned that the fundamental freedoms they have fought wars over are now being held in harm's way by a government and a small group of people who cannot really be trusted. At a very minimum, many of them want to see a sunset clause in Bill C-36. Canadians may trust the Prime Minister on many issues, but most British Columbians do not trust him and his small band on protecting their freedoms, apparently. As Benjamin Franklin once said, "Anyone who trades liberty for security deserves neither liberty nor security."

Honourable senators, I have excerpts from several e-mails here. I will read one of them from B.C., which states:

To the last line of defence — our Watchdogs, the Senators. Often it has been said that Senators do nothing but

I have always thought it prudent to have another group of eyes to watch what is being passed in the House of Commons. Call it a safeguard, if you would. Now is the time for those watchdogs to protect from us the House of Commons intentions. Sometimes, this being one of those times, I think the MPs consider themselves anointed rather than elected, especially when there is little effective opposition. I am hoping you senators will take our freedom more seriously than they do.

I have another quote from Vancouver, B.C., which states:

Please do not pass this bill into law. We already have legislation in place to deal with the threat of terrorists in Canada. This Bill has the potential to deny law-abiding Canadians fundamental rights and freedoms for which my grandfather and father fought.

Honourable senators, I could go on, but what is important here is that we are receiving a lot of information on this very contentious bill. I think we should pay heed and be very prudent in the way we proceed.

THE RIGHT HONOURABLE ROMÉO LEBLANC

CONGRATULATIONS ON APPOINTMENT AS CHANCELLOR OF
UNIVERSITY OF MONCTON

Hon. Joseph A. Day: Honourable senators, I should like to bring to your attention yet another award received by one of our former members of this chamber. The news release states:

Educator, journalist, politician, senator, former speaker in the Senate, former Governor General of Canada, Roméo LeBlanc has been all of these things and more. Memramcook's most famous son and one of New Brunswick's most famous sons will succeed Antonine Maillet and become the University de Moncton's sixth chancellor since it was created in 1963.

Hon. Senators: Hear, hear!

[Translation]

ROUTINE PROCEEDINGS

AUDITOR GENERAL

2001 ANNUAL REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table the report of the Auditor General for the year 2001, pursuant to the Auditor General Act, R.S. 1995, chapter 43, section 3.

[English]

BANKING, TRADE AND COMMERCE

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, December 5, 2001

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

TWELFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, March 20, 2001, to examine and report upon the present state of the domestic and international financial system, respectfully requests the release of an additional \$12,000.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of May 29, 2001. On June 5, 2001, the Senate approved the release of an initial \$18,000 to the Committee.

The Report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

E. LEO KOLBER
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 1070.)

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

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

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

EIGHTH REPORT OF COMMITTEE PRESENTED

Hon. Jack Austin, Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented the following report:

Wednesday, December 5, 2001

The Standing Committee on Rules, Procedures and the Rights of Parliament (*formerly entitled the Standing*

Committee on Privileges, Standing Rules and Orders) has the honour to present its

EIGHTH REPORT

Your Committee has considered the issue of senators indicted and subject to judicial proceedings and recommends that:

(a) the Senate amend the *Rules of the Senate* by replacing rules 137 and 138 with rules 137 to 142, attached as Appendix A;

(b) the Senate, pursuant to section 59 of the *Parliament of Canada Act*, make the *Regulations Amending the Senate Sessional Allowance (Suspension) Regulations*, attached as Appendix B;

(c) the Senate, pursuant to section 59 of the *Parliament of Canada Act*, make the *Regulations Amending the Senate Sessional Allowance (Deductions for Non-attendance) Regulations*, attached as Appendix C; and

(d) the Clerk be instructed to transmit copies in both official languages of the *Regulations amending the Senate Sessional Allowance (Suspension) Regulations* and the *Regulations amending the Senate Sessional Allowance (Deductions for Non-attendance) Regulations* to the Clerk of the Privy Council for registration and publication under the *Statutory Instruments Act*.

Respectfully submitted,

JACK AUSTIN, P.C.
Chair

(For text of appendices, see today's Journals of the Senate, Appendix "B", p. 1071.)

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

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

APPROPRIATION BILL NO. 3, 2001-02

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-45, for granting to Her Majesty certain sums of money for the Public Service of Canada for the financial year ending March 31, 2002.

Bill read first time.

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

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

[Translation]

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-35, to amend the Foreign Missions and International Organizations Act, to which they desire the concurrence of the Senate.

Bill read first time.

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

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

• (1350)

CANADIAN NATO PARLIAMENTARY ASSOCIATION

DEFENCE AND SECURITY AND POLITICAL SCIENCE AND TECHNOLOGY COMMITTEES MEETING, NOVEMBER 7-9, 2001—
REPORT OF CANADIAN DELEGATION TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to present the ninth report of the Canadian NATO Parliamentary Association. This is the report of the official delegation which represented Canada at the meeting of the NATO Parliamentary Assembly Committees on Defence and Security and Political Science and Technology held at Kiev, Ukraine, from November 7 to 9, 2001.

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lise Bacon: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Committee on Transport and Communications have the power to sit at 5:30 p.m. today, Wednesday, December 5, 2001, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

[English]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. E. Leo Kolber: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 3:30 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET
DURING SITTING OF THE SENATE

Hon. Leonard J. Gustafson: Honourable senators, I give notice that on Thursday next, December 6, 2001, I will move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit on Tuesday, December 11 at 4:30 p.m., even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

VETERANS AFFAIRS SUBCOMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

Hon. Michael A. Meighen: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Subcommittee on Veterans Affairs have power to sit at 5:45 p.m. today, even though the Senate may then be sitting, and that the rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING
SITTING OF THE SENATE

Hon. Lorna Milne: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. today, even though the Senate may then be sitting, for the purpose of receiving evidence from the Minister of Justice and Attorney General of Canada and her officials during its consideration of Bill C-15A, an Act to amend the Criminal Code and to amend other acts, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

INVIOABLE RIGHTS

NOTICE OF INQUIRY

Hon. Terry Stratton: Honourable senators, I give notice that on Monday next, December 10, 2001, I will call the attention of the Senate to the fact that even in times of crisis or emergency, certain values and rights are to remain inviolate.

QUESTION PERIOD

NATIONAL DEFENCE

AUDITOR GENERAL'S REPORT—FUNDING SHORTFALLS

Hon. J. Michael Forrestall: Honourable senators, in the face of the worst tongue-lashing any government has ever received from an Auditor General, it is beyond my comprehension that the Leader of the Government in the Senate would not expect me to ask a question.

Honourable senators, my question, of course, is for the minister. In 1998, the Auditor General told Parliament that the military was \$1 billion short per year over a five-year period. In 2000, the Conference of Defence Associations said that the Department of National Defence required an additional \$1 billion to meet its budget per year over at least the next five years. In 2001, the Level 1 business plans of the Department of National Defence, the plans of the service chiefs and ADM Materiel showed that the department was indeed \$1.3 billion short. Now we have the Auditor General stating in her 2001 report that the military is \$1.3 billion short of the monies it needs to do its job.

[Senator Milne]

Will the government commit \$1.3 billion in the upcoming budget to the Canadian Forces' budget in new funds, and additional funds to pay for the campaign on terror?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Forrestall for his question and, of course, I expected him to ask one. I do not think I have sat here as the Leader of the Government in the Senate on a single day when he has not asked a question. I would be very disappointed if he did not ask one.

As to the commitment he is asking from me today, he knows full well that to make that kind of commitment today, when a budget is due to come down on Monday, would be breaking all the rules of cabinet solidarity as well as budget secrecy.

Senator Forrestall: Honourable senators, even more surprising than not getting a question from me would be for me to get an answer from the Honourable Leader of the Government. The question I am asking arises out of the Auditor General's report, not Monday's budget.

• (1400)

The Department of National Defence commits only 19 per cent of its budget to capital expenditure. It is required to spend approximately 23 per cent of its total budget on capital programs to avoid "rust out." The Auditor General's report states that the Aurora aircraft fleet, our only long-range strategic surveillance platform, flies only 42 per cent of the time, and the Sea King, our most used front-line aircraft, is only available to fly 29 per cent of the time.

Let me remind colleagues that of that 29 per cent of the time, 60 per cent of those missions conclude in failure to complete. Will the government commit in writing — as the Australian government did — to funding its 1994 White Paper on Defence by committing at least \$1.3 billion per year in new monies to the defence budget, year over year for the next five years and longer?

Senator Carstairs: Honourable senators, Senator Forrestall said in his preamble that he does not get answers. Of course he gets answers. It is just that he does not happen to like them, and for that I make no apologies. He always gets answers to his questions. He gets them here in the chamber and also in written form when I do not have the information available to me.

In terms of the response that the government must make to the Auditor General, the Minister of Defence welcomed the report. He indicated that it set positive targets for the defence community. The Auditor General indicated in her statement that the navy and army have maintained or increased their level of activity over the last five years. We also know that, in the last 10 years, DND has acquired new frigates for the navy, light armoured vehicles for the army, air force system upgrades, new computer equipment and uniforms, and search and rescue helicopters. Thus there have been ongoing purchase commitments on behalf of the Department of National Defence, and we will learn on Monday if there are to be additional commitments.

AUDITOR GENERAL'S REPORT—COMBAT CAPABILITY

Hon. J. Michael Forrestall: Honourable senators, I have a very serious question arising out of this most damning report by the Auditor General. The Minister of National Defence and the minister here in our chamber always assert that the Canadian Forces are more combat capable than they were 10 years ago. The Auditor General, an Officer of Parliament, says otherwise. Can the minister tell us why this servant of Parliament would so bluntly choose to cast doubt on the veracity of her colleagues' statements that ring hollow when the bulk of our aircraft — key to providing air support to our army and navy — cannot seem to get off the ground more than 30 or 40 per cent of the time?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Forrestall for a very serious question. It is a serious one. However, I would take issue on one aspect of it. I do not know whether he used the word in a way in which I would use it, but the whole point of the Auditor General is that she is not a colleague. She is an Officer of Parliament, separate and apart from the members of Parliament and the senators, and that is what gives her her sense of independence. I am sure that we totally agree on that particular definition.

Senator Forrestall: No, we do not — not at all.

Senator Carstairs: She should indeed be looking at this situation through her own lens as the Auditor General, and not through the governing party's lens nor through the opposition parties' lenses.

In terms of the statements about Canada being combat capable, that is determined by the Chief of the Defence Staff through his knowledge and expertise with respect to the troops under his command.

Hon. Gerry St. Germain: Honourable senators, on a supplementary question to the Leader of the Government in the Senate: I agree with her on the aspect of the Auditor General. However, in regard to the Chief of the Defence Staff, do you not think that his hands are tied in his ability to truly express his opinion on the situation? He accepts the position based on the status quo. Do you not think it is unfair to say that he is in agreement with regard to the state of his equipment? Having been a military officer and a pilot myself, I find it so ludicrous that the minister would try, in any way, shape or form, to defend something like these Sea King helicopters. It does not make sense to spend that much time servicing an aircraft.

I have an aircraft myself which was built in 1957. There is no way in the world that I would ever be able to afford to fly it if I had to service it for 30 hours for every hour of flight time. Is there no way — and I have asked this question before of the previous minister — in which we could go out and lease aircraft? There are thousands, if not millions, of aircraft in this world that can be leased, yet we continue to send our forces out with these antiquated, dilapidated pieces of equipment.

Senator Carstairs: Honourable senators, there are many parts to the honourable senator's question. The first is that I, for one, would not question the integrity of the chief of our Armed Forces under any circumstances. He is a man of great integrity. In his statements, he has been quite public that our armed services need additional equipment. He has put that on the record, and I respect his having done so. However, he has also said that our service is combat capable, and I also accept that judgment from him.

As to Senator St. Germain's specific question with respect to the leasing of aircraft, although the aircraft we have does require a great deal of maintenance — the honourable senator is quite correct about that — they are functioning. They are functioning very well in the war against terrorism, as we speak.

Senator St. Germain: Honourable senators, when the minister says "combat capable," what does that really mean from her perspective? That is quite a wide-open statement — combat capable for what?

Senator Carstairs: Combat capable for the assignments to which they are sent. We have performed extraordinarily well in places like Kosovo; we are performing extraordinarily well in the Gulf and in the other locations where we are presently located. That is combat capable.

Senator St. Germain: When we had to borrow batteries from the Spanish air force to keep our airplanes flying? Be serious, please.

Senator Carstairs: The honourable senator is, in fact, a pilot and he does own his own plane. He does not own a helicopter. Whether it is a Sea King, a Sikorsky or anything else, the helicopter needs more maintenance than any other aircraft. That is known about such aircraft. The reality is that no matter what we replace these planes with, they will always need intensive maintenance. That is the nature of the beast.

Senator Forrestall: On a brief supplementary, I could not let the opportunity go without reminding the Leader of the Government in the Senate that, indeed, the Sea King is a Sikorsky aircraft.

• (1410)

FINANCE

AUDITOR GENERAL'S REPORT—ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS—EFFECT ON BUDGET PROPOSAL TO AUGMENT GST CREDIT

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. I have begun to read the Auditor General's report, and I have found some precious stones about the government's management of our national finances.

This past winter, the government provided a one-time grant for heating expenses to recipients of the GST credit. Just under 9 million Canadians received cheques totalling some \$1.54 billion to help with increased fuel costs. The Auditor General has found no shortage of problems with this payment, not the least of which was very poor targeting. Only \$250 million to \$350 million went to people who were actually experiencing immediate increases in heating costs — about one in five. About 40 per cent of those who got the cheque were either not low- or modest-income or were not about to experience an increase in fuel costs because they heated with electricity. About 600,000 Canadians who would have qualified based on their income in 2000 got nothing because the test for these January 2001 cheques was based on 1999 income or family status. As well, there was the problem of cheques being sent to 1,600 convicts, 7,500 dead people and 4,000 people who do not even live in Canada.

The department's response to the Auditor General is a defence of the way it issued the cheques, with no indication that it has learned anything from its mistake.

Honourable senators, in recent days, there have been reports that the Minister of Finance, faced with a \$13-billion surplus this year, may announce a one-time \$4-billion top-up of the GST credit in his budget. Can the government leader assure the Senate that the government has learned something from its experience with the heating credit and that any special GST top-up will reflect those lessons?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I think it is safe to say that the government always learns from the Auditor General's report. That is why we have the system of the Auditor General in place. Every single one of her recommendations is carefully studied and analyzed. One would hope that the lessons that she teaches governments are, in fact, learned.

Just to give a specific example, because the honourable senator used a very specific example, of the individuals who lived outside of the country and received benefits under this plan, the information that I have is that only \$2 million of the \$1.4 billion was spent in that way, but if we had spent the time to do the analysis and set up the computer programs to delete such people, the cost would have been \$50 million.

Senator LeBreton: And the election would have been over.

[Translation]

Senator Bolduc: Honourable senators, the minister mentioned a few thousand people who received cheques. However, that is not the issue; we are talking about nine million who received a rebate. That must be taken into account. That is the real issue.

[Senator Bolduc]

[English]

NATIONAL REVENUE

AUDITOR GENERAL'S REPORT— ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS— OVERSIGHT BY PARLIAMENT

Hon. Roch Bolduc: Honourable senators, my second question is also related to the heating grant, but it is about parliamentary oversight. Beyond the issue of who got the cheques, the Auditor General has raised serious concerns about the way this payment was approved. Parliament did not approve this payment. The government used a Governor General's Warrant, something that is supposed to be reserved for emergencies when Parliament is not sitting. The Auditor General noted that with Parliament set to be recalled at the end of January, waiting for legislation would have added no more than six weeks to the process. The payment did not meet the test of an emergency.

Even though the Auditor General found that most recipients were not facing immediate increases in heating costs, in its response to the Auditor General, the government offered no apology for bypassing Parliament. It wants us to believe that waiting six weeks for Parliament to pass legislation would have delayed the cheques by up to six months, until July, because Revenue Canada would have been too busy with other things.

Honourable senators, can the government leader assure the Senate that never again will \$1.4 billion be spent without proper authorization from Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect to the senator, I cannot assure him that political decisions will never be made by politicians in the future.

AUDITOR GENERAL'S REPORT—ONE-TIME GRANT TO RECIPIENTS OF GST CREDIT TO OFFSET HEATING COSTS

Hon. Edward M. Lawson: Honourable senators, I have a brief supplementary question on the issue of the 7,500 dead people who received cheques. I want to know how the government knew they were dead. Did the dead people communicate that fact, or did relatives? Second, were any of the cheques that were sent to the 7,500 dead people cashed? This is a serious question, because it is an invitation to commit fraud. Were any of those cheques cashed fraudulently?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that they learned about the 7,500 dead people because the cheques were returned. I will, however, need to make further inquiries to determine whether some of them were cashed. If they were cashed, it certainly is a scam.

TREASURY BOARD

REPORT OF TASK FORCE ON REFORM OF PUBLIC SERVICE

Hon. Jean-Robert Gauthier: Honourable senators, my question is directed to the Leader of the Government in the Senate. I apologize for not giving notice of this question.

In her latest report, the Auditor General talks about the complex, rules-driven staffing system that has been an obstacle to recruiting qualified applicants into the public service for 40 years. She goes on to say, and the press reported on this yesterday, that 80 or 90 per cent of new appointments to the public service are done on short-term, part-time employment. That is to avoid the whole complex appointment system that is in place.

I asked the leader a few weeks ago if the report prepared by Randal Quail entitled "The Quail Task Force on Modernizing Human Resource Management" will be available soon. I understand Mr. Quail had until the end of November to table his report with the government. I remember Senator Murray asked whether it would be made public. I am asking the minister to inquire whether the report is available and when it will be made public.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for that question. The honourable senator asks a very important question because the staffing problem that has been identified by the Auditor General has also been identified by Treasury Board. It has become an increasingly complex system to hire, and that is exactly why the Quail report is expected soon. To my knowledge, it has not yet been received. As you know, that report will be received first by the President of the Treasury Board. I certainly have not yet seen it. As I committed earlier, as soon it can be made publicly available to members of the Senate, I will make it so available.

PARLIAMENT

AUDITOR GENERAL'S REPORT—OVERSIGHT OF GOVERNMENT PROGRAMS

Hon. Herbert O. Sparrow: Honourable senators, I have a question for the Leader of the Government in the Senate following on some of the other questions that have been asked. Who is minding the store in Ottawa? We as parliamentarians have tried to act as a guard against the mismanagement of funds by the government. We are appointed and elected to assist in the delivering of good government. I think that parliamentarians, in both this chamber and the House of Commons, are not being heard. The home heating oil incident is only one example,

although it is a crucial one, where Parliament was bypassed. We in this chamber, under questioning, in caucus, tried to bring forward the issue that there was terrible mismanagement when those cheques went out. We did it at an early stage, but we were ignored. With regard to Western Canada, we tried our best to bring forward the problem of the Agricultural Income Disaster Assistance Program payments. At a very early stage, we tried to explain how it was not working, that the forms were wrong, that the policies were wrong and so on.

• (1420)

Who was minding the store? No one. No one was taking this issue seriously. It is difficult for us as parliamentarians to go back and try to explain, because the fact that any department could be so inefficient is inexplicable.

We talk about gun control. We talk about the terrible problems that exist in gun control where people still do not have their permits to hunt. We know that the registration system has cost half a billion dollars more than it was suggested it would cost. That was brought to the attention of the government.

We are supposed to mind the store but, honourable senators, we are not listened to, whether it is in committees, in this chamber, in caucus or wherever, and then there is laughing when these problems are brought forward and say, "Oh, it is a funny sort of thing," and we turn to issues that are not important. We went through a terrible waste in relation to the Department of Human Resources Development, where close to \$1 billion, they say, is still not accounted for.

We have people in the agriculture industry in the West who are in serious trouble, but they are laughed at, and told that there is no money available to help them. We have child poverty that we are so worried about, but then we laugh about half a billion dollars being spent unwisely. Those funds went to people who did not need or deserve them, and our colleague across the aisle was talking in terms of 90,000 such people.

Why do we not have a system, either through this chamber, the Finance Committee or some other committee, by which we can look closely at these issues and recognize that such programs are being terribly mismanaged — and it is.

My question is: Who is minding the store?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Sparrow for his comment, and I obviously do not have the time today to go into all of the individual programs that he has raised. However, there is no question that he has raised serious concerns and some serious issues.

Who is minding the store? The Government of Canada is supposedly, officially, as elected by the people of Canada, to mind the store. For the most part I believe it does a first-class job. Are there individual anomalies within which governments make mistakes and for which governments must then be slapped on the hand by the Auditor General occasionally and told to correct those mistakes? Yes, of course. I have never known an Auditor General's report, in a province or at the federal government level, which did not do just that, no matter what the stripe of the government in any given day. That is their job. Their job is to identify all these problems and all these irregularities. But it is also our job. It is our job as senators, and it is also the job of members of the House of Commons.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this chamber two delayed answers, one in response to a question raised by Senator Forrestall on October 25, 2001, concerning the elimination of infantry battalions and a brigade, and one in response to a question raised by Senator Nolin on November 20, 2001, concerning the Newfoundland name change.

I think we should accept what I understand will eventually be a recommendation coming forward from the Senate rules committee, which suggests that the Estimates of every single department should be referred to the Senate committee that reflects the basic activities of that department. I encourage senators to then give those Estimates the kind of scrutiny which sometimes, frankly, we have failed to do.

Senator Sparrow: Honourable senators, I appreciate the answer that the minister has given, but the Auditor General has a part to play, and I understand that. As members of Parliament, we are charged with the responsibility of delivering good government to the nation, and the government of the day represents the members of Parliament, in both houses, in jointly representing the people of this country. If the people who were elected and appointed to this parliament were allowed to do their jobs, we would not require an Auditor General.

Senator Carstairs: Honourable senators, I would disagree with that. I think we will always require an Auditor General because I do not think that it is within the human condition to always get every single thing right. That is why we have an Officer of Parliament called the Auditor General, and that is why I respectfully received her report yesterday, which I have read in part with great interest, and will continue to read over the weekend. It is in reading reports such as that that we challenge ourselves to be better members of the Senate, to be better members of the House of Commons and to be better members of cabinet.

Senator Sparrow: Honourable senators, how long has there been an Auditor General in Ottawa overseeing the spending of the government? What happened before we had an Auditor General?

Senator Carstairs: Honourable senators, my understanding is — and I must say that Senator Austin has been feeding me this information — that we have had an Auditor General since 1878.

[Senator Carstairs]

NATIONAL DEFENCE

ELIMINATION OF INFANTRY BATTALIONS AND A BRIGADE

(*Response to question raised by Hon. J. Michael Forrestall on October 25, 2001*)

The Army is studying its organization with the purpose of modernizing the force structure to meet contemporary and future threats. The future of mortar platoons is one of many items under consideration. No final decision has been taken with regard to this restructuring process.

JUSTICE

CONSTITUTION AMENDMENT, 2001, NEWFOUNDLAND AND LABRADOR—EFFECT ON BORDER WITH QUEBEC

(*Response to question raised by Hon. Pierre Claude Nolin on November 20, 2001*)

Although the need to address security issues is a high priority for the Government of Canada, this cannot exclude all other work. The business of government must continue, including cooperation with provincial governments to improve the federation in a range of other policy areas.

The Newfoundland and Quebec governments were consulted in advance of the Government of Canada's decision to proceed with this amendment to the Constitution.

The Government of Canada has and will continue to be responsive to provincial requests for amendments to the Constitution aimed at making the federation work better.

Please find in annex copies of letters to Premier Landry and Premier Grimes, informing them of the amendment.

The Honourable Bernard Landry
Premier of Quebec
J Building, 3rd floor
885 Grande-Allée East
Quebec City, Quebec
G1A 1A2

Dear Premier:

On April 29, 1999 the Newfoundland House of Assembly unanimously adopted a resolution authorizing the Governor General of Canada to issue a proclamation amending the Constitution of Canada by changing the name of the Province of Newfoundland, where it occurs in the Terms of Union of Newfoundland with Canada set out in the Schedule to the *Newfoundland Act*, to "Newfoundland and Labrador".

The Government of Canada intends to introduce an identical resolution in Parliament shortly. If adopted by the House of Commons and Senate and proclaimed by the Governor General, the requirements for effecting a bilateral amendment to the Canadian Constitution that are set out in section 43 of the *Constitution Act, 1982* will be met.

As the Honourable Stéphane Dion pointed out in December 1999, the resolution adopted by the Newfoundland House of Assembly in 1999 and which is to be put before Parliament has nothing to do with borders. Thus, I would like to reiterate that the proposed amendment changing the name of Newfoundland will have no impact on the boundary that separates Quebec from Newfoundland.

Changing the name of the Province of Newfoundland to "Newfoundland and Labrador" in the Terms of Union is a symbolic but important recognition of Labrador's status as a full and vital partner within the province, with its own unique geography, history and culture. As a native of Newfoundland and Labrador, I will be proud to present this resolution to Parliament.

Please accept, Mr. Premier, my most sincere wishes.

Sincerely,
Brian Tobin

The Honourable Roger Grimes
Premier of Newfoundland and Labrador
Confederation Building, East Block
P.O. Box 8700
St. John's, Newfoundland
A1B 4J6

Dear Premier:

As you are aware, on April 29, 1999 the Newfoundland House of Assembly unanimously adopted a resolution authorizing the Governor General of Canada to issue a proclamation amending the Constitution of Canada by changing the name of the Province of Newfoundland, where it occurs in the Terms of Union of Newfoundland with

Canada set out in the Schedule to the *Newfoundland Act*, to "Newfoundland and Labrador".

I am pleased to inform you that the Government of Canada intends to introduce an identical resolution in Parliament shortly. If adopted by the House of Commons and Senate and proclaimed by the Governor General, the requirements for effecting a bilateral amendment to the Canadian Constitution that are set out in section 43 of the *Constitution Act, 1982* will be met.

As the Honourable Stéphane Dion pointed out in his letter to Minister Lush of June 11, 2001, the resolution adopted by the Newfoundland House of Assembly in 1999 and to be put before Parliament has nothing to do with borders. Thus, I would like to reiterate that the proposed amendment changing the name of Newfoundland will have no impact on the boundary with Quebec.

Changing the name of the Province of Newfoundland to "Newfoundland and Labrador" in the Terms of Union is a symbolic but important recognition of Labrador's status as a full and vital partner in our province, with its own unique geography, history and culture. As a proud son of Newfoundland and Labrador, I look forward to leading this resolution through Parliament.

Sincerely,

Brian Tobin

[Earlier]

[English]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to the presence in our gallery of members of the study mission to Canada by chairpersons and secretaries of selected committees of the House of People's Representative Parliament of the Federal Democratic Republic of Ethiopia.

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

Hon. Senators: Hear, hear!

LESSONS TO BE DRAWN FROM TRAGEDY OF TERRORIST ATTACKS IN UNITED STATES ON SEPTEMBER 11, 2001

NOTICE OF INQUIRY

Leave having been given to revert to Notices of Inquiries:

Hon. Pierre De Bané: Honourable senators, I give notice that on Wednesday next, December 12, 2001, I will call the attention of the Senate to certain lessons to be drawn from the tragedy that occurred on September 11, 2001.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to proceed in the following order for Government Business. We would like to begin with Item No. 2 on the Orders of the Day, third reading of Bill C-24, followed by Item No. 1, Bill C-31, finishing up with Item No. 3 and all other items in the Notice Paper in their respective order.

[English]

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Wilfred P. Moore moved third reading of Bill C-24, to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other acts.

He said: Honourable senators, I am pleased to open debate at third reading of Bill C-24, to amend the Criminal Code in relation to organized crime and law enforcement and to make consequential amendments to other acts.

Over the last few months, there has been a considerable amount of debate in this chamber, in the other place and generally within Canada, about the need to enhance law enforcement tools to respond to threatening criminal activity, particularly terrorism. This debate continues as Bill C-36 receives consideration by a special committee of the Senate. While many of us have been quite naturally focused on that vital issue, we must remember that addressing the problem of organized crime is also vital to protecting public safety in Canada.

Organized crime continues to have a substantial negative impact on our communities and on our country as a whole. Drug trafficking, people smuggling, illegal trafficking in firearms, smuggling of contraband tobacco and organized prostitution, money laundering and credit card fraud are just some of the criminal activities directly associated with organized crime in this country.

We are all paying a price for these activities. In fact, in certain areas of the country, organized criminal activity, which includes threats and violence, has created an atmosphere of fear. These threats and violence have not just targeted other gang members but have killed, injured or threatened innocent members of the general public.

While we did have certain specific laws in place to deal with organized crime, in particular the measures of Bill C-95, enacted in 1997, law enforcement and prosecution authorities have told us that there is a critical need to strengthen these measures in order to deal adequately with the threat now posed by organized crime.

• (1430)

Honourable senators, Bill C-24 takes up this important challenge. It does so through initiatives in four main categories. First, the bill creates new criminal organization offences that comprehensively target the full range of activities undertaken by or for criminal organizations. Second, the bill includes measures to improve the protection from intimidation of people who play a role in the justice system, which is essential for the effective functioning of our criminal justice system. Third, the bill creates an accountability process to provide limited protection to law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of investigations. Fourth, the bill broadens the scope of the powers of law enforcement to seize and forfeit the proceeds of crime and property that was used in a crime.

Honourable senators, Bill C-24 received second reading in this chamber in September and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. The bill has now been reported. The Legal and Constitutional Affairs Committee has recognized that the law enforcement tools in the four categories I have mentioned need to be strengthened. If we expect our law enforcement officers and our criminal law system to be able to address the evolving face of organized crime, then clearly we must give them adequate tools to do the job.

At the same time, I must note that reservations have been expressed by honourable senators on the committee about certain aspects of Bill C-24. Many of these reservations have focused on the law enforcement justification provided by new sections 25.1 to 25.4 under the bill. This issue received considerable attention from the standing committee. Under these proposed sections of the Criminal Code, designated law enforcement officers would be justified, in certain circumstances, in doing an act or omitting to do an act that would otherwise constitute an offence. Officers, however, must be specially designated for the purposes of the scheme by a "competent authority," which in all cases is the responsible minister. In emergency circumstances, a temporary designation may also be made by a senior law enforcement official.

As a central condition of the scheme, a designated officer must believe, on reasonable grounds, that committing the act, or omitting to do so, is reasonable and proportional in the circumstances, having regard in particular to the nature of the act or omission, to the nature of the law enforcement duty or function being carried out, and to the availability of other means for carrying out that duty or function.

The committee heard strong testimony from law enforcement officials and others that demonstrated that these tools are necessary to respond to the Supreme Court of Canada decision in *Regina v. Campbell and Shirose*. In that decision, the Supreme Court ruled that police have no inherent immunity for conduct that would constitute an offence, even where it is undertaken in good faith for the purpose of an investigation. It also indicated that it was for Parliament to decide to provide for any such immunity.

Since the Supreme Court's judgment, in the absence of sufficient immunity under Canadian law, certain long-accepted law enforcement techniques have been called into question and numerous undercover investigations have been stopped or significantly hindered. Undercover police work in particular, which is critical to dealing with organized crime, has been seriously disrupted or stopped altogether in some cases.

On the other hand, the committee also heard from a number of witnesses, including the Canadian Bar Association and the Barreau du Québec, who expressed concerns about these provisions. There were concerns that expressly allowing law enforcement officers to engage in conduct that would otherwise constitute offences could undermine the rule of law in Canada. There were also concerns about the degree of law enforcement accountability and whether there would be sufficient control and oversight on law enforcement officers in respect of their use of these powers.

In response to these concerns, the committee heard evidence concerning the control and accountability mechanisms that would apply to the legislated justification under Bill C-24. These include: the requirement for designation by an accountable minister; the complete exclusion of crimes of violence that cause death or bodily harm, sexual offences and obstruction of justice; the requirement for an authorization from a senior official for acts involving substantial property damage or the use of agents; and the "reasonable and proportional" test that applies in all cases under the regime.

The accountability mechanisms also include a requirement for a public annual report and notification to persons whose property is lost or seriously damaged. There will also be a full parliamentary review of the law enforcement justification provisions within three years of coming into force, and a committee of the Senate and of the other place can conduct independent reviews.

It is important to observe that the control and the accountability mechanisms that are now reflected in the bill were constructed after considerable public input about the law enforcement justification. This input was facilitated by the tabling of the White Paper on Law Enforcement and Criminal Liability for public comment in the spring of 2000. That white paper was tabled in this chamber in June 2000. The input led the

government to make changes that, above all, were aimed at improving control and accountability. The law enforcement justification regime is therefore a matter that has been the subject of considerable informed debate and commentary, and that debate led to a number of significant enhancements of both the control and accountability mechanisms in the scheme.

Throughout the committee process, two specific issues garnered considerable attention from both the members of the committee and those who appeared before us. Serious concerns were expressed about insufficient public accountability for police officers operating under these provisions, as mentioned above, and equally important, fear that public accountability would be diluted in proposed section 25.1(3) of the bill. The latter section allows the designation of a broad group of public officers for exemption from criminal liability as opposed to a single named individual. I believe we can all see the potential danger with the wording of this section as it now stands and the need to provide a solid web of civilian oversight.

Included in this framework of accountability is Parliament itself, which has a special responsibility within three years to review this scheme. It is important that this review be undertaken with care and thoroughness. In relation to this, it is incumbent on federal and provincial governments and law enforcement services in all Canadian jurisdictions to collect and keep appropriate information on the use of this power in order to be able to fully inform the parliamentary review. Honourable senators on the committee spoke of the need for the Senate in particular to undertake a vigorous review of the scheme.

There was much evidence before the committee concerning the overall police oversight mechanisms that are currently in place at the federal and provincial levels. The significant work of these bodies — such as the Commission of Public Complaints into the RCMP and similar review bodies for provincial and municipal police services across the country — fulfils a needed role in providing an independent review of citizens' complaints of improper law enforcement conduct and of the oversight of law enforcement in general. The government is confident that these existing civilian oversight mechanisms will be able to provide the checks needed on the law enforcement justification regime in Bill C-24.

These oversight bodies have confirmed that they will pay close attention to these new powers. The committee heard that the Canadian Association for Civilian Oversight on Law Enforcement, or CACOLE, the umbrella organization of all of these bodies, plans to ensure that its members are fully informed of the responsibilities in regard to police conduct relating to both Bill C-24 and Bill C-36. In this regard I understand that the Department of Justice and the RCMP plan to sponsor a national meeting of all civilian oversight agencies to discuss these very issues.

• (1440)

On the issue of law enforcement justification in Bill C-24, Professor Louise Viau, a law professor at the University of Montreal, provided persuasive testimony. She spoke strongly of the balances she felt have been achieved under the scheme in the bill, about the control and accountability mechanisms to which it would be subject, and about the effectiveness of the existing oversight bodies. This testimony was particularly compelling because professor Viau was one of the commissioners on the recent public commission appointed to inquire into the conduct of the Sûreté du Québec, the Quebec provincial police force, known as the Poitras commission, which has been mentioned in this chamber.

Professor Viau also spoke from her experience of inquiring into allegations of police misconduct, and the mechanisms that were developed to respond to those allegations in her province, and urged us to respect the jurisdiction and responsibility of the provinces to establish such mechanisms, and the roles and responsibilities of civilian oversight bodies that have been established across Canada. She urged that we give our weight to strengthen these bodies where necessary.

At the end of the deliberations, honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs clearly accepted the need for the law enforcement justification provisions, and control and accountability mechanisms. The committee also clearly accepted the need for the advisability of the other measures in Bill C-24.

At the same time, the report does include observations by the committee members that relate especially to their concerns about law enforcement justification. There is clearly support for the provisions, but not entirely without reservation. In order to meet the concerns expressed by the committee, the government has come forward with two amendments. The first is to limit the broad scope of the wording in section 25.1(3) of the bill. The second is to ensure adequate oversight of these new provisions. The government has listened to the committee and has agreed to amend the bill.

MOTION IN AMENDMENT

Hon. Wilfred P. Moore: Therefore, honourable senators, I move, seconded by Senator Joyal:

That Bill C-24 be not now read a third time but that it be amended in clause 2,

(a) on page 4, by replacing line 32 with the following:

“public officers”;

(b) on page 5 by replacing line 5 with the following:

“public officer in”;

[Senator Moore]

(c) on page 6 by replacing lines 5 and 6 with the following:

“(b) is designated under subsection”; and

(d) on page 4 by adding after line 34, the following:

“(3.1) A competent authority referred to in paragraph (a) or (b) of the definition of that term in subsection (1) may not designate any public officer under subsection (3) unless there is a public authority composed of persons who are not peace officers that may review the public officer’s conduct.

(3.2) The Governor in Council or the lieutenant governor in council of a province, as the case may be, may designate a person or body as a public authority for the purposes of subsection (3.1), and that designation is conclusive evidence that the person or body is a public authority described in that subsection.”

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

Hon. Pierre Claude Nolin: Honourable senators, I have a few questions for my colleague Senator Moore, if he wishes to entertain them.

The Hon. the Speaker: Will the Honourable Senator Moore accept questions?

Senator Moore: Of course, honourable senators.

Senator Nolin: Would the new civilian oversight measure be undertaken prior to the appointment of specific individuals in the police force? Is that how it would work?

Senator Moore: Honourable senators, I did not hear the first part of the question.

Senator Nolin: I understand the first amendment would eliminate the appointment of groups of police officers. They will now be individually appointed. That is a very good improvement.

My second question has to do with civilian oversight. Is this oversight prior to the appointment only, or while they are performing their new responsibilities?

Senator Moore: I understand that it is throughout the whole process.

Senator Nolin: Will the term “civilian oversight” be applied with regard to police officers?

Senator Moore: Yes.

Senator Nolin: That means that it will be under the competent authority, which could be the federal Minister of Justice or the provincial minister.

Senator Moore: Yes.

Senator Nolin: Or would there be a civilian body that would advise the minister before and monitor —

Senator Moore: The ongoing designations.

Senator Nolin: That is definitely better than what was in the bill.

Hon. A. Raynell Andreychuk: Honourable senators, I seek some clarification. This is the first time we have seen these amendments. We expressed many concerns in the committee. I was not aware that these amendments were coming forward.

What is the second amendment? I do not follow. I now understand the first amendment. The honourable senator referred to various lines and deletions. We just received the amendments on my desk about 30 seconds ago.

As to the second amendment, can the honourable senator tell me what the full force and effect of it will be?

Senator Moore: Honourable senators, the second amendment is the inclusion of a new section. The others were changes, but this is an insertion of new provisions to provide for civilian oversight which was, as the honourable senator knows, one of the main concerns of our committee's work, as well as the designation of a public authority to provide that oversight. In the words of Senator Grafstein, there is conclusive evidence these things were required. I realize that honourable senators have just received the amendments. I can tell honourable senators that the Leader of the Government in the Senate has been working diligently in responding to the concerns we relayed to her as this process has been ongoing. She has achieved a great deal, not just for the committee but, indeed, for the country.

Senator Andreychuk: What the honourable senator is now saying is that there will be new civilian oversights created in each province, as I understand it, as opposed to a national authority. Will these civilian oversights be global in scope as far as the act is concerned, or will they only apply to this very unusual power that we are giving them to go into areas of law enforcement that would otherwise be deemed to be against the Criminal Code?

• (1450)

Senator Moore: As I understand it, this applies to the authority that we are giving to the officers. It is not just a designation; we are giving them extraordinary powers, and this authority would give them the competency to oversee those activities.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, unless Senator Andreychuk has another question, perhaps I can explain, since I understand what this will

do. She asked in her first question whether these would be new bodies. The answer is: not necessarily. They could be bodies that are already established in the provinces which, in fact, already examine police activities. Every province has one of those bodies, with the exception of Prince Edward Island. The RCMP looks after Prince Edward Island in all regions outside of the small city of Charlottetown, and the RCMP also has its complaints commissioner.

This particular amendment alerts these bodies that already exist to the fact that they will be asked to provide a civilian oversight. This is to ensure that these new powers, which are very extensive, will be provided with that civilian oversight. In other words, it is really a signal to them in the legislation that we want them to be aware of the fact that these are new powers, and that these new powers should be examined carefully by these bodies.

The Hon. the Speaker: Is the house ready for the question?

Senator Nolin: No, I want to go through the amendments.

Senator Andreychuk: I would like to speak to the bill, but it would be preferable if I could also address the amendments so that I do not have to speak twice. I would just like to make a statement.

The Hon. the Speaker: Very well.

Senator Andreychuk: Honourable senators, I thank Senator Moore and Senator Carstairs for bringing forward some amendments to Bill C-24. As you know, the Standing Senate Committee on Legal and Constitutional Affairs has been struggling with many bills that are not what I could call of a routine nature, including variations to the criminal law that have to be addressed. In the Legal and Constitutional Affairs Committee we have received many bills that have far-reaching implications for Canadians and for the criminal justice system.

Bill C-24 was introduced as the result of a need to address what police officers and segments of Canadian society were concerned about, and that is organized crime and gangs that have grown up across Canada with tremendous resources, tremendous technology and tremendous initiative to move across this country. We heard witnesses say that in the time that police were beginning to alert the population about the crime problem envisioned through gang activity, there were provinces that did not have this activity. However, before the police could gear up and alert their political masters to the problems, along came the gangs in virtually every province across Canada. They tend to bring with them all kinds of horrific violence and disrespect in every form, including economic and criminal activity in the communities. Consequently, there is no doubt that the activity of gangs, gang violence and gang activity is detrimental to good governance and to the security of citizens.

The bill was absolutely necessary. I recall the first time we had an anti-gang piece of legislation here. It was cobbled together rather quickly at the initiative of the House of Commons. The government responded and the legislation came through this house. I remember stating at that time that it was important that the government do it properly and not do it quickly in anticipation of the public reaction to a particular incident. I am afraid that the government only heard half the message because, while there was some activity, it really took the prodding and activity of the police, and certain other activity, most notably in Quebec, to bring forward this initiative in the shape of Bill C-24.

However, this bill still does not deal with the kinds of activity about which I have been concerned, and that is the activity that has to do with gangs when they are youths, or children. A criminal response is not the appropriate response for that kind of gang activity. I see very little in the government policy and legislation that addresses gangs of youths. That will be, again as I have signalled, a growing problem. We have seen this problem manifest itself in Aboriginal communities, in non-Aboriginal communities and in new communities of Canada. Youths in a state of flux because of difficulties in their communities often come together. They do not come together in a positive way, but in a negative way. The alerts that we should watch for, such as gangs forming, are symptomatic of social problems in the community, but not strictly criminal activity.

I would urge the government to deal with that as a social issue, a complex Aboriginal issue, a complex child-care issue, and as requiring complex, federal-provincial negotiation for more resources in social services. I would urge the government not to ignore it.

My other concern, which I raised very strongly at the committee when we were discussing the bill clause-by-clause, is that, on the face of it, this bill is giving powers to the police so that they will be able to be designated and, in layman's terms, be able to break the law. If they break the law, that evidence can be used in court and the police officer will be granted immunity, in essence.

We have prided ourselves in Canada that we have curtailed police action to within the law. I have heard countless politicians, including those who are in authority today, say that what marks Canada out is that we are a country of the rule of law and that no Prime Minister, no cabinet minister, no civil servant, no parliamentarian, no police officer, is above the law. Consciously, throughout the decades, we have looked for means whereby we can give police tools within the law.

This will be a dramatic variation where the police can go in and investigate. We must bear in mind that while they are investigating anti-gang activity, which we want them to do, there is a great fear in the community of the exercise of this power far out-reaching the anti-gang concept. If we give police the discretion, they will use it. In my opinion, in most cases they will

exercise it in good faith. However, the definition of what is "good faith" and the exercise of it will rest with the whole police force and with those who work with and around police forces. There is a great threat to the administration of justice if these discretions are stretched, if the exercise of even "good faith" is stretched so often and so innovatively that we find the reach of the police stretching way beyond what we have known in the past.

Therefore, I am concerned that we are embarking on something unique and counter to what I think has been the practice, and that marked out Canadian police enforcement. We were told by one of the officials that Canada has a reputation of having one of the finest, if not the finest, police force in the world. I happen to think that is true. However, that has been in the context that the police have always acted within the law. Witnesses who appeared before us expressed concern about police discretion used against minorities and disadvantaged groups. This discretion can in fact be very dangerous. I am pleased that we are trying to curtail the discretion, but my concern has not been alleviated.

• (1500)

Civilian oversight is necessary, and I am pleased that there is some movement toward such provision. We have had civilian oversight of the police, but it has been mainly in the administration of their budgets. I have been part of such bodies that have been preoccupied with union issues and ordinary policing issues. This is an extraordinary power, so the amendment gives an important signal.

Nonetheless, I am still concerned about the of the civilian oversight bodies. Will they have the necessary competence and skills and will the police be able to share the required information? I am concerned that the information that will be shared with civilian oversight bodies will be numerical and statistical, not the type of information that will allow the civilian oversight bodies to truly understand what is happening. The Security Intelligence Review Committee oversees the Canadian Security Intelligence Service. SIRC has often reported their difficulty in getting full information on CSIS investigations. Their job is a very difficult but necessary one. Although there is a review mechanism, I wonder whether the powers given by this bill are necessary. As I have said, if you give tools, they will be used.

Finally, we are being inundated with new legislation as a result of the events of September 11 and as a result of new global criminal activity. We are assured that there are sufficient safeguards in place, that the powers being proposed in these bills are necessary and that the powers are proportionate to the other issues of which we must take account, such as civil rights, individual freedoms, et cetera. We are also told, of course, that the powers are Charter proof and that, therefore, we should pass the legislation.

[Senator Andreychuk]

I remain worried that our concerns are being addressed on a piecemeal basis. I am very concerned about the cumulative effect on our criminal law, on human rights in Canada, and on Canadian values of the measures dealing with criminal law in Bill C-36, Bill C-24, Bill C-42 and Bill C-44.

It is time that there be some mechanism, be it in the Senate, in the House of Commons or jointly, to address the continual reduction of the safeguards and protections we have built up in our system in order that police power does not become arbitrary and government ability to use police cannot become dictatorial. There is a fine balance between the need for security and the need for the individual freedoms that make this country different from other countries.

Although, as Senator Carstairs has signalled, there is grave concern about maintaining what we consider to be the fabric of Canada, we must be very careful in the process. We have built this country with these balances and we should not continually respond to problems in our society with legal answers. Above all, we must ensure that we implement the measures that are the least intrusive into our human rights and fundamental values.

I grudgingly agreed to this legislation, even without the amendments. Therefore, I am pleased that there has been this response. I thank the Leader of the Government in the Senate for working with Senator Moore to bring them forward. However, my concerns remain. This is a good step, but the government has a long way to go to reassure Canadians. The time is coming when we must stop and reflect.

I will speak at another time about how the government could create this balance between security and human rights.

[Translation]

Senator Nolin: Honourable senators, I realize that if the Senate adopts these amendments, we will have to send them to the other place, which will also be able to examine and approve them.

I took a quick look at these amendments. I am very pleased to see that the committee's concerns were addressed. They were identified and included in the observations attached to the committee's report. I thank the Leader of the Government in the Senate for diligently convincing her colleague the Minister of Justice, to amend the bill.

I draw the attention of senators to the fact that, within a three-year period, the Senate will have to establish a joint or Senate committee to review this bill. We have that authority. We will be able to broaden the mandate of that committee. The act authorizes us to examine clause 2, not the whole bill. I want this to be clear in every honourable senator's mind. Based on the bill alone, within the next three years, we will review only the new sections 25.1 and the ones that follow.

None of the clauses on the new repressive measures to fight organized crime are included in that review. I want senators to be fully aware of what they are approving.

Within the next three years, it will be possible for the Senate to broaden its mandate, and I hope that it will. This means that the Senate will be able to review not only Bill C-24, but all the measures that we support to ensure that our system to monitor criminal activity is much more effective. I wish to draw your attention to the fact that the review provided for is very restrictive. We will have to be vigilant in broadening the power of the committee that will examine this issue, to ensure that all aspects of the reforms on which we will be asked to make decisions are taken into consideration.

[English]

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion in amendment agreed to.

The Hon. the Speaker: Is the house ready for the question on Bill C-24?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Wiebe, that Bill C-24, as amended, be read a third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill, as amended, read third time and passed.

• (1510)

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

Hon. David Tkachuk: Honourable senators, my short speech today follows somewhat on the question Senator Sparrow directed earlier this day to the Leader of the Government about who is minding the store. As you know, I have talked on a number of occasions about the accountability of Parliament, and frankly, honourable senators, Parliament is supposed to be minding the store.

Both Senator Sparrow and I have a healthy distrust of the bureaucracy, not because the bureaucracy has bad people in it, but because bureaucracy is a large institution and we delegate powers to the bureaucracy. However, in delegating powers we should not delegate responsibility or accountability.

When was the last time a minister resigned because he misinformed Parliament? It does not happen any more. It does not happen because people no longer feel accountable. It is a little thing. People say, "It does not really matter, I changed my mind." We here in the Senate have an even more onerous responsibility. We are placed here with certain privileges. We do not have to seek the will of the people every four years like the members of the other place. As senators we have a responsibility to not only be the house of sober second thought, as many say, but an obligation to step in when we see failings in the works of the other place. If we are not fulfilling that obligation, I have no idea why we are here. Are we simply a mirror image of the other place, which is frankly what we have become. Perhaps if I were on your side I would feel differently, but I am not. I know that if there was a mirror there and we were looking at it, we would not see anything different from the other place.

Honourable senators, we are a privileged group. We receive our paycheques. We sit fewer days. We do not have to seek the will of the people. There is a reason for that: We can act with some independence when we see failings. To be the house of last resort, to uphold the Constitution and to uphold the reason for Parliament is accountability itself. If Parliament is not accountable then there is no accountability.

Yesterday an amendment was moved on Bill C-31, which was defeated. My remarks will focus on the process because Senator Oliver spoke on some of the problems we had with the bill, and Senator Angus, who will be speaking after me, will focus on other specific concerns. It was a small amendment that would have changed a couple of words so that the Crown corporation in question would be more responsible to Parliament and fall under the provisions of the Statutory Instruments Act. It was not a big deal. It was not a motion of non-confidence.

I do not know whether Senator Sparrow voted for that amendment, but that is a little thing we can do to fix the problem of who is minding the store. We could force Crown agencies to be responsible to Parliament, because if they are not responsible to Parliament they are only responsible to one man, and that is the minister who holds their portfolio. They do not have meetings. Can you imagine all that cash, all those employees and no one responsible? There is no annual shareholders' meeting when thousands of people get together and say, "Hey, what are you doing out there?" It is just them and us.

The bill was referred to the Banking Committee Tuesday evening two weeks ago, which began its study on Wednesday. On Thursday, we completed the clause-by-clause study. The

[Senator Tkachuk]

committee reported on Tuesday of last week with observations as an appendix to the committee report. They were minority observations because our colleagues on the other side refused to consider even two little amendments, which were both issues of accountability and not issues of principle or issues of great substance. That is all it was.

When the Banking Committee reviewed the EDC Act in March 2000, we expected legislation to be tabled once the overall review was complete. Bill C-31 is the first legislation to be tabled regarding the EDC since that review. We were expecting a name change and some minor changes regarding the pension plan. We were also expecting from the government a provision that would guarantee a level playing field while not compromising EDC's ability to serve exporters, sometime within six months of the issuance of the Senate Banking Committee's report, which was dated March 2000. That did not occur, nor did provisions for this new policy appear in Bill C-31.

While we continued to support the excellent work and initiatives of the EDC, we did have any outstanding concerns arising from this bill. My concerns, as I said earlier, deal with accountability. We have continued to witness an erosion of direct accountability by Parliament through the use of more detail in regulations. We have all heard the statement, "Oh, we will deal with that in regulations." Such detail does not even appear in legislation so we do not know what will happen. Then we are told, "Well, it will come up for review." Yes, it does, in the summertime. There are hundreds of them and it is very difficult to watch them all: changes to reporting techniques; relying on the Auditor General rather than the public accounts committee, which we used to rely on; reviews that are taking place further and further apart; and finally, less direct response to committees by the minister responsible.

Honourable senators, we should not deal with any bill unless the minister appears before the committee. If it were my government, I would say, "If you want this bill come before us and argue for the bill." We should not need to beg or ask. It should be a done deal or the bill does not move off the Order Paper. They are the ones who want the bill. They initiate the bill. Then they send their bureaucrats to argue for the bill in front of parliamentarians. That is ridiculous. We demean this place when we allow that to happen.

When the Standing Senate Committee on Banking, Trade and Commerce undertook its review of the EDC Act, our recommendations and report struck a balance between the Canadian government's commitment and obligation to the environment, which is the other issue that came up here, and the commercial objectives of this agent of the Crown, the Export Development Corporation. We decided and agreed it would be acceptable for EDC to establish its own environmental review framework.

Honourable senators, I had much difficulty with that. I believe the committee agreed to the process because we were assured there would be accountability built into this framework. In Bill C-31, which amends the EDC Act, an environmental review framework is established as anticipated. However, there must be further accountability to Canadians through Parliament, which can be achieved easily with an amendment ensuring that the Export Development Act is subject to the Statutory Instruments Act.

Senator Oliver moved that very amendment and it was defeated last night. Senator Nolin spoke eloquently a week ago Wednesday on Bill C-7, about the role of the Senate when it comes to legislation. If I have one strong message today, it is that we must ensure that Canadians, through Parliament, and especially through this chamber, have an accountability structure in which they can believe.

• (1520)

We should have a framework by which to judge bills. One requirement should be that the minister appear. We should also be able to tell how others are accountable to Parliament for the measures in the bill. How do we, as parliamentarians, impose our will upon what is happening to us? If there is no way to impose our will down the road, then this bill drifts off into never-never land; the actors are never made accountable to Parliament. The only way we can get the actors to be accountable to Parliament is through the public purse. However, we have left that oversight to others; we have not taken it upon ourselves. It rests with us, and we must be vigilant in our duty. I hope honourable senators will consider very carefully our duty and our role as senators in this place when we vote on third reading of this bill.

Hon. W. David Angus: Honourable senators, I, too, would like to join in the third-reading debate on Bill C-31.

I simply state at the outset that I do support Bill C-31, for the most part. I approve of and support the very good work done by the Export Development Corporation and its officials as they endeavour to achieve the aims and objectives set forth in their mandate.

However, there are several aspects of this bill that concern me deeply and which I think should concern us all. Senators Oliver and Tkachuk have already pointed out several flaws in Bill C-31, dealing especially with the lack of transparency and accountability which this proposed law accords to Canada's Export Development Corporation.

Senator Oliver's proposed amendments were defeated here last night without debate. The five Progressive Conservative senators on the Banking Committee prepared and submitted a minority report, honourable senators, which was appended to the committee's report filed here on November 27. That minority report was prepared only after the amendments put forward by those same five Progressive Conservative members on the

committee were dismissed out of hand without consideration, without any debate whatsoever. The amendments were rejected along party lines by the seven Liberal senators on the committee.

Honourable senators, before going into the details of my particular submission on one aspect of the bill, I refer you all to an editorial by Andrew Coyne entitled, "The death of Parliament," which appeared on November 28 in the *National Post*. He makes the point that Parliament — and that includes us, honourable senators — has abdicated its duty to be accountable, to debate and study legislation, to propose amendments and, when appropriate, to adopt them. Closure and party-line voting, without study or debate, were highlighted in this article and characterized as extremely objectionable. I quote one piece from that editorial:

If ever there were a time in which the legislature ought to play a leading role in the making of law — to air concerns, suggest improvements, and shape a consensus — it is now. And if ever there were any doubt that Parliament has ceased to play that role, there is no more. As a watchdog on the executive, as a guardian of the public purse, as a house of deliberation, it is, as the constitutional scholars say, a dead letter.

Honourable senators, we should pause to reflect on those points. We may not agree wholly with them but, as my colleague the Honourable Senator Tkachuk has just stated, it is a matter for serious concern at this particular time as we approach the Christmas break.

I refer honourable senators particularly to the section of the minority report dealing with clause 12. That is the clause that particularly concerns me. Clause 12 proposes to add a new section, 24.2, to the Export Development Act which would read as follows:

24.2 (1) Except with the written consent of the Corporation, no person shall in any prospectus or advertisement, or for any other business purpose, use the following names and initials: "Export Development Canada", "Exportation et développement Canada", "Export Development Corporation", "Société pour l'expansion des exportations", "E.D.C.", "EDC", "S.E.E." and "SEE".

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both.

In the face of this kind of proposed legislation, what is the rush? Why is the government wanting to push this bill through when we could be addressing such things in two small amendments? Honourable senators, I am sure, can see our concerns, and those of the witnesses who appeared before the committee.

[Translation]

According to government and EDC witnesses, the government's interest in clause 12 of the bill is to prevent all fraudulent acts. However, this clause is too broad and has the effect of criminalizing the use of the EDC's name or acronym without the explicit authorization of the EDC.

[English]

The problem appears not to be with the intent, honourable senators, but with the very wording of the proposed legislation. Simply put, the bill is very badly drafted and could easily lead to unwanted, unfortunate and difficult results, if not amended.

[Translation]

Under clause 24(2) of the bill, an organization with the same name or initials could be subject to criminal charges. I cannot overemphasize my concerns regarding the terrible consequences this clause could have on many Canadian organizations and companies.

[English]

Just taking a look through the phone book, for example, we found listings such as EDC Facilities Management & Consulting of Windsor, Ontario, Electronics Delivery Consulting of Toronto, and the EDC Telecommunications Group of Toronto. Does it make any sense to put firms like this at risk of heavy fines, and even possibly jail terms for their officers, for just using their own names and initials?

Adequate legal safeguards already exist to protect company names and trademarks under a variety of intellectual property laws and regulations already on the books. This proposed section 24.2 covers matters that are covered under well-established Canadian laws including trademark law, competition law and copyright laws.

Honourable senators, as drafted, Bill C-31 would make it a criminal offence to use the name EDC in an advertisement criticizing its record on the environment, unless you first get their written permission.

I am concerned with the fact that EDC requires this added protection. Why is that? As a lawyer, to me, this added security measure makes me wonder what is up. What have they got to hide? Why would the EDC require this special clause? I asked at the committee if they really needed it and they said no. I then asked if we should take it out and they said, "Leave it in," and they had seven willing horses to support them.

Why would EDC desperately need measures to guarantee that no organization could comment on EDC or even mention its name without its written consent or otherwise face a criminal violation? Is this not a violation of our freedom of speech? Testimony by witnesses has drawn the attention of committee

[Senator Angus]

members to the fact that the EDC has already written a letter directing a particular organization in Canada to stop using their initials on a Web site that is actively critical of the EDC's environmental record. Here is a huge government organization in a great big building here in Ottawa with thousands of employees, big enough to defend itself, but now it wants to write a measure into the law guaranteeing that no organization can even mention its name.

[Translation]

Honourable senators, we believe that interest groups and the media have the right to criticize and comment on Crown corporations that are funded by public monies if they want to.

[English]

• (1530)

Honourable senators, it is interesting to note that Bill C-41, which is currently before Parliament, does not include such a clause limiting the use of the initials CCC for the Canadian Commercial Corporation. The only other example that the government can list of a Crown corporation with such a clause is the Business Development Bank, the favourite bank of the Prime Minister. I would suggest that this really ought to be changed as well.

We have also been told of similar sections in the Bank Act and in the Insurance Companies Act. The sections may have a similar intent, but they are not drafted in such a draconian manner.

At committee a week ago Thursday, the government was quick to circulate the relevant sections of the Bank Act and the Insurance Companies Act as proof that this measure is not out of line. However, those acts prevent the use of a bank or an insurance company's name in a prospectus, offering, memorandum, advertisement for a securities transaction, and so on, except as permitted by the applicable regulations. Leaving aside the issue that the ban is on securities advertisements and not advocacy advertising or comparative advertising, the government side did not circulate the full story: We need to refer to the regulations which show us what is, in fact, permitted.

Let me say this: The Bank Act's "name use" regulations read as follows:

A person may use the name of a bank in a prospectus, offering, memorandum, takeover bid circular, advertisement, or a transaction related to securities, or in any other document in connection with a transaction related to securities where the use is required by law, or the bank has given its express written permission for the use.

Note, honourable senators, the one key difference: The Bank Act regulations do not require you to get the permission of a bank if you are required by law to mention the bank's name in a securities prospectus. Regulations under the Insurance Companies Act are almost identical.

I will not belabour the issue, honourable senators. The point is that Bill C-31 does not grant that type of an exemption. The last time I looked, the provinces had jurisdiction over securities measures. If you issue a prospectus, you must declare all material facts. Thus, if you owe money to the EDC, Bill C-31 puts you in the unusual, bizarre position where you must seek the permission of a federal Crown corporation to meet your legal obligations under a provincial statute.

[Translation]

What is going on, honourable senators?

[English]

The EDC has managed fine so far without such a clause. This clause should be struck from the bill, as there is no demonstrated need for it. We moved an amendment in the committee; I have told honourable senators what happened. Senator Oliver moved an amendment last Thursday. We saw what happened as a result of the vote last evening. All I can do is add to my colleague Senator Tkachuk's words and say, please, honourable senators,

when you finally deal with this bill, give careful consideration to the points we have made.

On motion of Senator Setlakwe, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, today is Wednesday, a day on which committees sit at 3:30 p.m. With leave of the Senate, I move that the Senate do now adjourn and that all items on the Order Paper that have not been reached stand in their place.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Thursday, December 6, 2001, at 1:30 p.m.

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