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(HANSARD)

Monday, December 17, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Monday, December 17, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

EFFECT OF TOBACCO TAX ON DUTY FREE INDUSTRY

Hon. Donald H. Oliver: Honourable senators, on June 12 of this year I rose in this chamber to speak in support of Bill C-26, the tobacco tax amendments bill, because I am against smoking and the use of tobacco products. As I indicated at that time, I am also in the favour of the development of good public policy and government initiatives to stimulate business development. At that time, I warned honourable senators about the possible side-effects of the tax to the so-called duty free industry. I warned that the imposition of a tax on duty free shopping in this country in the form of a $10 tax on tobacco cartons could do damage to the industry.

Approximately six months later, let us have another look to see what has happened. In effect, the government was to bring down a new tax policy imposed in the name of health policy and to completely ignore Canada's duty free industry. I am informed, in response to my request for an update, that airport duty free operators in Canada and the land border duty free operators say that customers are confused and have stopped buying. Year over year, the range of lost business is between 30 and 40 per cent.

The Hon. the Speaker: Honourable senators, I am sorry to interrupt, but I should like to ask honourable senators to stop conversations or continue them beyond the bar. It would enable those of us wishing to listen to intervenors to hear them.

Some Hon. Senators: Hear, hear!

Senator Oliver: Year over year, the range of lost business is between 30 and 40 per cent. In a couple of cases, the retail losses are averaging 50 per cent, notwithstanding September 11. We are dealing with 36 land border stores and close to 25 airport stores in Canada.

Bill C-47 was recently introduced in the other place. It states that federal excise taxes on cigarettes will increase by an additional $2 per carton in Quebec, $1.60 per carton in Ontario, and $1.50 per carton in the rest of Canada effective November 2, 2001 — in other words, retroactively. The government is once again saying that this is part of a comprehensive strategy to improve the health of Canadians by discouraging tobacco consumption. It will also continue to have an effect of reducing the effectiveness of duty free shops.

Honourable senators, as we prepare for our New Year's recess, one of the things we should ask is whether we want to have a duty free program in Canada at all. If we do, perhaps it is time that we had a good, hard look at the consequences of this excessive taxation.

THE ISLAMIC FAITH

Hon. Mobina S. B. Jaffer: Honourable senators, Canadian Muslims and Muslims around the world have been fasting and concentrating on their faith during the holy month of Ramadan: a time of worship, contemplation and reflection on the need to better understand the faith of Islam. Ramadan is the ninth month of the Muslim calendar. The month of Ramadan is also when it is believed the Holy Quran "was sent down from heaven, a guidance unto men, a declaration of direction, and a means of Salvation."

This week, Muslims all over the world are celebrating Eid ul-Fitr, the "Festival of Breaking the Fast." It is a joyous period in which believing men and women show joy for their health, strength and opportunities of life that Allah has given to them. It is also a period during which Muslims emphasize Islam's framework of ethical principles of sharing, caring, generosity and service to others.

Honourable senators, there may never have been a time when Muslims in Canada have been more aware of their faith and never a time in which Islam needs to be understood more. The Aga Khan, the spiritual leader of the Shia Ismaili Muslims, explained this need in his address at Brown University in June 1996. On that occasion the Aga Khan stated:

> Today in the occident the Muslim world is deeply misunderstood by most. The West knows little about its diversity, about the religion or the principles, which unite it, about its brilliant past or its recent trajectory through history. The Muslim world is noted in the West, North America and Europe, more for the violence of certain minorities than for the peacefulness of its faith and the vast majority of its people.
>
> The words "Muslim" and "Islam" have themselves come to conjure the image of anger and lawlessness in the collective consciousness of most western cultures. And the Muslim world has, consequently, become something that the West does not want to think about, does not want to understand, and will associate with only when it is inevitable.

• (1410)

Islam is not a monolithic faith, just as Christianity is not. Islam is a faith practised by over 1 billion people of different cultures, languages, traditions, geographies and civilizations. Islam is a truly pluralistic faith. This pluralism is grounded in a common religion.

Canada is uniquely equipped and positioned to create the understanding to celebrate that pluralism. I am very fortunate to be able to celebrate and practise my faith in Canada.

I know that all honourable senators will join me in wishing Canadian Muslims Eid Mubarak.

[*Translation*]

ROUTINE PROCEEDINGS

ANTI-TERRORISM BILL

THIRD READING—NOTICE OF TIME ALLOCATION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wish to inform the Senate that it was not possible to reach an agreement on how to dispose of third reading of Bill C-36. I assure honourable senators that every effort was made on both sides of the house.

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

> That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration of third reading of Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism;
>
> That, when the debate comes to an end or when the time provided for the consideration of the said motion has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the said motion; and
>
> That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

QUESTION PERIOD

THE SENATE

APPROPRIATION BILL NO. 3, 2001-02—
REQUEST FOR INFORMATION

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. Last week, she informed us that she would obtain information about the $288 million sought by the Canada Customs and Revenue Agency in Supplementary Estimates (A). Does she now have this information?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I asked for leave last Friday at the beginning of the debate on Bill C-45, at which time I read all of that information into the record.

TRANSPORT

AIRLINE INDUSTRY—OPEN SKIES AND CABOTAGE

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and it is in regard to cabotage.

This government's policies in relation to the airline industry have been often reactive and at cross purposes with promoting a healthy domestic airline industry and competition. It was under this approach that we saw the demise of Canada 3000 and, before that, of Canadian Airlines. It is also under this approach that the government has introduced a $2.2-billion tax on our domestic airline industry, a tax that, combined with other fees, surcharges and taxes will provide a further disincentive for many to fly by plane. This tax creates a punitive airline security regime relative to its border or marine security counterparts that are funded out of general revenues.

The government has for the most part resisted opening Canadian skies to U.S. carriers as a means to promote a competitive environment. What is the current position of this government with respect to Open Skies and cabotage?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Minister Collenette is on the record as indicating that he is willing to discuss any ideas, including Open Skies, with the airline industry. As always, policies for Canadians, and that includes Canadian airlines, will be made in Canada.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before we proceed with Orders of the Day, I observe that we have a very structured day ahead of us. We will have the following votes: on Order No. 3 at 3:00, with bells to ring at 2:45; on Order No. 2 at 3:30, with bells to ring at 3:15; on Order No. 1 at 4:30, with bells to ring at 4:15; and on Order No. 4 at 5:30, with bells to ring at 5:15 p.m.

Before we proceed with the vote on Bill C-36, it will be necessary for the Speaker to rule on the point of order that was raised on Friday last. I shall do that before 3:15. However, in the event that the ruling takes longer than expected, or if there is an appeal on that ruling and a vote that could potentially require a one-hour bell, these matters will move ahead accordingly.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, we would like to proceed as follows: first, item No. 6, that is, resumption of the debate on the motion for second reading of Bill C-37, followed by items Nos. 7 and 5, returning thereafter to the order as set out in the Order Paper, depending on the votes to come later today.

[*English*]

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Wiebe, seconded by the Honourable Senator Banks, for the second reading of Bill C-37, to facilitate the implementation of those provisions of first nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

Hon. Janis G. Johnson: Honourable senators, I am pleased to speak to Bill C-37, the proposed Claim Settlements (Alberta and Saskatchewan) Implementations Act.

As honourable senators may know, this bill is modelled on similar legislation that was passed in October 2000, applying claim settlements in my province of Manitoba. I am sure this proposed legislation will benefit our First Nations greatly in the years to come.

I am pleased to participate in this debate because it is refreshing, especially in these harried days, to see a bill with so little controversy.

• (1420)

As far as I know, there are two good reasons for this absence of strife: First, it is a solid, much-needed and well-thought-out piece of legislation; and, second, all affected parties were consulted and listened to, it would seem, in the development and drafting process. I commend the government for a job well done.

In fact, as noted by my honourable colleague Senator Wiebe, this bill has come to us, in part, at the insistence of two Alberta First Nations. In the 1998 treaty land entitlement claim settlement agreements of the Alexander and Loon River Cree First Nations, the government promised to create legislation to deal with the difficulties associated with accommodating third-party interests, be they public or private, on land destined to be set apart as reserve land.

Honourable senators, solving these problems — a headache now for some decades — will have two effects: to speed up the reserve creation process, and therefore to allow First Nations to benefit economically more quickly and certainly from third-party interests on land that is to become theirs.

As such, this legislation is urgently needed. There is no need to reiterate here the desperate state of affairs on many reserves, where unemployment is epidemic and Third World conditions continue to exist in the midst of one of the most developed countries in the world. I support any legislation that proposes to assist First Nations through the creation of new economic and job-creating opportunities.

Although this is a technical bill, it is one that promises real, relatively immediate and very human benefits. It will do this by streamlining the process by which First Nation reserve land is expanded in Alberta and Saskatchewan and by which potentially lucrative — for the First Nations — third-party interests are dealt with.

Honourable senators, there are currently 36 treaty land entitlement claim settlements waiting to be completed in the two provinces, representing over 2-million acres of land. The main difficulty is brought on by the inadequacy of current law to deal with third-party interests in respect of lands that may have been selected by a First Nation to fulfil an outstanding treaty or other Crown obligations. These third-party interests may be incidental, or the First Nation may have chosen those particular lands because of the economic benefits that may be derived from the existence of those interests or the possibility of creating others.

Under the Indian Act, third-party interests could only be created on land already set apart by an Order in Council as reserve land. This means that any existing third-party interests must be terminated before the land can be set aside. Although the First Nation, the Crown and the third party may negotiate an agreement to terminate and then reinstate existing third-party rights once reserve status has been acquired, this is a time-consuming process. It is one in which the third party may be understandably nervous, given the uncertainty that would result from termination of its previous rights. Furthermore, the First Nation cannot, at this time, create new third-party interest on lands they select for reserve status. This may mean missed economic opportunities and the inability to compete for these opportunities with private landowners in the area.

Although the 1993 Saskatchewan Treaty Land Entitlement Act proposed a method for partially dealing with this situation, the Manitoba Claims Settlement Implementation Act was the first to address the possibility of First Nations negotiating new third-party interests during the process of reserve creation — that is, before reserve status has been granted. As I mentioned a few moments ago, Bill C-37 is modelled on Part II of this act, extending its benefits to Manitoba's sister provinces and making small modifications to the latter, as well as to the Saskatchewan Treaty Land Entitlement Act, to make them consistent with Bill C-37.

There are two main provisions in the bill that will facilitate this. The first will enable the minister to set aside lands as reserve, replacing the Order in Council that is currently required. This will allow reserve status to be granted more quickly, thereby easing the backlog of cases waiting for approval, which can take considerable time. Of course, we are always nervous these days when we hear about additions to ministerial authority, but in this case, it is clearly in the best interests of the people affected.

The second major provision of this bill, also taken from the Manitoba Claims Settlement Implementation Act, will enable the minister to accept third-party rights in place of the Governor in Council. In addition, the minister will be authorized to accept First Nation designation of these rights before the land in question has been set aside or even transferred to the federal Crown. This will allow First Nations to choose, with greater certainty, land with existing third-party interests or great potential for that interest. The lessening of bureaucratic red tape also provides certainty to existing third parties and potential investors in future interests. Taken with the greater commercial certainty allowed by the bill's changes to the timing of third-party interests, the reduction of bureaucratic sluggishness will help to reduce the total time between the selection of potential reserve lands and their transfer to the First Nation. It will also hasten the start of economic benefits that come with the granting of pre-reserve designation of third-party interests.

Honourable senators, this last issue is important because claim settlements are often comprised of several parcels of land rather than one large parcel, each necessitating its own accommodation of whatever third-party interests may exist. It is easy to see how implementation of settlement agreements can become bogged down by bureaucratic red tape. This proposed legislation will speed that along, which, again, is a positive thing for everyone involved. It is important to note that no designations come into effect until the land has been transferred to the First Nation. This will ensure that any deals made during the designation process will be null and void if the reserve is not granted in the end.

The flexibility of Bill C-37 is also welcome. Clause 3 allows First Nations with specific claim settlements to choose whether to opt into the scheme proposed by this bill. For existing settlement agreements listed in the bill's schedule, this can be done through a resolution of the First Nation's council. However, there is nothing that requires the First Nation to opt in. Affected Saskatchewan First Nations, for example, can choose to remain under the rules set out in the 1993 Saskatchewan Treaty Land Entitlement Act. I am hopeful, and I would expect, that most First Nations would choose to take full advantage of the bill that is now before us. I am hopeful, not only for the sake of First Nations in Alberta and Saskatchewan, but because the bill seems advantageous from all sides. Reducing bureaucracy in government is a good thing, and that is often not easily achieved.

The advantages for First Nations are clear. The ability to negotiate and accommodate third-party interests will mean quicker designation of interests on pre-reserve lands and the faster reaping of economic benefits from development on reserves. Third parties also clearly benefit from the certainty that their interests are protected before the transfer of land to reserve status. This is DIAND doing what it should be doing — easing the layers of bureaucracy that have been built up over the years that often impede real progress. Fewer layers of bureaucracy increase security and certainty for everyone involved.

I have only one caveat. The Manitoba Claims Settlement Implementation Act has been in effect for over one year. We have yet to see, according to DIAND officials, a single band opt into its scheme. This appears to be because DIAND has yet to implement an administrative process by which Manitoba First Nations with reserve expansion claims can take advantage of the scheme. I wonder what is the point of implementing legislation without soon thereafter putting in an administrative process for its use. I will be interested to hear the reasons for this delay from DIAND officials during our committee hearings.

• (1430)

In spite of this, the legislation now before us is, as was its Manitoba counterpart, good, although we may have to watch how it is implemented. I should like to add my support and that of my party to Bill C-37. Any piece of legislation that helps First Nations to avail themselves of what is rightfully theirs deserves our support. I look forward to hearing from witnesses in committee and supporting the speedy passage of this bill.

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

Hon Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Wiebe, bill referred to the Standing Senate Committee on Aboriginal Peoples.

ANTI-TERRORISM BILL

THIRD READING— MOTION IN AMENDMENT— POINT OF ORDER—SPEAKER'S RULING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,
>
> And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:
>
> *"Expiration*
>
> 147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.
>
> (2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act,* as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4.".

The Hon. the Speaker: Honourable senators, it occurs to me that we have some time before I must call in the senators at 2:45 p.m. by order. This would be an opportune time for me to dispose of the ruling that was requested of the Chair last Friday. Accordingly, I will rule on the Bill C-36 amendment now.

[*Translation*]

Honourable senators, last Friday, December 14, the Deputy Leader of the Opposition, Senator Kinsella, raised a point of order just before the adjournment of the Senate's sitting for that day. The point of order addressed several issues related to the Senate's consideration of the amendment of Senator Lynch-Staunton, seeking to insert a five-year sunset clause into Bill C-36, the anti-terrorism legislation of the government, which is now at third reading.

[*English*]

First, Senator Kinsella questioned the size of majority that would be required for the decision on the question of the amendment of Senator Lynch-Staunton. This is because, as the honourable senator observed, the amendment is virtually identical to that which had been recommended by the special committee that studied the subject matter of Bill C-36. Following some debate, the Senate adopted that first report of the special committee on November 22, 2001.

In Senator Kinsella's view, the Senate is now confronted by two reports that are inconsistent with each other. In addition to the first report of the special committee already adopted, the Senate has before it the third reading motion on Bill C-36, which is, as Senator Kinsella described it, the second report of the special committee, which recommended no amendments to Bill C-36. Under our rules, this report was adopted automatically. In order to deal with the third reading of Bill C-36, Senator Kinsella contends that the decision on the first report of the special committee would have to be set aside; it would have to be rescinded. To do this properly under our rules, he argued, would require a vote of two-thirds of the senators present in the chamber.

To buttress his case further, Senator Kinsella spoke of the underlying principles of our parliamentary system and the balance accorded the rights of the majority and the rights of the minority. Senator Kinsella referred to resolutions of the British House of Commons dating back to 1604 and 1610. In addition, the senator took note of the fact that rule 63 dates back to 1915 and is, consequently, of long standing. Senator Kinsella also supported his contention by observing that Senate practices provide for different levels of support depending on the nature of the decision. Beyond simple majority and the two-thirds majority, there is also the unanimity requirement for certain requests such as one to change the recorded vote of a senator. Finally, Senator Kinsella cited references to parliamentary authorities and to a decision made by a previous speaker of the Senate in 1991.

For his part, the Deputy Leader of the Government, Senator Robichaud, disagreed with the case presented by Senator Kinsella. Senator Robichaud explained that the first report of the special committee dealt with the subject matter of Bill C-36. The objective of the subject matter review was to make known certain views of the Senate to the House of Commons while the bill was still in the other place. The work of the special committee was successful in that amendments adopted in the other place were based in part on some of its recommendations. Now, according to Senator Robichaud, the Senate is seized of Bill C-36 itself as amended by the other place. Following second reading, the bill was studied by the special committee, which subsequently presented its report.

In Senator Robichaud's view, if the position of Senator Kinsella were to be followed, it would render almost impossible any pre-study of a bill, since the Senate would be bound by the recommendations made by the committee. According to Senator Robichaud's analysis, the two exercises, the pre-study of a bill and the consideration of the bill itself, are separate procedures, and the Senate could not have intended to be constrained in its review of the bill by any approved pre-study.

In rebuttal, Senator Kinsella stated that the problem arises in this case because the Senate adopted the first report of the special committee and thus pronounced itself with respect to the recommendations contained in that report. Accordingly, the Senate cannot pronounce itself again, based on the same question rule, without rescinding its previous decision which requires a two-thirds vote under rule 63.

I wish to thank the deputy leaders for their views on this point of order. I reviewed the Debates of last Friday, the parliamentary authorities, and the history of Senate rules and practices. I have also searched for any precedents that might be useful to my understanding of this particular case. I am now ready to rule on this challenging point of order.

Let me begin by stating that I think that Senator Kinsella has raised an interesting issue. Rule 63(1) is quite clear. It states that:

> A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded —

Accordingly, the Senate should not consider the same matter a second time in the same session if it has already pronounced on it. This rule is used not only by the Senate but by many other parliamentary bodies as well, including the other place. As Senator Kinsella explained, the underlying principle dates back centuries to the British House of Commons.

That being said, however, I believe that the Senate has never treated pre-study as a procedure subject to the same question rule. Pre-study has been a feature of Senate practice for more than 30 years. It was a device developed originally by the late Senator Salter Hayden, the long time Chair of the the Standing Senate Committee on Banking, Trade and Commerce. Its purpose was to allow the Senate more time to examine bills, particularly complex and controversial bills, while accommodating the broad legislative timetable of the government. At the same time, it permitted senators greater input into the legislative process by allowing the work of the Senate to have some influence on the study of a bill while it was still in the other place. This is precisely what happened with regard to the study of this bill. Certain recommendations of the special committee were incorporated into the original version of Bill C-36 while it was still in the possession of the other place. Thus, the work of the special committee on the pre-study of the bill was not without effect.

Applying the logic of Senator Kinsella strictly to the circumstances now before us, it seems to me that the problem is far greater than the one he made out. If the same question rule is to be applied vigorously it affects more than just the amendment of Senator Lynch-Staunton and the third reading of Bill C-36. It affects the entire proceedings of the bill from the moment it was introduced in the Senate. The first report of the special committee, it could be argued, dealt with the subject matter of Bill C-36 and made numerous recommendations that were subsequently adopted by the Senate. Thus, the Senate has pronounced itself with respect to the entire contents of what is now Bill C-36. Under the terms of the same question rule, understood in this restrictive way, the Senate should not reconsider Bill C-36 at all. I do not believe, however, that this is the intent of the rule.

• (1440)

Senator Kinsella noted that the 1610 resolution of the British House of Commons enunciated a principle with respect to legislation "that no bill of the same substance be brought in the same session." This has also been a part of our practice since Confederation. It is my view that this principle has not in fact been violated with respect to the consideration of Bill C-36. The pre-study of the bill was a preliminary stage of examination that was not intended to be definitive and that was also distinct from any subsequent proceedings related to the review of the bill itself. This is critical to the question at hand. According to Erskine May, twenty-second edition, at page 334, "a question which has not been definitely decided may be raised again." Any decision taken with respect to a pre-study phase of legislation cannot be the last word on the subject.

To take the contrary position would fly in the face of other practices followed with respect to the legislative process. When, for example, the Senate amends a House of Commons bill and it is returned to the Senate with a message rejecting the amendment, the Senate is not precluded from either dropping its amendment or changing it, despite having already taken a decision on it.

I would concede that most reports dealing with pre-study have not been adopted by the Senate. This is because the vast majority of these pre-study reports have been tabled. With respect to Bill C-36, the first report of the special committee was tabled. However, it was subsequently adopted by a motion from the floor. Does this make a difference? In my view, for the reasons that I have already given, it may call into question the same question rule but it does not actually constitute a violation of it. There is a precedent to support my interpretation. It occurred in 1992 and involved a bill on telecommunications, Bill C-62. That bill had been the object of a pre-study, the report of which was subsequently adopted. As with Bill C-36, the pre-study report on Bill C-62 had an impact on the study of the bill in the House of Commons, even though not all of the pre-study recommendations were incorporated into it. When the bill was at third reading in the Senate, an amendment was proposed to include a missing portion of a recommendation that had only partially been accepted in the House of Commons. In the end, the amendment was negatived.

The result, however, is not the principal point of this case. Rather, it is that the pre-study report, with its numerous recommendations and the third reading debate were implicitly recognized to be two separate, although related, proceedings. As one would expect, the pre-study report certainly informed the debate on the bill, but it did not limit the course of that debate nor did it determine its outcome. They were treated as two different and separate procedures.

It is my ruling that a case has not been made on the point of order. Rule 63 does not apply to Bill C-36 and there is no need to rescind any decision of the Senate.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Andreychuk, that the Bill, as amended, be not now read a third time but that it be further amended in clause 110, on page 113, by replacing line 29 with the following:

"(2) When the youth justice court, on application of the Attorney General, determines that the public interest will best be served and that the rehabilitation of the young person will not be compromised, subsection (1) does not apply".

The Hon. the Speaker: Honourable senators, pursuant to the order passed by the Senate on Friday, December 14, 2001, I will now ask for the bells to ring for a vote on an amendment to Bill C-7.

I have been advised by Senator Nolin, the mover of the amendment, that there is an error in the way in which the amendment has been written in the *Debates of the Senate* and the *Journals of the Senate*.

Senator Kinsella: The Journals are correct.

Senator Nolin: Only the Debates.

The Hon. the Speaker: The error is in the French version of the amendment of the *Debates of the Senate* in that certain words are missing. The amendment appears, however, in the *Journals of the Senate* correctly. If honourable senators wish, I would be happy to read the French version of the amendment.

Senator Nolin: No.

The Hon. the Speaker: Senator Nolin says it is not necessary.

Honourable senators, it being 2:45 p.m., pursuant to order adopted by the Senate on December 14, 2001, I interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Nolin to Bill C-7.

The bells calling in the senators will sound for 15 minutes, so that the vote can take place at 3 p.m.

Call in the senators.

• (1500)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Bolduc	Nolin
Comeau	Oliver
Doody	Prud'homme
Johnson	Rivest
Kelleher	Roche
Keon	Spivak
Kinsella	Stratton
LeBreton	Wilson—22

NAYS
THE HONOURABLE SENATORS

Austin	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Pitfield
De Bané	Poulin
Fairbairn	Poy
Finestone	Robichaud
Finnerty	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Sparrow
Gill	Stollery
Graham	Taylor
Hubley	Watt
Jaffer	Wiebe—47
Kenny	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Honourable senators, I move, seconded by the Honourable Senator Nolin:

That Bill C-7 be amended, in clause 2,

(*a*) on page 2, by adding, immediately before line 3, the following:

"2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and

(*b*) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

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

Senator Andreychuk: Honourable senators, I should like reiterate the message that I have been trying to drive home from the time we first began to debate Bill C-7. When we adopt any bill that concerns youth justice in Canada, we owe the international community and equally as important the children of our country, an unequivocal demonstration of Canada's commitment to the United Nations Convention on the Rights of the Child. Bill C-7, in its present form, does not deliver such a commitment. The bill does not go far enough to ensure that the provisions of the convention relating to youth justice are respected in Canada. It does not guarantee that a person will be able to obtain remedy in a court of law in the event a right contained in the convention is violated. The present bill acknowledges that we are a party to the Convention on the Rights of the Child but only recognizes rights and freedoms when referring to children's rights, including those contained in the Canadian Charter and the Canadian Bill of Rights, after the convention has been given cursory, non-binding treatment.

It is true that a preambular statement may indicate that a given piece of legislation has been adopted to fulfil specific treaty commitments, as the Supreme Court of Canada indicated in the 1997 decision *R. v. Hydro-Québec*.

• (1510)

However, the non-committal phrasing of Bill C-7's preamble vis-à-vis the Convention on the Rights of the Child sends a clear message to the courts of Canada that the letter of the law is not to be considered as binding within the laws of Canada. In fact, Minister McLellan, having had the question put to her directly — "Is this enabling legislation?" — continued to restate that it was in conformity. When asked again whether it was intended to be enabling legislation, she indicated that we were a party and that it was in conformity. She would not acknowledge that it was enabling legislation, and I think rightly so, as I do not believe that was intended in the bill.

Honourable senators, if we want to live up to our international commitments in the preamble, a more categorical language will have to be adopted than what presently exists. We will have to use language that expressly states that the bill recognizes the rights laid out in the convention as it pertains to the rights of youth caught up in the youth justice system. However, the adoption of such clear language is not the best option available. Canada maintains a dualist system in respect to the implementation of international treaties and international law. The executive branch of government enjoys exclusive Royal Prerogative to sign and ratify treaties. However, the act of ratification of itself does not have a direct effect upon the laws of Canada. Legislation must be adopted in order to incorporate a treaty or any part of a treaty that the executive has ratified into national law.

Therefore, if we truly want to honour the commitments that we have made before the international community when we ratify the convention, we must adopt enabling legislation. In this way, we will transform our international commitments into binding national law. We have not adopted any such legislation for the Convention on the Rights of the Child.

A ratified and unimplemented international instrument may enjoy certain authority in Canadian law. However, the best we can hope for is that the courts consider the values reflected in the instrument in order to help inform the contextual approach that courts are to adopt when interpreting the applicable domestic law. This is precisely the route the Supreme Court of Canada took in *Baker v. Canada*. However, the precise rights circumscribed by any given international instrument such as the Convention on the Rights of the Child cannot be guaranteed simply by considering the values that are expressed in the instrument.

Certainly it is possible to bring forward legitimate arguments or expedient excuses that explain away why no enabling legislation needs to be adopted in order to implement the Convention on the Rights of the Child. However, we must reflect on the serious consequences that flow from breaking our word to the international community. We can claim that Canadians are not prepared to accept all the rights contained in the convention. We can insist on the fact that few other countries have ratified it. There is also the argument that the convention steps into the jurisdiction of provinces. The provinces, along with the federal government, however, agreed to the ratification of the convention. Therefore, legalistic arguments aside, the provinces cannot maintain that they are not bound by it.

The argument has also been made that the convention goes beyond the scope of the bill. However, a simple qualifier stating that the convention pertains exclusively to youth justice is all that is needed to narrow the scope of the convention to fit the youth justice bill. Also, if there are preoccupations that the convention, as it pertains to youth justice, treads into provincial jurisdiction, then the bill itself must be considered to be doing just that: going into provincial legislation.

One cannot have it both ways. Either the convention, as it pertains to youth justice and the bill, lies within the authority of the provinces or it does not. Criminal justice as it relates to youth is within the authority of the federal government and, therefore, the bill and the convention do not infringe on provincial jurisdiction or, alternatively, they do. In my opinion, if an interpretive section were added, we could live with the bill.

However, one cannot change the fact that Canada has ratified the convention and that we must live up to it. We have committed ourselves to the international community to comply with the convention. As a nation that prides itself on the important contributions it has made to the field of human rights, Canada does not want to see its reputation tarnished due to any real or perceived disregard it may demonstrate toward such rights. To do so would undermine our leadership role in the area of international human rights within the international community but, more important, it would deprive children of their rights.

The Vienna Convention on the Law of Treaties states in article 26:

> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27 underlines that:

> A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Honourable senators, despite assurances to the contrary —

The Hon. the Speaker: I regret to interrupt the Honourable Senator Andreychuk. It being 3:15, pursuant to the order adopted by the Senate on December 14, 2001, I interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Lynch-Staunton to Bill C-36.

Debate suspended.

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,
>
> And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:
>
> *"Expiration*
>
> 147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.
>
> (2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act,* as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition "United Nations operation" in subsection 2(2) and in the definition "terrorist activity" in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4.".

The Hon. the Speaker: Honourable senators, the bells to call in the senators will be sounded for 15 minutes and the vote will take place at 3:30 p.m.

Call in the senators.

• (1530)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Meighen
Atkins	Murray
Beaudoin	Nolin
Bolduc	Oliver
Comeau	Pitfield
Doody	Prud'homme
Johnson	Rivest
Kelleher	Roche
Keon	Spivak
Kinsella	Stratton
LeBreton	Tkachuk
Lynch-Staunton	Wilson—24

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Finestone	Rompkey
Finnerty	Setlakwe
Fraser	Sibbeston
Furey	Sparrow
Gauthier	Stollery
Gill	Taylor
Grafstein	Tunney
Graham	Watt
Hubley	Wiebe—49
Jaffer	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended,
>
> And on the motion in amendment of the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, that Bill C-7 be amended, in clause 2,
>
> (*a*) on page 2, by adding, immediately before line 3, the following:
>
> "2.(1) An object of this Act is for Canadian law to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and
>
> (*b*) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

The Hon. the Speaker: Honourable senators, Senator Andreychuk had the floor. I was advised by the clerk that Senator Andreychuk had 12 minutes. I am not sure how much of her time has expired, but I would not want her to run out of time before putting her motion.

There might be some issue as to whether Senator Andreychuk has 45 minutes. On that point, the first speaker from the other side, Senator Rivest, used 12 minutes.

Is it agreed, honourable senators, that Senator Andreychuk will have the 45 minutes?

Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if she does not need 45 minutes, we would appreciate it, but we will certainly give her the time to address her motion.

Hon. A. Raynell Andreychuk: Honourable senators, I want to thank Senator Robichaud. I think I made clear the importance of this topic. I have at least made that point with honourable senators.

Honourable senators, despite assurances to the contrary, there exist serious concerns that if we adopt Bill C-7 in its present form, we may well be adopting a bill that maintains provisions that run contrary to the Convention on the Rights of the Child that cannot be justified before the international community. A variety of provisions in this bill run contrary to both the letter and the spirit of the convention. We have already discussed the issue of imprisoning young people with adults. The expression of our support of young Aboriginals was concretized when we adopted Senator Moore's amendment last Thursday, and this goes some distance toward giving benefit to the convention.

Also, let us not lose sight of the fact that the purpose of Bill C-7 is to provide a separate criminal justice system for young people. Clause 3(1)(*b*) of Bill C-7 states:

> the criminal justice system for young persons must be separate from that of adults —

This principle is mirrored in article 40(3) of the convention, which stipulates:

> States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law —

However, Bill C-7 does maintain provisions whereby adult sentences are to be imposed on youth within the youth criminal justice system. Therefore, the bill is importing adult sentencing into youth court, thereby effectively placing young people in an adult court that has been given youth court window dressing. I have already spoken to fact that the bill, taken in its entirety, certainly looks like the adult system, with very few ameliorating facts for children.

• (1540)

We tried to make several amendments to ameliorate the effect of those offending provisions of the bill. The Standing Senate Committee on Legal and Constitutional Affairs adopted two amendments that would exclude 14-year-olds from receiving adult sentences.

The convention permits states parties to set their own age of majority. However, there are serious concerns that the convention is grossly undermined by provisions of the bill that give the provincial lieutenant governors the discretion to set the age limit for imposing adult sentences at either 16 or 14 years. If youth are to be given equal treatment in our youth justice system, all young offenders of the same age must be treated equally, as a starting point.

In some cases, youth court can be even more penalizing than adult court in Bill C-7, as in the "three strikes" provisions of the bill. The Legal and Constitutional Affairs Committee adopted an amendment that seeks to grant the Attorney General the discretion to decide whether the subsequent offence is serious enough to trigger the full and severe consequences that flow from a finding of guilt of a presumptive offence. Unfortunately, this chamber does not see it that way, given our last vote.

Without this amendment, the presumptive offence clauses of the bill clearly violate the provisions of the convention that stipulate that all alternatives must be considered before sending a young person to prison. When one presumes incarceration, the special safeguards and care owed to youth are given secondary treatment, and the rallying cry for punishment comes to the fore.

The clause of Bill C-7 dealing with conferences offends several articles of the convention. Article 12 of the convention requires that young people be provided with the opportunity to be heard in any judicial and administrative proceeding that affects them. Article 40 guarantees youth who are accused of breaking the law the right of due process of law. That includes the right to have legal assistance present when a judicial body is convened for the purposes of determining a youth's involvement in crime, or, for that matter, any administrative body trying to deal with children.

Clause 19 of the bill allows a limited number of people to convene a conference in which the accused is not present. The purpose of these conferences is to allow interested parties to give advice on issues such as sentencing, interim release and extra-judicial measures. Conferences are not simply toothless forums where interested parties gather to discuss the advantages of imposing such and such a penalty on a given youth. Conferences have the potential of representing a forum where the liberty of young people can be decided in their absence by partial parties, although with the best of interests, and subsequently made official by the courts of law. Imposing criminal penalties on young people on issues originally decided in absentia undermines fundamental canons of criminal law in Canada. Not only are the conventions violated, but due process of law, in general, is thrown out.

The committee adopted an amendment whereby the Crown must prove it is in the public interest that a young offender's name be published before any such publication takes place. In this way, the committee sought to strike a balance between the relatively unimpeded right to publicize a young person's name, and the special protection that must be accorded to the young person in the spirit of the convention. If the bill is adopted without the committee's amendment on this matter, the young person's needs for special safeguards and care, as outlined in the convention, will be smothered by public interest.

Bill C-7 does not foresee a strong role for teachers of young offenders in the rehabilitative process. However, it is in such situations that teachers must be given access to the records of young offender students. I have already spoken on this point, and I will not take the time to speak in detail about teachers. However, teachers, I must state over and over again, should not be seen as the public. Teachers must be seen as the convention sees them, as a resource for children in rehabilitation. They are also seen, as in article 3, as other individuals legally responsible for the child. Surely teachers stand in *locus parentalis* for more hours with children, and their right to know, under the three conditions put into the amendment, needs to be reinforced. What signal are we sending to our teachers when we say they do not have a role in rehabilitation? It is time that we recognize the convention and that we recognize teachers.

At this moment, honourable senators, I want to correct the record with respect to the stance of the Canadian Teachers' Federation on corporal punishment. Taken from the Canadian Teachers' Federation Web site, and confirming the same with officers at the federation, their policy statement 5.4.1 states: "The Canadian Teachers' Federation opposes the use of corporal punishment." This policy statement was made in 1989 and reaffirmed again in 1991. The Canadian Teachers' Federation endorses the development of effective disciplinary skills that would eliminate the use of corporal punishment. I shall not take the time today, but I think it is worthy to hear what teachers have to say about clause 43.

Honourable senators, on a final note on the convention per se, the reasons explaining why the convention needs to be binding are not exclusively based on considerations pertaining to Canada's commitment to and reputation before the international community. The convention will give direction to the application of the bill within Canada. The guiding principle of the convention is to provide rights to children in order to secure the special care and safeguards they are owed. However, in its present form, Bill C-7 is convoluted, contradictory, legalistic and resource dependent. The bill does not send any clear message to the youth of Canada. It is not the clear message of stick or carrot. It is a convoluted message of subsections, cross-references and legal minutiae. Its overall signal to youth is not one where young people will be taught to be accountable for their acts nor where they will learn that society is there to encourage and support them in the challenge to turn their backs on crime.

On the other hand, the convention's message is that we have the obligation to secure special care and safeguards for our nation's most precious resource. By committing ourselves to something greater than simply the spirit of the convention, we will at least be able to place the bulky and awkward vehicle of Bill C-7 on the rails of a youth justice system that has as its core value the safeguard and care of young people. Only from this point, may we commence the journey that leads to the veritable rehabilitation and integration of young offenders into society.

Honourable senators, the minister spoke about a policy for young people and indicated that she had relative support, but the fundamental support that the minister needs comes from the ministers of justice and the ministers of community services in the province. Quebec is in the courts. The Minister of Justice in Ontario is not satisfied with the bill and, indeed, wants more than 100 amendments. Another minister talked about rehabilitation and worried about the shortage of funds to do proper rehabilitation. The Minister of Justice of Saskatchewan and the Minister of Justice of Manitoba worried about Aboriginal youth being overrepresented in the system as a matter requiring our attention.

If this is to be the guiding act, it certainly is not accepted by those in the provinces from whom it needs full support. In fact, as Kim Pate of the Elizabeth Fry Society said, when the Young Offenders Act came in, it was hailed as internationally innovative and new, but when the negotiations started with the provinces to release resources, it fell quickly into disrepute.

I am afraid Bill C-7 will fall into the same disrepute with the many witnesses who appeared before us and those who sent us letters, e-mails and so forth. This bill just does not do it for young people. It will put resources into the hands of a system, not into the hands of measures that help young people.

• (1550)

We heard from Mr. Irwin J. Waller, Professor of Criminology at the University of Ottawa, who spent seven years running the International Centre for the Prevention of Crime, in Montreal, where they identified methods to reduce crime and how to implement those methods He stated to the committee:

> I read what the minister said to this committee and I agree with her ambitions for Canadian policy.
>
> I think it is good to reduce youth crime, to respect the needs of victims and to limit custody, not to the last resort but to where it is an appropriate sanction to use. Safety is as important to Canadians as health care and education, and we need to treat it in the same way, and that is seriously. Unfortunately, the proposed legislation, in its present form, without adequate strategy around it, and there is no visible strategy around it, will not have any impact on decreasing crime. It will not decrease crime, neither persistent crime, petty crime nor violent crime, and that is an important point to underline, and I will be happy to be taken to task on it. The proposed legislation will not reduce the number of persons in custody. In fact, from what I have heard today, it is likely to increase fairly significantly the number of people in custody.
>
> Third, if implemented, the proposed legislation will squander scarce human resources and financial resources in Canada on the wrong things. These resources obviously should be put into reducing youth crime, not criminalizing crime in the way it is dealt with here.
>
> Fourth...I do not think the proposed act in its present form will conform to every part of the UN Convention on the Rights of the Child, primarily because of the presumptive sanctions and the issues that have been referred to in terms of legal assistance and in terms of putting in the legislation, for instance, use of Dangerous Offenders Act for kids aged 14. I am not comparing this with the Young Offenders Act. I am comparing it with what a civilized society should be doing, and that is what the measure is in the UN Convention on the Rights of the Child.

He went on to say:

> It is, in my view, futile to have a debate about whether the Quebec system is better than the Ontario or British system when we do not even have adequate information on how these systems operate within our country. We must get adequate statistics in place.

He went on further:

> We need to begin to change the culture in policing, in our schools and in the justice system, so that crime reduction is our focus. I am in favour of the rights of offenders and victims. We have to make sure that crime reduction is the major objective. That is what people want but are not getting in this country at the moment.

Later, in response, Professor Doob made an interesting statement. He said:

> I thought we were here to talk about the proposed youth criminal justice act. I agree completely with Professor Waller that crime prevention is important, but the important point is that the kinds of things that will be involved in crime prevention are outside of this proposed act. Whether we have the Youth Criminal Justice Act, the Young Offenders Act, the Juvenile Delinquents Act, or deal with everyone under the Criminal Code, talk about how we treat children and how we see children, but it does not have a lot to do with how we will reduce crime.

Honourable senators, we need to rethink this entire process. We have been given a golden opportunity by the amendment. The bill is now amended. I plead with senators to give consideration to the United Nations Convention on the Rights of the Child, something for which I must give credit to Senator Pearson. I note that she is not here today, although I do not wish to comment on that. However, I know she is committed to the convention.

In committee, Senator Pearson was preoccupied with the fact that any amendments would require the bill to be returned to the House of Commons. Honourable senators, this is now an amended bill. I ask you, therefore, to consider this amendment with the other amendment.

I move:

> That Bill C-7 be amended, in clause 2,
>
> (*a*) on page 2, by adding, immediately before line 3, the following:
>
> "2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and
>
> (*b*) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Hon. Bill Rompkey: I propose a 10-minute bell.

Hon. Terry Stratton: I propose a one-hour bell, with the vote to be held tomorrow at 5:30 p.m.

The Hon. the Speaker: The opposition whip has requested a deferral of the vote, which he is entitled to do on a government bill pursuant to our rules. Accordingly, the vote will be at 5:30 p.m. tomorrow afternoon. There will be a 15-minute bell pursuant to the rules.

Senator Rompkey: If we cannot agree on a 10-minute bell now, could we agree to attach this vote to a vote later this day?

Senator Stratton: No.

Senator Rompkey: We have a scheduled vote at 4:30 and one at 5:30 p.m.

Senator Stratton: Rule 67(2) states:

> Except as provided in section (3) or as otherwise provided in these rules, when a vote has been deferred, pursuant to section (1), it shall stand deferred until 5:30 o'clock p.m. on the next day the Senate sits.

Rule 66(1) calls for a one-hour bell.

Senator Rompkey: I seek clarification from the opposition as to exactly what their preference is. Is there a possibility that they will agree to have a one-hour bell this day?

Senator Stratton: As I stated last week, we have a deferred vote. It will be called the next sitting day at 5:30 p.m., with a one-hour bell. Those are the rules.

The Hon. the Speaker: The only issue I should try to resolve now is the length of the bell. Senator Stratton believes the bells should ring for one hour. I have indicated that it should be 15 minutes. That is to say that the bells should ring for 15 minutes prior to the vote at 5:30 p.m. tomorrow. The reason for the 15-minute bell is that the rules provide for an interruption of proceedings. I will read the relevant rule, which states:

> 66(3) When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question of any business then before the Senate or when a standing vote has been deferred pursuant to rule 68, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than 15 minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions and any motion for which a period of time has been allocated to the disposition of the debate.

• (1600)

Accordingly, the bells will ring at 5:15 p.m. for a vote at 5:30 p.m. that has been deferred by the opposition whip to that time.

Senator Robichaud: Honourable senators, we have been negotiating and we had been speaking about Bill C-7. I thought we had come to an understanding that those senators who wanted to speak and move amendments would do so today. We would vote on those amendments today and, if there were one or two amendments, senators would then be free to express themselves. However, that vote was to be taken today so that we could dispose of Bill C-7.

I am at a loss as to why we are not proceeding in this manner. I would ask my honourable colleague, the Deputy Leader of the Opposition, if this is not the way we should be moving?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, unfortunately, I was out of the room when we got to this immediate point. Let me see if I can recapitulate where we are at the present time.

Senator Andreychuk has concluded her address on third reading of Bill C-7 and has moved an amendment. I take it that the question is being asked regarding that particular amendment. The question is whether or not that vote would be deferred. The two whips have not reached an agreement as to when that vote would be deferred. The rules are clear that it would be tomorrow at 5:30 p.m. unless, in the meantime or over the next period of time, an agreement was reached so that they could revisit this time and have unanimous consent on it. I take it that if the vote is deferred, then the debate on this item is also deferred. I would want to do a bit more reflection on where we are on this matter.

[*Translation*]

Senator Robichaud: Honourable senators, I understand that when a vote is called for the opposition whip may delay it until the following day. However, we had an agreement, and, now, I see that we no longer do. I guess people can always change their minds — I have no control over that — but I do wish that people would honour our agreement, that is, to vote now on the amendment, hear the senator wishing to propose an amendment, vote on third reading of the bill and continue our work on the Orders of the Day.

Hon. Marcel Prud'homme: The spirit of cooperation that can exist between two people does not seem particularly common in this chamber. I understand that, in the House of Commons, an eye was very often kept on who was coming in and who was going out in an effort to establish unanimous consent, which never happened. In my opinion, we should proceed with the *Rules of the Senate*, and the items on the Orders of the Day should be treated as usual. We are back here on a Monday. Those who want to leave tonight can leave. Otherwise we would have reached different agreements on Friday.

[*English*]

We would not have placed the burden on all of you to come back here today at the expense of taxpayers, which is what some people will accuse us of doing. We are here to do our duty. You have called us back. It is Monday. Let the universe unfold and we will see what happens.

The Hon. the Speaker: Honourable senators, the situation is straightforward. We have a deferred vote, which prevents further debate on Bill C-7 because we have called the vote. There is no agreement to do otherwise that I can discern. Accordingly, I ask the Table to call the next item.

Honourable senators, in that we ordered a vote on Bill C-6 at the last sitting, I shall rise at 4:15 p.m. to indicate that the bells are to ring for a vote at 4:30 p.m.

• (1610)

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I have an amendment to propose to Bill C-36 after which I intend to speak to it. I move, seconded by Senator Buchanan:

That Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(*a*) by adding after line 19 the following:

"Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(*b*) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

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

Senator Murray: Honourable senators, this is the amendment for a watchdog, for a parliamentary commissioner. It has my name on it but I think of it — and I invite all senators to think of it — as the Grafstein amendment. It was he who, when the committee was engaged in pre-study and considering what manner of watchdog to set over the exercise of the extraordinary powers in this bill, suggested the appointment of a parliamentary commissioner.

We looked at the possibility of employing the Security Intelligence Review Committee, SIRC, which already oversees the activities of the Canadian Security Intelligence Service, CSIS. However, we soon came to the conclusion it would be necessary to bring in further legislation to enlarge the mandate of SIRC.

We also considered a parliamentary committee for the oversight function. On that point, we quickly came to the conclusion that such a mechanism would be unwieldy for the watchdog function. There was some talk of the creation of a judicial post, but as Senator Grafstein wisely reminded us, many of the issues that are apt to arise and come to the attention of an overseer would be political in the broad sense and not just strictly legal. Therefore, we came up with this parliamentary commissioner, and it is incorporated in the report of the special committee that conducted pre-study of the bill.

The commissioner we have in mind would be a real watchdog, a monitor, able to look over the shoulder of the authorities and blow the whistle on abuses when they happen, not three years afterwards.

Senator LaPierre very eloquently called on the Senate the other day to act as ombudsman for Bill C-36. I trust he might support this amendment. How could he not do so since it gives effect to his very own suggestion?

On Thursday night, when Senator Fraser was speaking, she feared that the passage of this amendment and the creation of a parliamentary commissioner would lead to some turf squabbling between the proposed parliamentary commissioner and existing oversight agencies. Well, the Access to Information Commissioner and the Privacy Commissioner act within the strict confines of their own statutes. They operate in relatively narrow fields, narrow relative to the wide scope of this bill. In any case, I have specifically exempted them in this amendment from the purview of the proposed parliamentary commissioner.

There is also a provision in Bill C-36 for the appointment of a commissioner — one exists already, actually — for the Communications Security Establishment. I think the purpose of that provision is to give that commissioner rather broader oversight powers than he now has. That commissioner would be a supernumerary judge or a retired judge of the superior court.

The Hon. the Speaker: I must interrupt Senator Murray, it being 4:15 p.m. Pursuant to the order of the Senate adopted on December 14, 2001, I interrupt the proceeding for the purpose of putting the question on the motion in amendment of the Honourable Senator Carney to Bill C-6.

Debate suspended.

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

On the motion in amendment of the Honourable Senator Carney, P.C., seconded by the Honourable Senator Di Nino, that the Bill be not now read a third time but that it be amended, in clause 1,

(*a*) on page 1,

(i) by adding after line 14 the following:

" "removal of boundary waters in bulk" means the removal of water from boundary waters and taking it outside the water basin in which the boundary waters are located

(a) by means of any natural or artificial diversion, such as a pipeline, canal, tunnel, aqueduct or channel; or

(b) by any other means by which more than 50,000 L of boundary waters are taken outside the water basin per day.", and

(ii) by replacing lines 24 and 25 with the following:

"sanitary purposes.";

(*b*) on page 2,

(i) by replacing line 1 with the following:

"**12.** Except in accordance with a licence,",

(ii) by deleting lines 11 and 12,

(iii) by replacing lines 14 to 17 with the following:

"use or divert boundary waters by the removal of boundary waters in bulk.",

(iv) by replacing lines 18 to 26 with the following:

"(2) For the purpose of subsection (1) and the application of the treaty, the removal of boundary waters in bulk is deemed, given the cumulative effect of removals of boundary waters outside their water basins, to affect the natural level or flow of the boundary waters on the other side of the international boundary and to have a negative environmental impact.",

(v) by replacing lines 27 and 28 with the following:

"(3) Subsection (1) applies only in respect of the portion of the following water basins that is located in Canada:

(*a*) Great Lakes — St. Lawrence Basin, being composed of the area of land that drains into the Great Lakes or the St. Lawrence River;

(*b*) Hudson Bay Basin, being composed of the area of land that drains into Hudson Bay; and

(*c*) St. John — St. Croix Basin, being composed of the area of land that drains into the St. John River or the St. Croix River.", and

(vi) by replacing lines 29 and 30 with the following:

"(4) Subsection (1) does not apply to boundary waters used

(*a*) as ballast in a vehicle, vessel or aircraft, for the operation of the vehicle, vessel or aircraft, or for people, animals or products on the vehicle, vessel or aircraft; or

(*b*) for firefighting or humanitarian purposes in short-term situations in a non-commercial project.";

(*c*) on page 4,

(i) by deleting lines 13 to 22, and

(ii) by renumbering paragraphs 21(1)(*e*) to (*m*) as paragraphs 21(1)(*a*) to (*i*), and any cross-references thereto accordingly.

The Hon. the Speaker: The bells to call in the senators will be sounded for 15 minutes and the vote will take place at 4:30 p.m.

Call in the senators.

• (1630)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Doody	Oliver
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk —22

NAYS
THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
Bryden	Kolber
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Moore
Cordy	Morin
Day	Phalen
De Bané	Pitfield
Fairbairn	Poulin
Finestone	Poy
Finnerty	Robichaud
Fraser	Rompkey
Furey	Setlakwe
Gauthier	Sparrow
Gill	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe
Jaffer	Wilson—52

ABSTENTIONS
THE HONOURABLE SENATORS

Prud'homme
Roche—2

• (1640)

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

And on the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan, that Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(*a*) by adding after line 19 the following:

"Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(*b*) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Honourable senators, Senator Murray has the floor and has seven minutes remaining.

Hon. Lowell Murray: Honourable senators, that being the case, I shall press on because I certainly do not want to endure the humiliation of asking for an extension of time and having it refused.

Why do we need a watchdog? There was an interesting exchange the other day, Friday morning during Question Period, between Senator LeBreton and Senator Carstairs about the execution of a search warrant on the residence of a former President of the Business Development Bank and an obvious tipoff that occurred to a newspaper. Senator Carstairs accused Senator LeBreton of impugning the integrity of the RCMP. With all due respect, I believe Senator Carstairs would do better to save her indignation for those in authority who leak unauthorized information to the media.

Some honourable senators can recall an incident in the 1970s when a Liberal senator arrived at his office to be confronted by the police with a search warrant in hand. Miraculously, the media had gotten wind of not only the issuance of the warrant but of the exact time of its execution. The senator, a former minister, was faced not only with the police and their warrant but with cameras, microphones and questions from the assembled media mob.

More recently, we had the spectacle of the then Premier of British Columbia observing the police, warrant in hand, together with — what a coincidence — the Vancouver media mob descending on his home one evening.

Senator Carstairs surely does not believe that these things happen because of the diligence of journalists: They happen because there are deliberate tipoffs to the media.

The purpose of these tactics can only be to make the laying of charges inevitable, or to at least make it difficult not to lay a charge because public opinion has been engaged. The purpose can only be to try and to convict an individual through the media, and I say that those tactics are inimical to due process and to the proper administration of justice and to impartial justice.

Honourable senators, this is the kind of thing that we need a watchdog to oversee. Members of my party have bad memories of what happens when due process and legal process is subverted for partisan political ends.

The other night, Senator Tkachuk mentioned the so-called Mulroney file. The public record shows what happened there. A rumour-mongering journalist filled the ear of the then Minister of Justice, Mr. Rock, with defamatory scuttlebutt about the former Prime Minister. Mr. Rock took the story to the then Solicitor General, Mr. Gray, who got the police to go galloping off in all directions. Before we knew it, there were accusations of corruption against Mr. Mulroney, couched in the most lurid language possible, winging their way to the authorities in Switzerland. There were accusations in respect of which, as the government had later to admit, there was no evidence. Meanwhile, Liberal political staffers, who in a decently run operation should have no access to such files, were selectively trying to leak tidbits of the so-called Mulroney story to selected journalists on Parliament Hill.

Honourable senators, it is extraordinary that no one was ever called to account: No minister of the Crown, no official, no political staffer and no policeman ever had to pay. Malfeasance and malevolence can operate in today's Ottawa without the perpetrators having to face any consequences whatsoever.

The relevance of this to Bill C-36 is obvious. If they can do that to a former prime minister, who had the resources and access to professional counsel and the determination to fight back successfully, what fate might await an ordinary citizen who incurs their wrath or even their suspicion with the new powers that are to be exercised under Bill C-36? That is more than a fair question, it is a pertinent question.

In Bill C-36, we have provision for a so-called entities list, formerly known as a terrorists' list. How much rumour will go into the compilation of the list, which goes to the Solicitor General and then right into the *Canada Gazette*, after being rubber-stamped by the cabinet? How much rumour, hearsay, suspicion, incompetence, simple human error and mistaken identity will go into the compilation of that list?

Once a name is on the list, an individual has the right to appeal to have it removed. However, honourable senators know full well that once a name appears on the list, that individual's reputation is a goner. Why is a watchdog necessary over the extraordinary powers in Bill C-36? That is why a watchdog is necessary.

No senator, to my knowledge, has ever advocated, in ordinary times, that these kinds of powers be accorded to the Crown, to the government or to its agents. Indeed, the Senate usually tilts in the other direction on legal matters. The Senate usually tilts in favour of the rights of the individual. Under the circumstances, however, we are asked by the government to grant these extraordinary powers, and we have to give the government the benefit of the doubt — that the powers are needed.

Honourable senators, we have the upper hand until this bill is passed. Let us pass the bill and let us grant the powers, but let us insist that there be proper oversight. We can reassure Canadians — those whose concerns we share — that Parliament will be watching; that Parliament will be vigilant; that there will be an officer of Parliament ready to blow the whistle on any abuse; that the officer of Parliament will report to us; and that the officer of Parliament will act in our name and in the name of the Canadian people and their rights.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Will Senator Murray take a question?

Senator Murray: Certainly.

Hon. Wilbert J. Keon: Honourable senators, I heard on the news today that the FBI will be increasing its activities in Canada. As I listened to the honourable senator, I wondered what the relationship of its activities would be with a parliamentary commissioner. In the absence of a parliamentary commissioner, who would be responsible for the activities of the FBI?

Senator Murray: Honourable senators, I heard the same report that indicated the FBI was seeking additional resources so that it could post more officers in Canada. I would assume that the FBI would work closely with the police and security services in this country. I assume that the activities of the FBI would be an open book to our police and security agencies and to the political ministers who are responsible for them.

It seems to me that if this additional close cooperation is to intensify, then it argues more strongly for the appointment of effective oversight and a parliamentary commissioner.

• (1650)

The Hon. the Speaker: Honourable senators, I regret to notify you that Senator Murray's time is up.

Senator Bolduc: I want to ask a question.

The Hon. the Speaker: The 15-minute time period for speech, questions and comments has expired.

Senator Bolduc: That is too bad because it is a fantastic question.

The Hon. the Speaker: You could speak.

Senator Bolduc: Forget it.

The Hon. the Speaker: Honourable senators, are we ready for the question? Does someone want to speak?

[*Translation*]

Hon. Roch Bolduc: Honourable senators, I should like to say a few words about the activities of the FBI. Am I to understand that these activities are restricted to the borders? The FBI's jurisdiction is over the United States, not other countries. I believe it is the CIA that has jurisdiction elsewhere. The FBI is at the borders but I would be very surprised if its jurisdiction went beyond the borders. If we got into that, it would be a very serious matter. It would mean that we, too, would probably have people carrying out investigations in the U.S. and would mean there would be a total of three or four police forces per country. We already have the provincial police forces. It strikes me as odd. Perhaps some senators are more familiar with security matters. Would Senator Kelleher or someone else with experience in this area perhaps be in a position to respond to this?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe Senator Bolduc wanted to ask a question of the previous speaker. One cannot ask a question just like that, of someone on the other side. A comment, however, can be accepted.

Senator Bolduc: It was a comment.

[*English*]

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

Hon. John G. Bryden: Honourable senators, may I ask a question of the previous speaker? If the honourable senator was not asking a question, he was making a speech. If he made a speech, I have a right to ask a question.

The Hon. the Speaker: Senator Bolduc took the floor to speak. I saw him; he spoke. Will you take a question from Senator Bryden, Senator Bolduc?

Senator Bolduc: Yes.

Senator Bryden: Honourable senators, I am not quite sure that I understand. Was Senator Bolduc referring to the reports about the FBI expanding its area of operation?

Senator Bolduc: I was a bit surprised, but that was my concern.

Senator Bryden: Do you know on what authority they operate now in Canada?

[*Translation*]

Senator Bolduc: No, that is why I was concerned. I really do not know. I have always thought they had jurisdiction within the United States, but not elsewhere except at the borders. It is understandable that there is a cooperative effort at the borders between the RCMP, customs officials of both countries, and the FBI. Elsewhere, I have always thought it was the job of the CIA.

Hon. Laurier L. LaPierre: Honourable senators, the U.S. embassy has FBI representatives among its staff and these will become —

[*English*]

— legal advisers to the ambassador in order to assist the exchange of information, which they do anyhow in all the embassies of the world. It does not mean that they will come here to investigate, because they do not have that right. As usual, Senator Bolduc is quite right.

While I am on my feet, may I ask a question of the honourable Senator Murray?

The Hon. the Speaker: Honourable senators, I rise to seek your disposition. Is it the Senate's disposition to speak, to adjourn the debate or to put the question?

Senator Bryden: Honourable senators, I should like to speak briefly on the amendments that have been canvassed by the honourable senators on the other side in relation to Bill C-36. In particular, I want to speak to the amendments that relate to the sunset clause and the possibility of having an officer of Parliament oversee the exercise of powers provided by Bill C-36.

'There was no sunset clause in the original bill tabled in the other place. The sunset clause that is in the present bill was added largely, as I understand it, in response to the pre-study report of our special committee. The committee originally recommended a full sunset clause, meaning that the entire bill, except for those provisions dealing with international obligations, would come to an end at a particular time. This proposal was not accepted.

Senator Murray: Point of order. I am sorry to interrupt the honourable senator. I suppose that tradition might have it that a speaker can use his 15 minutes in any way he sees fit, but the honourable senator is purporting to debate an amendment that has already been defeated.

We had the vote on the sunset clause and defeated it a few moments ago. I eagerly await his comments on the amendment that is before us, which is the amendment pertaining to a parliamentary commissioner.

The Hon. the Speaker: We have a rule regarding relevance and it is generally along the lines to which Senator Murray is alluding. However, it has always been liberally interpreted. In particular, we have often seen debate on the main motion when we are actually on an amendment.

I am in the hands of the Senate. I am reluctant to intervene other than to point out that you have correctly drawn attention to the fact that we are on the current amendment, which has to do with a parliamentary commissioner.

It has also been requested of me to advise where we are in terms of proceedings on Bill C-36. We are debating an amendment. In this case, we could entertain a subamendment. That is, we could entertain an amendment to the amendment, but no more than that under our rules unless leave is given, as is sometimes done, to stack amendments. However, that leave has not been given.

The only amendment that could be entertained now is an amendment to Senator Murray's amendment.

Senator Bryden: I appreciate the instructions from my honourable friend opposite. As always, I defer to his long experience in this place.

Honourable senators, I was attempting to create a context within which to put my discussion on the officer of Parliament, which I believe is within the ambit of the speech of Senator Murray. The amendment that has been proposed in this area was canvassed very thoroughly during the course of our committee hearings. Indeed, it was proposed at committee by people on the other side and was not carried.

One of the main objections to this proposal relates to the jurisdiction to be exercised by this proposed officer. While criminal law is a federal jurisdiction, the administration of criminal justice, as Senator Beaudoin reminded us in committee, is provincial jurisdiction. This has worked very well for many years.

Criminal law is not the issue of concern here. That is what we have been debating. That is what Bill C-36, if and when adopted, will be. It will be part of the criminal law of Canada that we would be reviewing within three years in any event.

• (1700)

The issue is the administration of this law, and that administration is largely a provincial matter. During the hearings last week, Senator Fraser asked Professor Errol Mendes, who is from the Faculty of Law at the University of Ottawa, whether a parliamentary officer could possibly oversee the activities of the provinces in executing the powers given to them under the bill. He asked whether the provinces would agree to the establishment of a free-ranging parliamentary officer who would come marching into their jurisdiction with a mandate to pass judgment on how they are doing. Professor Mendes replied:

> Senator, you are right...It is a very complex constitutional problem because there are clear divisions of powers between what the provinces and the federal government have jurisdiction over.

Further to this issue, Mr. Rick Mosley of the Department of Justice was very explicit, saying:

> The powers in Bill C-36 given to the police and the attorneys general will be exercised at both levels of government. Under our system, we believe it would be inappropriate for an officer of Parliament to conduct a review of the exercise of the jurisdiction of a provincial attorney general or minister responsible for the police, or the police or the Crown counsel who report to them. In a nutshell, that is one of the major objections to that proposal.

Professor Monahan, the constitutional law professor from Osgoode Hall who is very well known and highly respected by my friends on the other side for actions and good service done in the past, said:

> First, the administration of justice is a provincial jurisdiction. Most of the police forces are under the control of the attorneys general or solicitors general of the provinces. Therefore, I am not certain how the officer of Parliament would effectively review those bodies. It may be that it could be worked out through agreement.

Senator Forrestall: If you had bothered to think it through, you would have found out the act required it 30 years ago.

Senator Bryden: I am not sure that I understand your point.

Senator Forrestall: I am sure you do not. You do not want to, either.

The Hon. the Speaker: I ask for order. Senator Bryden has the floor and honourable senators wish to hear him speak.

Some Hon. Senators: Hear, hear!

Senator Bryden: I understand I have only 15 minutes and I am doing my very best, honourable senators.

I will continue the quote from Professor Monahan:

> Second, there already exist review mechanisms for federal police forces. The RCMP and CSIS already have mechanisms to review their activities. Again, they will be the primary persons enforcing the law.
>
> The other question is how would this new officer of Parliament work in conjunction with these other mechanisms that we have? An alternative might be to see whether the mechanisms that already exist could be used. I do not know whether the Canadian Human Rights Commissioner really has the expertise to deal with this. Perhaps the intelligence review committee or other bodies that already exist could, within their mandate, review some of these matters. I like to be practical about things and not set up a new commission or body every time we pass a new statute, but rather try to see what we already have.
>
> I do think that it is important that there be effective oversight.

Like Professor Monahan, I do not like the idea of creating a new body or commission with every new statute. Like him, I like to work with what we have, and in this area we have extensive oversight and review mechanisms already in place. Minister McLellan and other witnesses pointed out that various accountability mechanisms already established under Canadian law will apply to the exercise of powers under this bill, including the commission for public complaints against the RCMP, the various complaint and review mechanisms that apply in respect of the police forces under provincial jurisdiction, the Privacy Commissioner, SIRC with respect to CSIS, the commissioner with respect to CSE, the Commissioner for Human Rights, and of course our judiciary. Our deep concern would be how these bodies would interact with this new officer of Parliament, who presumably would have jurisdiction that overlaps significantly with several, if not all, of these existing bodies.

Senator Murray suggested at the committee that he should like to construct a mandate that would fill in those gaps. I question how useful or feasible that would be. Let me quote from the testimony of Mr. Radwanski, the Privacy Commissioner, before the committee. While he was not asked about this issue, he volunteered the following:

> With your indulgence, senator, there is one other matter I wanted to raise with this committee because I have not been asked it so far. I wish to ensure that I do not fail to address it...
>
> With regard to the matters that are under the jurisdiction of the Privacy Commissioner, I must tell you that I would be as vehemently opposed to that as I was to these amendments that I had to take issue with. The reason is that there is oversight of privacy matters by an officer of Parliament. It is by an officer of Parliament who has a long-established office with an expert staff, including the best privacy expert lawyers, trained investigators, some of whom have been at this for 20 years, and policy analysts who have been at this for 20 years. To give a part of that oversight to a new officer of Parliament, with presumably other duties as well, would create either a fragmentation of oversight roles, which would weaken oversight; or it would create a hierarchy of officers of Parliament, which in my view would be untenable.

The Hon. the Speaker: I regret to advise Honourable Senator Bryden that his 15 minutes, plus some additional time that I have allocated because of the point of order, have expired.

Senator Bryden: May I have more time?

The Hon. the Speaker: Is leave granted, honourable senators, for Senator Bryden to continue?

Some Hon. Senators: Agreed.

Senator Forrestall: I did not give my consent to that. I am sorry if I was not heard. The word was "no."

The Hon. the Speaker: There is no unanimous consent, Senator Bryden, and accordingly your time has expired.

Hon. Tommy Banks: May I yield to Senator Bryden?

The Hon. the Speaker: No, the rules are fairly straightforward. Where there is a time limit and the time limit expires, that is it. We can continue debate, adjourn the debate or put the question.

• (1710)

Hon. George J. Furey: It is always a privilege to rise in this chamber to address honourable senators. Today, I wish to speak to the very troublesome and controversial legislation known as Bill C-36.

I understand and appreciate some of the reservations of senators opposite. I have received numerous phone calls and much correspondence from individuals across the country asserting their concerns regarding the threat that they believe Bill C-36 poses to the civil liberties we currently know and enjoy. Indeed, my own daughter, Meghan, who is a second-year law student at Dalhousie University, and some of her fellow classmates have expressed to me some of their apprehensions about this bill. Therefore, it is not without grave concern and deep reflection that I rise to speak to honourable senators today and urge you all to support this legislation in its current form without amendment.

Honourable senators, I must first acknowledge that no legislation is perfect. If it were, legislators would be perfect and, therefore, those they represent would be perfect and hence there would be no need for Parliament. I am satisfied that in our great Canadian legal system, legislative imperfections can and will be addressed on a timely and ongoing basis by our competent judiciary.

Honourable senators, we have had an opportunity to look at the legislation in detail, and we have heard many words spoken for and against its various provisions. That is as it should be in a free and democratic society. We should jealously guard our freedoms, and we should be openly skeptical of governments that profess to protect them by infringing upon them. However, I do not think that carefully guarding freedoms means that governments can never act when such freedoms are potentially in issue. We must look at what is being proposed in the context of the time in which it is being proposed.

We have all read and seen much of what occurred on September 11. I believe, however, that for our purposes, it would be instructive to reflect for a moment on three events that occurred before September 11. This, I feel, will help us focus on the purpose and logic of this legislation.

We are told that Mohamed Atta and Fayez Ahmed each piloted commercial jets into the World Trade Center. We know that on one occasion in the year 2001, Mohamed Atta had $110,000 wired to him from a Western Union office in the United Arab Emirates to Citibank in New York and that he then forwarded the money to SunTrust Bank in Florida, where he was training to be a pilot. We know this because the United States Treasury Department received a suspicious activity report on the aforementioned transactions pursuant to the 1994 Suppression of Money Laundering Act, an act somewhat akin to our own Bill C-22, Proceeds of Crime (Money Laundering) Act. This document about Mohamed Atta sat useless and impotent on a desk in the Treasury Department in Washington on September 11. Without Bill C-36, a similar document would also be rendered ineffectual in Canada, as Canadian authorities would continue to be isolated from other investigative bodies and, as a result, would not be privy to the information.

We also know, honourable senators, that German authorities in Hamburg had Mohamed Atta and certain of the other hijackers under surveillance because they were living in an apartment frequented by others whom the German authorities had under surveillance. The German authorities were not alerted to Atta because he had no terrorist history. The important mechanism in Bill C-36 is that, among other things, it removes the barriers between nations and allows the various threads of information to be knit together, thereby reducing the possibility of such an individual slipping through the cracks, as Mr. Atta indeed did.

Finally, we now know that the United States is and —

The Hon. the Speaker: I am sorry to interrupt the Honourable Senator Furey, but it being 5:15 p.m., pursuant to the order adopted by the Senate on December 14, 2001, it is my duty to interrupt the proceedings to dispose of the question on the motion of Senator Finnerty for second reading of 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.

Debate suspended.

APPROPRIATION BILL NO. 3, 2001-02

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of 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.

The Hon. the Speaker: Call in the senators.

• (1730)

Motion agreed to and bill read second time on the following division:

YEAS
THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Moore
Corbin	Morin
Cordy	Phalen
Day	Poulin
De Bané	Poy
Fairbairn	Prud'homme
Finestone	Robichaud
Finnerty	Roche
Fraser	Rompkey
Fury	Setlakwe
Gauthier	Sibbeston
Gill	Sparrow
Grafstein	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Watt
Jaffer	Wiebe—53
Joyal	

NAYS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Buchanan	Nolin
Comeau	Oliver
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—21
Kinsella	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

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

Hon. Isobel Finnerty: With leave, honourable senators, later this day.

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

I had trouble hearing Senator Forrestall earlier. May I please ask for calm so that I can hear the answer?

Is leave granted, honourable senators?

Hon. Pierre Claude Nolin: Leave for what?

The Hon. the Speaker: Senator Finnerty is moving third reading of Bill C-45, and she is asking that leave be granted for consideration of this bill later this day.

Some Hon. Senators: No.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Later this day, we will be debating the motion to adopt this bill at third reading, which motion is open to debate, correct?

The Hon. the Speaker: Normally, the time frame for second to third reading is one day. It is not a debatable motion. Once the matter comes up for consideration, debate goes on at third reading.

Perhaps I could read rule 66(3), which is what I am relying on in asking for a motion at this time. It reads as follows:

> When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question on any business then before the Senate or when a standing vote has been deferred pursuant to rule 68, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than fifteen minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions —

— which this is —

> —and any motion for which a period of time has been allocated to the disposition of the debate.

As I say, honourable senators, I am relying on that rule for putting the question as to when third reading will occur. Senator Finnerty moved third reading for later this day. That requires leave and leave is not granted.

Senator Kinsella: On behalf of the official opposition, we agree to debate the third reading later this day.

The Hon. the Speaker: It is agreed, then.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, last Friday —

[*English*]

The Hon. the Speaker: I must rise, Senator Prud'homme. I know all honourable senators know this, but the motion of Senator Finnerty is not a debatable motion. You could withhold leave or not, but this is not a debatable motion.

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

Senator Prud'homme: No.

The Hon. the Speaker: Leave is not granted.

Hon. Anne C. Cools: Honourable senators, I believe that leave had already been granted by the time that Senator Prud'homme rose. Absolutely. Point of order!

Senator Nolin: I said "no" before him.

Senator Cools: Point of order. Leave was granted actually twice when Senator Finnerty first put the question. It was granted then. Then His Honour proceeded to expand on the matter and to make some commentary.

Senator Nolin: I said "no" the first time.

Senator Cools: Then again, after that commentary, leave was put and asked for and senators said "yes." After that agreement, Senator Prud'homme rose to his feet. In point of fact, leave had been granted twice. In this particular and immediate case, leave is clearly granted.

The Hon. the Speaker: This is a point of order.

Senator Prud'homme: Point of order.

The Hon. the Speaker: Senator Cools has risen on a point of order to say that leave was granted, and I will hear interventions on the point of order.

• (1740)

Senator Prud'homme: I know there are all kinds of tremblings, but I was not the first one to say "no." Senator Nolin said "no," then Senator Kinsella got up and spoke for his side. Of course, Senator Nolin did not push further after his deputy leader had given agreement.

Senator Nolin may withdraw his "no," but that is why I got up. He said "no" first and I was the second to say "no." I will explain why I did so in due course.

The Hon. the Speaker: Honourable senators, I will review what I believe to be the case. Senator Finnerty moved the motion and asked for leave. I was not able to hear. I wanted to be very sure. I heard Senator Nolin say that leave was not granted.

I then looked back at Senator Finnerty and asked if there was leave. Senator Kinsella rose and said, "On behalf of the opposition, we grant leave." He does not speak for independent senators. Senator Prud'homme said, "No, leave is not granted." I am afraid, honourable senators, that leave is not granted.

Hon. John G. Bryden: I rise on the point of order, honourable senators. I believe that if we review the transcript, we will find that when Senator Prud'homme rose, he did not say "no." Rather, he said, "Last Friday, I —", at which point His Honour stood up and Senator Prud'homme sat down. He did not stand up and say "no." Your Honour said that leave had been granted and he started to make a speech.

An Hon. Senator: No, you are wrong.

Senator Bryden: That is what he said.

The Hon. the Speaker: We can clear this up.

Did you withhold leave or not, Senator Prud'homme?

Senator Prud'homme: I said "no." In French, it is "non."

The Hon. the Speaker: It is moved by the Honourable Senator Finnerty, seconded by the Honourable Senator Rompkey, that Bill C-45 be placed on the Orders of the Day for third reading at the next sitting of the Senate.

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

Hon. Senators: Agreed.

Motion agreed to.

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

And on the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan, that Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(*a*) by adding after line 19 the following:

"Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(*b*) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Senator Furey has nine minutes remaining.

Hon. George J. Furey: Honourable senators, we now know that the United States is and has been holding Zacarias Moussaoui in custody since August 17, 2001. This December, a United States Grand Jury indicted Moussaoui for conspiracy to commit acts of treason. The Grand Jury indictment states, among other things, that Moussaoui was training to be a pilot. He was in contact with and receiving money from the same persons overseas as were the other hijackers. In August, fortunately, Moussaoui was detained on alleged immigration violations.

The question, honourable senators, for our purposes, is to ask whether anything would have been achieved if the United States had vigilantly shared intelligence information with its allies. Would anything have been achieved if the United States had carefully pursued its money laundering suspicions? Finally, what would have happened if the United States had not discovered the immigration violations committed by Moussaoui that led to him being detained in August?

We cannot answer these questions definitively, but we can say that if Moussaoui was the probable fifth hijacker on Flight 77 that crashed in Pennsylvania, it was indeed a good thing that he was detained.

It could not have been a bad thing for the United States if its Treasury Department had investigated a suspicious transaction involving Mohamed Atta. We can say that it would not have been a bad thing if the United States had linked the German intelligence information with the suspicious transaction report of Mohamed Atta. If Atta had been detained by the United States, indeed, it would not have been a bad thing.

All of these things, honourable senators, involve government action in anticipation of the event, not, as is generally the case in our Canadian tradition, after the event.

All of these things implicate individual rights. I note, in particular, that these facts speak directly to the instruments in Bill C-36 involving preventive arrest and investigative hearings. The facts mentioned above justify the use of these instruments in a way that would essentially not have been open for debate prior to September 11.

Honourable senators, I should like to reflect for a moment on the fact that, as a society, we have had this debate before. For example, for many years, Canadians have become more aware and more intolerant of drunk driving. This insidious crime has killed countless numbers of innocent people. Governments across the country undertook a sustained effort to end this evil. In doing so, government action came in direct contact with the Charter of Rights and Freedoms on the issue of detention without charge. The Supreme Court of Canada admitted that random roadside checks were certainly a breach of our section 9 right to be free of arbitrary detention and arrest. However, the purpose of the check was so important in relation to detection and risk of detection of drunk drivers that it was upheld as a reasonable limit in a free and democratic society under section 1 of the Charter of Rights and Freedoms.

Drunk driving is an insidious, repetitive crime, but it is the way we addressed ourselves to the question of this crime that is instructive. After measured judgment, governments decided that the arbitrary detention implied by the roadside check programs were the appropriate response to the evil that had to be confronted. The legislature acted and, in the ordinary course of things, the courts, armed with the Charter of Rights and Freedoms and the benefit of actual fact situations, reacted and confirmed the government's approach.

It is important to remember, honourable senators, that if these powers had been abused — and indeed they were at times — the courts adjusted these problems on a case-by-case basis. When the police, in a given incident, used a roadside check to pursue other agendas, courts found this to be inappropriate and held the police in check. The government did not rescind legislation properly aimed at one evil because of the inevitable excesses that may happen with any police authority.

When Bill C-36 becomes law, honourable senators, if and when we are faced with fact situations that suggest that state conduct is inappropriately extreme, we will see these matters addressed in the courts of our country. The courts will decide whether this legislation is constitutional, and we will have the further opportunity to hear about its operation. As well, as the Honourable Leader of the Government in the Senate said in her reply to Senator Andreychuk, there are sufficient oversight provisions in this legislation. She named the following: We have a judicial review; we have reports to Parliament; we have reviews by the Privacy Commissioner and the Information Commissioner; we have a three-year review; we have a sunset clause under preventive arrest and investigative hearing provisions; we have the RCMP Public Complaints Commission; and we have provincial complaints commissions. With the greatest respect, there are many oversights to ensure that there is fairness and equity in the application of this bill.

In addition, honourable senators, as I mentioned above, we are not the last institution that will give reflective second thought to this legislation. The courts will give it further thought. It is with this security and the aforementioned safeguards in mind that I am satisfied to support this legislation without amendment.

• (1750)

Bill C-36 will not guarantee that we will find terrorists before they act, any more than roadside checks cannot guarantee against drunk driving. However, the instrument is rationally aimed at the things that we can do to raise the risk of detection.

It is perhaps not entirely unsuitable to quote Abraham Lincoln, who said on December 1, 1862, in relation to his Declaration of Emancipation:

> The dogmas of the quiet past, are inadequate to the stormy present. With new challenges, we must think anew.

I realize that some honourable senators may think it ironic that I would quote a speech giving freedom in support of a law that may infringe freedom. I do not look upon it that way. Rather, I think and feel that we all know the freedom that we enjoyed on September 10 and that we hope to enjoy again. The freedom to fly without anxiety and the freedom to move across borders are examples that I am sure we all reflect upon.

The largest freedom, to be free of the carnage of September 11 in Canada, in the United States and, indeed, in the rest of the world is the true and best purpose of this bill. It is for this reason that I would encourage all honourable senators to support the bill without amendment.

Some Hon. Senators: Hear, hear!

Hon. David Tkachuk: Will the honourable senator entertain a question?

The Hon. the Speaker: I have just been advised by the clerk that the 15 minutes for Senator Furey's speech, comments and questions have expired. Is the Honourable Senator Furey asking for leave?

Senator Furey: No, I am not.

The Hon. the Speaker: Senator Furey would have to ask for leave. It is his time, and he is not asking for leave.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): We would be very happy to have Senator Furey on the opposition, if he would be prepared to withdraw that statement he just made.

The Hon. the Speaker: Senator Fury, there is another invitation for you to request leave.

Hon. Fernand Robichaud (Deputy Leader of the Government): I would be very happy if the honourable deputy leader were to reconsider the understanding we had this morning, and then perhaps I would ask Senator Furey to reconsider his position.

Some Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): On a point of order, if I may, that is an uncalled-for comment.

Some Hon. Senators: Oh, oh!

Senator Lynch-Staunton: If honourable senators do not want to hear an explanation, then carry on.

Senator Kinsella: Perhaps the Honourable Deputy Leader of the Government wishes to outline the agreement of which he speaks.

Senator Taylor: What is the use? You will forget it in an hour.

Senator Carstairs: You have forgotten it already.

The Hon. the Speaker: This is a procedure we often utilize, honourable senators. It is not on the Order Paper, but house leaders do discuss house business. Is it your wish to proceed to a discussion?

[Senator Furey]

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Senator Kinsella will speak on Bill C-36.

Senator Kinsella: Honourable senators, I was beginning to rise to speak on Bill C-36 when His Honour assumed that Senator Furey sat on the opposition side. I would be happy to have Senator Furey in our caucus.

The judgment that I am really concerned about, honourable senators, is the judgment that history will accord to this class of senators who were on the watch when this terrible piece of legislation, which strikes the dagger into the heart of Canadian civil liberties, is adopted by the Liberal majority in this place.

Senator Bryden: That is why the Conservative leader voted for it.

Senator Kinsella: The whole issue, honourable senators, is balance.

Senator Bryden: Does that mean you are now changing the party's position?

Senator Kinsella: The issue is where one draws the balance between human rights and civil liberties. The balance, unfortunately, seems to be going with the majority in the direction of state power and away from human rights.

If one were to ask a rhetorical question as to whether members of the Senate will be grouped with those in the other place of all parties who have come down on the side of the state party, I think the answer will be yes. This is what the majority will do. We have invited the majority to test its will against the rule of two-thirds majority, but it has failed to accept that invitation.

Honourable senators, our class of senators is supposed to exercise sober second thought and return Bill C-36 to the House of Commons with the kind of amendments that were articulated and laid out clearly in the first report of the Special Senate Committee on Bill C-36, a report which was unanimously adopted by the Senate.

We have before us an attempt by my colleague Senator Murray to have one final reflection given to the wisdom of having a parliamentary monitor set in place: an officer of Parliament. This was the unanimous decision of the Senate when it embraced the first report. Indeed, it would have been a concrete step to return the balance between human rights, on the one hand, and state power on the other. This would have been an opportunity — and is an opportunity — for the bill to be amended to provide for an officer of Parliament to be appointed within 90 days of the bill receiving Royal Assent.

Let me add, in parentheses, that should we fail because of numbers in achieving this objective, hopefully the wisdom of the entire Senate in its first report will not be forgotten as we turn our minds to Bill C-42, phase two of the anti-terrorism legislation. If there is a phase three or phase four, there will be so much power in the hands of the state, and the rights of the citizen will be so much in jeopardy, that maybe by that time our friends opposite will see the wisdom of having an ombudsman, such as we have at the provincial level, in place at the federal level to deal with a maladministration of these extraordinary powers — maladministration that is not motivated necessarily by ill will on anyone's part. We are speaking about a safeguard. That is what the ombudsman does in all jurisdictions in Canada, save and except the federal jurisdiction.

We know the position of the Senate as per the first Senate decision taken on November 22. This officer of Parliament would monitor the exercise of the power provided to the state under this bill. The officer of Parliament would be able to serve as a federal ombudsman to whom Canadians individually or collectively could report any maladministration of powers under this anti-terrorism bill and, indeed, future anti-terrorism legislation. The provincial ombudsman offices are already in place and could deal with the complaints resulting from provincial authorities abusing the powers under this bill.

Consequently, I was pleased, honourable senators, to see the Canadian Council of Criminal Defence Lawyers state:

> This legislation requires an independent ombudsman, not to interfere but to oversee.
>
> A retired Justice of the Supreme Court of Canada or Provincial Appellate Court should be named as an overseer and given the tools to do so effectively.
>
> All preventive arrests, investigative hearings, their results, all Ministerial certificates issued, and the reasons therefore, must be reported to this "Overseer" annually.
>
> This Ombudsman could hear Ministerial requests for the nondisclosure to Parliament of matters set out in the annual review report provisions. In this way meaningful independent accountability would be effective.

The Council of Criminal Defence Lawyers continued —

The Hon. the Speaker: Senator Kinsella, I rise because it is six o'clock. Unless someone asks and unanimous agreement is given not to see the clock, I must leave the Chair. Is there unanimous agreement that I not see the clock?

Some Hon. Senators: No.

The Hon. the Speaker: Then I must leave the Chair. The sitting will resume at eight o'clock.

The sitting of the Senate was suspended.

• (2000)

At 8 p.m. the sitting of the Senate was resumed.

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

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

> That when the Senate adjourns today, it do stand adjourned until 9 a.m. on Tuesday, December 18, 2001.

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

Hon. Senators: Agreed.

Motion agreed to.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Bryden, for the third reading of Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, as amended,
>
> On the motion in amendment of the Honourable Senator Andreychuk, seconded by the Honourable Senator Nolin, that Bill C-7 be amended, in clause 2,
>
> (*a*) on page 2, by adding, immediately before line 3, the following:
>
> "2.(1) An object of this Act is for the law of Canada to be in compliance with the United Nations Convention on the Rights of the Child, and the Act shall be given such fair, large and liberal construction and interpretation as best assures the attainment of this object."; and
>
> (*b*) by renumbering subclauses 2(1) to (3) as (2) to (4) and any cross-references thereto accordingly.

Hon. Terry Stratton: Honourable senators, if I may, I would like to refer to the vote I had deferred until tomorrow at 5:30. There is agreement now to defer that vote until 10 a.m. tomorrow morning.

The Hon. the Speaker: I require the agreement of all senators with no dissenting voice. Is it so agreed?

Some Hon. Senators: Agreed.

Hon. Marcel Prud'homme: Honourable senators, since things are developing rapidly, would you kindly tell us exactly what you have been asked. I was absent last Friday for three minutes, and something was dealt with so quickly that I could not oppose it. I want to be sure of what we are agreeing to since things are moving so fast.

The Hon. the Speaker: The question, honourable senators, is whether the vote on the amendment of Senator Andreychuk to Bill C-7 will be held not at 5:30 tomorrow afternoon but at 10 a.m. We sit at 9 a.m.

Senator Prud'homme: Would Your Honour tell us how long the bells will ring, et cetera?

The Hon. the Speaker: Because it is pursuant to an order of the Senate, the rules provide that proceedings are interrupted 15 minutes prior to the vote, and that rule will apply in this case.

Senator Prud'homme: I am delighted to give my agreement to a fine gentleman, the chief government whip, who has consulted me.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. Douglas Roche: Honourable senators, for those who have to make travel arrangements to distant places, can the Deputy Leader of the Government tell us at what hour tomorrow the vote will be held on the third reading of Bill C-36?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we have come to an agreement, and I want to thank the people who agreed, that debate on Bill C-36 would come to an end prior to three o'clock, at which time we are hoping to hold Royal Assent.

Hon. Marcel Prud'homme: Honourable senators, an order was passed earlier this afternoon for a possible debate of two and a half hours on the closure. That means 15 senators could speak for 10 minutes each. That is two and a half hours. Then you have six hours after that. With all due respect to my esteemed colleague, if we have two and a half hours starting at 9:30 a.m., plus six hours of debate, possibly, I do not know how you can have an agreement for 3 p.m., without having not only one closure but a double closure. You are having a closure on closure, and then we dispose of closure because this is debatable.

I put to His Honour that we would have to first dispose of the motion to have closure. That could be up to two and a half hours. I do not imagine it will take two and a half hours, but I do not know. I will certainly have a few words to say. Once we finish that, there could be a possible six-hour debate on Bill C-36. Either we feel very strongly about Bill C-36, or we do not. Either we believe that Bill C-36 is in the interests of Canada's reputation or not.

Having said all that, this is a surprise to me. I agreed tonight that we sit at 9 a.m. tomorrow. I agreed that we vote earlier on Senator Andreychuk's amendment, but how many more agreements do you want? We should let the universe unfold, and if some senators have other places to go, I am sure they can say so publicly before they leave. Canadians are reasonable and will understand.

• (2010)

The Hon. the Speaker: Honourable senators, and Senator Prud'homme in particular, I cannot answer. Senator Robichaud may wish to comment.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as Senator Prud'homme has pointed out, a period of time is allotted for debate on the motion of closure or time allocation and, when it is proposed, a period of time allotted for debate on the main motion. This is the holiday season, and we are exceptionally optimistic. We will be able to proceed without denying anyone the opportunity to speak, and certainly not senators who say they are affiliated with neither of the two main parties in this chamber.

[*English*]

Senator Prud'homme: I understand, then, that a three o'clock deadline is unnecessary because it could be finished sooner. Why is there a double deadline? Some senators want to be accommodated, while for others it is not as important. If the universe is allowed to unfold, things may turn out favourably by tomorrow, without putting two closures on something that will happen anyway.

[*Translation*]

Senator Robichaud: Honourable senators, we do not wish to provoke further debate on this matter. We are simply trying to establish a reasonable time to hold Royal Assent, namely at about 3 p.m. If senators wish to leave before, that is their decision.

[*English*]

Senator Prud'homme: I am aware that the rules are being applied. However, are there other pieces of legislation that honourable senators want to pass before three o'clock, or is the debate only about Bill C-36? In that case, we will continue tomorrow, when the Orders of the Day could be changed such that Bill C-7 is called before Bill C-36 is called. I intend to cooperate, but I should like to know the intention of the house because I want to be on the side of history.

[*Translation*]

Senator Robichaud: Honourable senators, tomorrow, our intention is to study Bills C-6, C-7 and C-45 first. We will then consider the time allocation motion and move on to Bill C-36.

[*English*]

Senator Prud'homme: There will be many new amendments to Bill C-7. Is it the intention to dispose of Bill C-7 before Bill C-36? If that is the intention, it makes no sense.

[*Translation*]

Senator Robichaud: Honourable senators, as I was saying, we are very optimistic and will try to proceed in that fashion. We will see tomorrow what happens.

[*English*]

ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the third reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism,

And on the motion in amendment of the Honourable Senator Murray, seconded by the Honourable Senator Buchanan, that Bill C-36 be not now read a third time but that it be amended in clause 146, at page 183,

(*a*) by adding after line 19 the following:

"Oversight and Report

146.1 Within 90 days after this Act receives Royal Assent, Parliament shall appoint an officer of Parliament to monitor, as appropriate, the exercise of the duties and functions provided in this Act, excluding the powers and duties of the Information Commissioner under section 69.1 of the *Access to Information Act*, as enacted by section 87 of this Act, the powers and duties of the Privacy Commission under section 70.1 of the *Privacy Act*, as enacted by section 104 of this Act and the powers and duties of the Security and Intelligence Review Committee established by subsection 34(1) of the *Canadian Security Intelligence Service Act*.

(2) The officer referred to in subsection (1) shall table in both Houses of Parliament annually, or more frequently, as appropriate, a report on the exercise of the powers and duties provided in this Act, except those excluded under subsection (1); and

(*b*) by re-numbering clause 146 as clause 147 and any cross references thereto accordingly.

The Hon. the Speaker: Honourable senators, we are on Senator Murray's amendment to Bill C-36. Honourable Senator Kinsella has eight minutes left.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, when I spoke to the bill earlier, I was quoting from a letter from the Canadian Council of Criminal Defence Lawyers, who have appealed to the Senate to amend Bill C-36 so as to provide an oversight mechanism such as envisioned in the amendment of Senator Murray.

The letter from the Canadian Council of Criminal Defence Lawyers states:

> The main problems with this legislation are the sections which authorize operations in the dark.

There are many possible activities with powers that will be exercised very much in the shadows. With the simple provision of an officer of Parliament, who will provide monitoring and oversight, perhaps Canadians could achieve a second level of security, because someone will be watching the state. That is the balance that we believe is necessary.

Ombudsman offices are key features of democracies in the modern world. As I mentioned, across Canada the success of those institutions has been proven at the provincial level. The ombudsman oversees conflicts of interest and the workings of ministries. In this way, while trusting in our elected representatives, we ensure checks and balances along the way.

The letter from the Canadian Council of Criminal Defence Lawyers concludes:

> We urge the Senate to do no less with Bill C-36. In the rush to proclaim new measures of security, in these dark times, we should ensure a glimmer of light.

Honourable senators, we are faced with a need for parliamentary oversight. The powers provided in Bill C-36 must be subject to an ongoing oversight by Parliament, including the responsibility of reviewing and reporting on the exercise of the powers, when they are being exercised, in detail and on a timely basis. It must include access for some parliamentarians to information that is not ordinarily available to the public. Bill C-36 leaves, frankly, too much power concentrated in the executive.

Bill C-36 must be amended by reconstructing and intensifying the role of the representatives of Parliament — not merely those who sit in cabinet or in the ruling party's caucus.

The model of parliamentary oversight that is being proposed — review and monitoring — can provide safeguards over and above those afforded by juridical review under the Charter and/or the Canadian Bill of Rights. While the Charter review is obviously an important protection of our rights and liberties, it is also slow and very expensive, particularly for the claimant. Usually, it is piecemeal rather than comprehensive in scope.

The Special Senate Committee on Bill C-36 did the pre-study of the bill. The subsequent adoption of the report by the full Senate chamber took place after the government made known its amendments in the House of Commons committee. The position of the Senate is that we need an officer of Parliament appointed to monitor the exercise of the powers granted to the government in this bill. It is my view that the officer of Parliament must be established by Bill C-36 to provide the needed monitoring and supervision of the legislation.

On motion of Senator Beaudoin, debate adjourned.

• (2020)

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

Hon. Lowell Murray: Honourable senators, when this bill was before us for the debate on second reading, five members of the Progressive Conservative opposition spoke to it: Senator Carney, Senator Bolduc, Senator Andreychuk, Senator Spivak and I. We agreed that there was a need for legislation in this field. We even agreed at that time with the basic premise of the government's approach, namely, that in order to prevent the export of water, water should be treated as a resource, not as a good; that it should be treated as an environmental, not a trade issue; and that water should be dealt with at the basin, rather than at the border.

However, we were opposed to the unfettered power proposed in Bill C-6 for the Governor in Council to make exceptions both to the licensing provisions of this bill and to the so-called prohibition provisions. We were opposed to the blanket authority for the Governor in Council to make those kinds of exceptions by regulation. What is the point of a prohibition if there is a total discretion given to the cabinet to make exceptions to the prohibition? That is not a prohibition at all.

In the regulatory authority, there is also the ability for the government to define any word or phrase in the act that is not otherwise defined and to do so by regulation. We find that by making regulations or, indeed, as one of the expert witnesses pointed out to us at committee, by abstaining from making regulations, future governments will be in a position to negate the entire purpose of the bill.

The bill received second reading and was referred to committee and the five of us from this caucus went to committee.

We heard from the minister, and from senior officials of the departments of Foreign Affairs, Justice and the Environment.

Apart from the minister and his officials, no other witness wanted this bill to pass in its present form. Who were these other witnesses? They were expert witnesses, honourable senators, not people with a political or special interest axe to grind. Of particular note, we heard from the following witnesses: Ms Anne Sullivan, a professor from the faculty of law at the University of Ottawa, a former officer of our own Department of Justice, and an expert in legal drafting; Mr. Michael Hart, a professor from the Norman Patterson School of the Centre for Trade Policy and Law, at Carleton University; Mr. Barry Appleton, a trade lawyer with Appleton and Associates; Dr. Howard Mann, another former legal counsel for the Government of Canada with whom he spent five years and who has a legal and consulting practice in international environment and sustainable development law; and Mr. Nigel Bankes, a professor of law at the University of Calgary.

Almost all of these witnesses agreed that they want legislation. All of them agree with the intent of the bill. However, not one of them wants to see the bill passed in its present form.

The two trade lawyers told us that the premise is wrong, that water is a good, no matter what the government says. The question is: When does that good come into commerce of any kind, not just international commerce? After an examination of this bill, these trade lawyers insist that the process envisaged under Bill C-6, including the licensing regime for inbasin waters, would make it more difficult to keep water out of commerce.

The trade lawyers told us that a more comprehensive approach is needed and they have suggested amendments that were reflected in the amendments that the Conservatives proposed at the committee and which were defeated along party lines in that committee.

Professor Bankes, a constitutionalist, told us that this bill is highly vulnerable to a successful court challenge on two counts. The first is the famous deeming clause that honourable senators will find under proposed section 13(2), where removing water from boundary waters and taking it outside the water basin is deemed to affect the natural level or flow of waters, whether or not it does. As Professor Bankes pointed out, that deeming provision has been put in there strictly to lend some constitutional justification for a provision that cannot be justified under section 132 of the Constitution Act. Section 132 gives Parliament power to implement international treaties.

The second count on which Professor Bankes thinks the bill will be highly vulnerable to a constitutional challenge is that the bill purports to erect a prohibitory scheme where the treaty that it purports to implement envisages only a regulatory scheme. Professor Bankes also drafted an amendment for us.

All of these people, led by Professor Fleming, the expert legal draftsman, are convinced that this bill will not do what it was intended to do. They believe that the fatal flaw of the bill is the unfettered regulatory authority which it will accord to the Governor in Council. Professor Fleming called the bill a paper tiger. She said it is smoke and mirrors. I could go on to quote, as I did at the committee, chapter and verse from the various witnesses who appeared before the committee who spoke in the same vein.

Honourable senators need not agree with the criticisms that have been made either by Conservative colleagues or by the witnesses who appeared before us. However, there has been sufficient doubt cast on critical areas of this bill that the conclusion for us is inescapable: We ought not to allow this bill to go through as it is.

Honourable senators, there are various amendments that I would like to move and could move, including one that was drafted by Professor Bankes, to try to render the bill less vulnerable than it is to a successful constitutional challenge. However, for the moment, I will concentrate on the regulatory authority that the bill proposes to give to the Governor in Council. I will propose an amendment that will put Parliament back into the loop, so that we are not constantly governed by regulation and by a blanket regulatory authority granted to cabinet to exercise as it sees fit.

I repeat: The regulation-making authority in this bill will allow cabinet to make exceptions to the licensing provision. They will be able to make exceptions as they see fit to the prohibition provision. They will be allowed to define or de-list the basins to which the licensing provisions and the prohibition apply, which means that they could completely gut the proposed section 13 of the bill. The government will be able to define any word that is not defined in the bill. As honourable senators know, in any respectable piece of legislation, definitions are included. We want to put Parliament back into the loop. Honourable senators, I have a very practical amendment that I put forward for your consideration.

• (2030)

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I move, seconded by Senator Oliver:

> That Bill C-6 be not now read a third time but that it be amended, in clause 1, on page 5, by adding after line 12 the following:
>
> (3) The Governor in Council may only make a regulation under subsection (1) where the Minister has caused the proposed regulation to be laid on the same day before each house of Parliament and
>
> (*a*) both houses of Parliament have adopted resolutions authorizing the making of the regulation, or
>
> (*b*) neither house, within thirty sitting days after the proposed regulation has been laid, has adopted a resolution objecting to the making of the regulation.
>
> (4) For the purposes of paragraph (3)(*b*), "sitting day" means a day on which either house of Parliament sits.

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

On motion of Senator Andreychuk, debate adjourned.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET—STUDY ON STATE OF HEALTH CARE SYSTEM—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—release of additional funds (study on the state of the health care system in Canada)) presented in the Senate on December 11, 2001.—(*Honourable Senator LeBreton*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on behalf of Senator LeBreton, I move the motion standing in her name.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BUDGET—STUDY ON STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—release of additional funds (study on Canadian identity)) presented in the Senate on December 11, 2001.—*(Honourable Senator LeBreton).*

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on behalf of Senator LeBreton, I move the motion standing in her name.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:
>
> That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(*Honourable Senator Day*).

Hon. Joseph A. Day: Honourable senators, I hope that this matter on which I will speak this evening will bring some dramatic relief compared to the other matters we have dealt with here in the last couple of days. I am hopeful, honourable senators, that we can agree to unanimously support this motion.

[*Translation*]

I am extremely pleased to rise in this chamber today to take part in the debate on the motion that the Senate of Canada recommend that the Government of Canada recognize the date of August 15 as the Fête nationale des Acadiens et Acadiennes.

[*English*]

I would point out, honourable senators, that my intervention today is to participate in the debate on the motion of Senator Losier-Cool, and does not deal with the motion for second reading of Bill S-37, moved by the Honourable Senator Comeau.

Honourable senators have heard several of our colleagues discuss various aspects of the contribution of Acadian people to Canada. Today I speak as a resident of southern New Brunswick to give my perspective on why this chamber should support this motion.

Honourable senators will have noticed that there are in fact two aspects to this motion. One is the recognition of August 15 as la Fête nationale des Acadiens et Acadiennes and the second is the recognition of the contribution of the Acadian people, economically, culturally and socially.

Honourable senators, the date for la Fête nationale des Acadiens et Acadiennes has been chosen for some time. This concept is not something new from the point of view of the Acadian people. An assembly of Acadians met in Memramcook in 1881 to discuss this very subject. It is interesting that there was at that meeting a strong debate between choosing la fête de Saint-Jean-Baptiste, which was la fête nationale des Canadiens français, principalement du Québec, celebrated on June 24, and la fête Notre-Dame de l'Assomption, celebrated on August 15.

[*Translation*]

The supporters of the Feast of the Assumption felt that the history and nationality of the Acadians differed from that of the French Canadians and thus a specifically Acadian holiday was required to reinforce that very specific national identity.

[*English*]

For over 120 years, therefore, the Acadians have recognized August 15, la fête Notre-Dame de l'Assomption, as their fête nationale.

• (2040)

The Province of New Brunswick recognizes August 15 as the Fête nationale des Acadiens and Acadiennes. I therefore ask why we, as Canadians, would not recognize this important day of the Acadian people who live and participate within our country.

Who are the Acadians? Let me answer this question by quoting Antonine Maillet:

[*Translation*]

> The Acadians are a people and a people is stronger than a country. A country is an institution, but a people is stronger than an institution, because it has a soul, it has dreams, it has life.

[*English*]

The Acadians are a people. The Honourable Senator Losier-Cool has told us of the significant economic contributions made by the entrepreneurial spirit of the Acadian communities.

[*Translation*]

Senator Léger has spoken of their cultural contribution.

[*English*]

Their social contribution has been highlighted by Senators Corbin, Bryden and Comeau.

[*Translation*]

Senator LaPierre has given us a very fine historical perspective of the Acadians and of Acadia.

[*English*]

Permit me now, honourable senators, to describe the social, economic and cultural contributions of the Acadians to my region of New Brunswick, the southern part of the province. When the first families arrived with Pierre de Mont and Samuel de Champlain in 1604, they found the Saint John and Kennebecasis Rivers already used as transportation routes and the valleys inhabited by the Mi'kmaq and Maliseet First Nation peoples. Indeed, the Saint John River was named by Champlain on that voyage in 1604 when he found himself on the river on June 24, Saint-Jean-Baptiste Day.

As the Saint John River winds its way slowly, gently and occasionally ferociously throughout the full length of New Brunswick, passing many communities of peoples of many different origins, it passes Grand-Sault, an Acadian community and the home of the Honourable Senator Corbin. Further south it runs through the city of Fredericton, formerly an Acadian village known as Ste-Anne, and the home of the Honourable Senator Kinsella.

Before emptying its waters into the Bay of Fundy at Saint John, the river is joined by another important waterway, the Kennebecasis River. These two rivers were important trading routes and natural locations for the habitation of many Acadian communities over the past 400 years. Indeed, I have chosen as my designation as senator the area Saint John — Kennebecasis in recognition of the important historical and present contribution of these two rivers to the lives of the people of southern New Brunswick.

[*Translation*]

A number of speakers have referred to the challenges, the disappointments, the injustices, the successes and the joys of the Acadian community.

[*English*]

We cannot rewrite history, but we can and must learn from it. There is much we can learn from the history of southern New Brunswick and the Acadian people of that region.

The Saint John region saw a major influx of Loyalist refugees after they were stripped of their land and belongings following the American Revolution in 1783. Other major influxes of settlers came in the 1800s as a result of the potato famine in Ireland and the clearing of the highlands to make room for more sheep in Scotland. It may be that the injustices done to those people and the hardships that they suffered in forging a new life in our region resulted in a harmony between the various peoples not seen in other places.

Together, those peoples from various backgrounds worked cooperatively, building a strong and vibrant community, but at the same time maintaining their own cultures. Our laws and institutions made this possible. Our country today is better because of that diversity.

Several recent developments have helped to strengthen the Acadian community, and they should not go unmentioned, especially since some honourable senators of this chamber have been instrumental in bringing about those changes and have demonstrated that we can make a difference.

In 1969, then Premier Louis J. Robichaud led his government in passing the Official Languages of New Brunswick Act, making French an official language.

Richard Hatfield, then premier of the province in 1981, and Jean-Maurice Simard, both former members of this chamber, introduced legislation to establish the equality of the two official languages.

In 1984, the Centre scolaire-communautiare Samuel-de-Champlain was opened in Saint John.

[*Translation*]

Roméo LeBlanc, Minister of Public Works at the time, came to Saint John to open the centre. In 1994, the first world Acadian congress and Acadian family reunion took place in Moncton, New Brunswick.

In 1998 came the inauguration of the parish church for the French Catholic parish of Saint-François de Sales in Saint John, the fruits of the efforts of many, including a good friend of mine, Laurier Doiron.

[*English*]

Each of these events helped to strengthen the fabric of the Acadian community in an area where it is a linguistic minority.

Today, in Saint John, you will find a vibrant Acadian community operating in harmony with the greater community. No better example can be found of that harmony than the organization begun by Mr. K.C. Irving who, of Scottish ancestry, grew up in the Acadian community of Bouctouche. He formed lifelong relationships with many Acadian families, which relationships have continued with his sons and grandchildren. Many successful citizens with whom I have had the pleasure of working bear witness to the Acadian contribution to the life of the Saint John region, names such as Gaston Poitras, Roméo Cyr, Rio St-Amant, Laurier Doiron, Reno Morin and Joel Lévesque are but a few. Martin Chiasson is manager of the Xerox customer support centre in Saint John which employs over 400 bilingual personnel. The convergence of information and communications technology, coupled with world leading technology, has made Saint John well known in this particular area. There are approximately 2,000 such positions in the Saint John region, many of whom are Acadian. It has been estimated that this particular segment of the economy in the Saint John region contributes $70 million annually.

There is a recent publication, honourable senators, if I have at all twigged your interest in the region of Saint John, to which I would like to draw your attention. It is entitled, *De la survivance à l'effervescence, portrait historique et sociologique de la communauté acadienne et francophone de Saint Jean Nouveau-Brunswick*, by Greg Allain and Maurice Basque.

In closing, honourable senators, permit me to quote from this particular publication to which I have just referred:

[*Translation*]

> The Saint John area is an integral part of the history and the colonization of New France, as well as an integral part of the Acadia of today.

[*English*]

Honourable senators, I would, of course, be remiss if I did not invite you and your families to come to l'Acadie and experience for yourself the effervescence of our communities. I urge honourable senators to support this motion.

[*Translation*]

By any definition of these words, it is certain that Acadia exists. The Acadians are a living people. They have had their own fête nationale for 120 years: August 15. Perhaps recognition of this fête nationale by the Government of Canada is more symbolic than otherwise, but this symbolism is extremely important to them, and the time has come for Canada to proclaim August 15 the Fête nationale des Acadiens et des Acadiennes.

Debate suspended.

• (2050)

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like to speak to Motion No. 81, but first, I want to inform you that an agreement has been reached among senators from the official opposition and the government regarding Bills C-45, C-7 and C-6.

[*English*]

Therefore, I move:

> That pursuant to rule 38, no later than 12:30 p.m. on Tuesday, December 18, the Speaker put all questions necessary to dispose of all stages of the following Bills now before the Senate:
>
> Bill C-6, An Act to amend the International Boundary Waters Treaty Act;
>
> Bill C-7, An Act in respect of criminal for young persons and to amend and repeal other Acts; and
>
> Bill C-45, An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

[Senator Day]

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Please call in the senators.

Hon. Bill Rompkey: Could we agree to a five-minute bell?

Hon. Terry Stratton: Five.

The Hon. the Speaker: It has been agreed between the whips that the bells will ring for five minutes prior to the vote. Call in the senators for a vote at 8:58 p.m.

• (2100)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Atkins
Austin
Bacon
Banks
Beaudoin
Bolduc
Bryden
Callbeck
Carstairs
Chalifoux
Christensen
Comeau
Cook
Cools
Corbin
Cordy
Day
De Bané
Fairbairn
Finnerty
Forrestall
Fraser
Graham
Hervieux-Payette
Hubley
Jaffer
Johnson
Joyal
Kelleher
Kenny
Kinsella
LaPierre
Léger
Losier-Cool
Lynch-Staunton
Maheu
Mahovlich
Milne
Moore
Phalen
Poulin
Poy
Rivest
Robichaud
Roche
Rompkey
Setlakwe
Sibbeston
Sparrow
Spivak
Stollery
Taylor
Tunney
Watt
Wiebe—55

NAYS
THE HONOURABLE SENATORS

Di Nino
Nolin
Prud'homme—3

ABSTENTIONS
THE HONOURABLE SENATORS

Stratton—1

[*Translation*]

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:

That the Senate of Canada recommends that the Government of Canada recognize the date of August 15th as *Fête nationale des Acadiens et Acadiennes*, given the Acadian people's economic, cultural and social contribution to Canada.—(*Honourable Senator Day*).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am pleased to rise to support the motion to recognize August 15 as the Fête nationale des Acadiens et Acadiennes.

A number of honourable senators alluded to the very impressive contributions of the Acadian people to Canada's socieconomic and cultural life.

They told us about the history of Acadians, including their settlement, deportation and revival. They also stressed the efforts of religious communities and Acadian leaders to protect the interests of the Acadian people and its culture over the centuries. It may be that everything or most everything has been said regarding these aspects.

However, I would like to take a few minutes to tell you about the feeling of pride that leads Acadians to live fully wherever they are. This feeling of pride goes back a long time. It has its roots in the history of our people, and it is evoked and maintained through monuments and institutions in the villages of Acadia.

Honourable senators, the pride of the Acadian people is present and visible in many villages along New Brunswick's Acadian coast, in other provinces and wherever there are Acadians. Those who come to visit us can testify to that.

As regards my corner of the country, I think of the contribution by the Acadian leader, Monsignor Marcel François Richard, who played a vital role in the Acadian revival. More importantly, perhaps, he touched the lives of the people of Saint-Louis-de-Kent, of Rogersville and of all the communities he worked in.

I would mention that Monsignor Richard was the father of the Acadian flag. The first Acadian flag, adopted in 1884 at the Miscouche convention on Prince Edward Island was hand-stitched by the seamstresses of Saint-Louis-de-Kent, the village where I live. Still today, the memory of Monsignor Richard is venerated with pride. The people of these villages happily and affectionately tend to the monuments erected by Monsignor Richard.

They are the rallying points in the communities. They help develop the people's identity and promote a feeling of belonging to a people and a culture. As well, there is the historic church of Barachois, which has become a cultural centre, and the Lefebvre monument in Memramcook, acknowledged to be the symbol of Acadian survival by the authorities of the Historic Sites and Monuments Board of Canada.

And then, at Bouctouche, there is the Pays de la Sagouine. It is a tourist and cultural site teeming with an endless stream of the most colourful and touching characters. The Pays de la Sagouine depicts an aspect of village life in my part of the country. It is a lively representation of a life that is simple but vibrant, cunning yet sensitive. The people are proud to see themselves depicted in these many appealing characters, whose principal interpreter, Senator Léger, has just joined us in the Senate.

Then there is our Acadian village of Caraquet, where homes have been rebuilt, and the bustle of our ancestors' daily lives is recreated. How many more monuments of Acadian pride are there to be found in the many villages of New Brunswick, Prince Edward Island and Nova Scotia? These cultural centres and museums are witness to the vibrancy of the communities and provide links to the greater Acadian community. These institutions provide a place for Acadians to gather to express their culture and promote their participation in community life and the development of their economy.

In recent decades, the growth of small- and medium-sized business in Acadian communities has been another source of pride. Along with big companies, such as the Assumption Mutual Life Insurance Company and the network of Acadian caisses populaires, a multitude of small- and medium-sized businesses have sprung up in industries such as fishing, agriculture, forests and raw material processing. In addition, the goods and services sector is growing.

• (2110)

In observing the progress of past decades and visiting the places that bear witness to the lives of our ancestors, we can gain a better understanding of Acadian pride. The obvious conclusion is this: people of vision, of courage and of determination have made the decision not to let themselves be defeated by the tragedy of their past. These leaders have focused instead on the future with hopes of better days ahead for their people; they have worked doggedly to create institutions to allow the Acadian people to develop, to regroup, to progress.

Yes, the Acadians did live through a period of great darkness, one that went on for a very long time, but women and men of faith and of heart, of action and of courage, have encouraged and helped the Acadians to establish institutions to ensure a better future for themselves.

The Acadians did not have to invent monsters or demons that had to be defeated before they could move on to a new start. Their energies were devoted to survival, of course, but also to building and creating, with a desire to live life to the fullest, to progress, to take an active part in community life, to find their place in the sun.

This pride in our past and in the courage of our ancestors is what has enabled us to legitimately demand official recognition of our survival and our right to live and develop our full potential in French in North America. The deportation was meant to ensure that we disappeared, yet we were to be reborn in the 20th century with vigour, vitality and determination. We have developed symbols and institutions to safeguard our language, our culture and our identity.

There has been no greater manifestation of Acadian pride than the Acadian World Congress, in 1994, and the VIIIth Summit of the Francophonie, in 1999. Houses proudly sported the colours of Acadia and we were enthusiastic in loudly proclaiming our pride as Acadians.

That pride is a very profound one; it is rooted in the courage of our ancestors and in the survival of our language and customs. The Acadians have a homeland, a land without borders. We have a flag, with its tricolour and star; we have a national anthem, the *Ave Maris Stella*; we share the French language, but the Acadians' French has a different flavour to it. Honourable senators, if you hear an Acadian speaking in a group, you will recognize him right away as the one without an accent.

We have our own customs, our froliques and tintamarres. We also have our own special dishes, poutines râpées and poutines à trou, salt cod, fricot, cod livers and stuffed cod stomachs we call "gos" — not to mention mioche. If anyone wants the ingredients for that, I have the recipe.

We are proud of these differences and proud of surviving in a homeland without borders. Our pride finds expression as well in our openness to the world. When we arrived in America, we established links, cordial relations, with native peoples. Gradually, we built ties of mutual trust and respect that enabled us to help each other and to survive the pitfalls of the early days of the colony.

We still appreciate the support of the native peoples. A number of Acadian families have blood ties with native peoples, and I am proud to trace my blood lines with the Mi'kmaq back eight generations.

No matter where we find ourselves in the world, be it Louisiana, Belle Île-en-mer, baie Ste-Marie, Petite Aldouane or Shippagan, we celebrate our national day in the company of our fellow citizens with our renowned warmth and with pride.

Honourable senators, I enthusiastically support the Canadian government's recognition of August 15 as the Fête nationale des Acadiens et Acadiennes.

Hon. Marcel Prud'homme: Honourable senators, we could adjourn the debate, but I care too much for the Acadian people to object to our agreeing this evening to recognize August 15 as the Fête nationale des Acadiens et Acadiennes.

I hope that, when Senator Losier-Cool has spoken and the debate on the motion is concluded, we may all celebrate this grand event. August 15 is a memorable date for me for a number of reasons. First, every year I take part in the grand procession of the Assumption, a great day for Montreal's Greek community, which has kindly made me an honorary Greek citizen.

For the past 30 years, I have taken part in this great procession, where I again recall the honour given me. I also think of this crushed and scarred people, which held fast against wind and sea. I think of the Acadians.

I also have a very emotional reason for remembering this day. It is the day my mother died, and when I take part in this procession of the Greek community of Montreal, I think of my mother, who died in 1959. And I think of the Acadians.

Thus, I am delighted to support this motion. I did not intend to speak to this motion, because I told Senator Comeau that I hoped it would be adopted before we adjourned in haste. In haste, I say, because some are more drawn by pies, tourtières, turkey and other celebrations than by the responsibility of remaining in Ottawa and doing what the Canadian people wish us to do on their behalf.

I do not want us to rewrite history either. I hope this will be well translated into English, because I see that half the people here do not understand French and are not hooked up to the audio system for the interpretation of my speech. That means that my speech must be pretty much going over their heads.

• (2120)

Whether they get hooked up or not is their problem. I am used to it. I chaired the national Liberal caucus and the Quebec caucus. I would make an effort, I would speak English to the Quebec caucus to accommodate two or three colleagues who did not speak French. I did it out of respect, as I will do it tomorrow when I pay tribute to one of our colleagues.

We must not rewrite history. It is very dangerous to rewrite history. I think that what was said of Acadia is true. Senator Léger was the first one to aptly describe it, as all the other senators who spoke on this issue did afterwards. However, I see that our views differ when we talk about history. A pope said that St. John the Baptist would be the patron saint of French Canadians wherever they live — particularly in Quebec, of course. He did not say "particularly in Quebec." This is history. The patron saint of Quebecers is St. Anne, whose birthday is celebrated on July 26, as proclaimed by the same pope. I believe in these proclamations and in history. So, St. John the Baptist is the patron saint of all French Canadians and not, as they would have us believe — and I was surprised to hear this — the patron saint of French Canadians in Quebec. This is very serious.

I want to honour August 15 as the Fête nationale des Acadiens et Acadiennes because of everything they experienced throughout their history. If you think that St. John the Baptist is exclusively the patron of Quebecers, you are falling into the trap set by those who want to make Quebec a country different from what we believe in and what has brought us to the Senate of Canada.

All French Canadians and Acadians celebrated June 24 in Montreal. I remember what a big celebration it was in my family; as we all headed off to Sherbrooke St. to watch the Saint-Jean-Baptiste parade. People came from all over — not just Quebecers — to celebrate this festival of the great French Canadian people, which included the Franco-Ontarians, the Franco-Manitobans and so on. I have heard some on the other side here say: "I am not a Quebecer; I am Acadian." It is strange; I would like my friend Senator Comeau to know that I am fully prepared to say: "Yes, you are of our blood."

There are some who want to change the national anthem, the French lyrics of which were set to music by a French Canadian. The national anthem was given to this country as a gift. It is fine as is. Today, there are some who are bothered by the English translation, but that is your problem, not mine.

At the request of Mr. Pearson, I sat on the committee examining the national anthem, and he begged me to leave the authentic French version unchanged. If we do not stand up spontaneously to get things back on track, we begin to wonder if we all agree. Those senators who wanted to take out certain words in the French version got it all wrong.

[*English*]

I will say it in English so all honourable senators will understand exactly. I even know some senators who have tried to change the authentic French.

[*Translation*]

They were bothered by the words "il sait porter la croix."

[*English*]

They did not understand that "il sait porter la croix" does not mean "the cross of Jesus Christ."

[*Translation*]

This means to put up with the hardships of life. Some even thought that we should amend the French version of that work of art, of that poem, as Senator Lapointe said.

It will give me great pleasure to hear Senator Losier-Cool ask us to support this motion. In so doing, we will extend a hand to our Acadian brothers and sisters who survived, often without, and this is unfortunate, the support of French Canadians from Quebec. You all know that I am a Canadien français. It is a concept that does not exist in English. I am a nationalist, a federalist, a Roman Catholic. I am not afraid of these words.

I had to set some historical facts straight. I wanted to join honourable senators and say that I am pleased that we are proclaiming August 15 as the Fête nationale des Acadiens et Acadiennes. Senators represent not only regions, religions, colours and first nations, but also one of the best countries — as Jean Chrétien would say — provided no one thinks he is more important than the next person.

I say this in French and I hope that some unilingual English speaking colleagues are hooked up to the interpretation system and understand that I will not accept to sit in the Senate if we waste our time improving bills at the last minute. This is not the role of the Senate. The role of the Senate is to correct past mistakes, to help heal old wounds. This is why I will be glad to listen to Senator Losier-Cool.

• (2130)

The Hon. the Speaker: Honourable senators, I wish to inform the Senate that if the Honourable Senator Losier-Cool speaks now, her speech will have the effect of closing debate on this motion.

Hon. Rose-Marie Losier-Cool: Honourable senators, I want to extend my sincere thanks to all the senators who supported the motion that I proposed on October 25 of this year, recommending that the Government of Canada recognize the date of August 15 as the Fête nationale des Acadiens et Acadiennes.

Your speeches touched me by their energy, their eloquence and their deep attachment to Acadia. With this motion, I wanted to underline the contribution of the Acadian people to Canada's vitality, and you helped me do that.

I thank Senator Comeau for his participation in this debate. He gave us a good description of how August 15 is celebrated in his province of Nova Scotia. The artistic and cultural community in Acadia and in Canada is pleased and lucky to have Viola Léger as its ambassador in the Senate. In her speech, Senateur Léger really showed the place that Acadian artists have on the national and international stage. The Acadian people is deeply rooted in its religious and Christian values.

I thank Senator Kinsella for showing in a very informative way the historical link between August 15 and the religious feast of the patron saint of the Acadians, Our Lady of the Assumption. Still today in many areas of Acadia on August 15 we start the day with religious celebrations. We have built our communities side by side with English communities through perseverance, tolerance and vision.

Senator Bryden highlighted this vision, especially when he talked about the contribution made by a remarkable Acadian whom I still miss a lot, Fernand Landry.

Mr. Landry had a limitless vision of Acadia. His devotion to the Acadian people was quite obvious during the Sommet de la Francophonie in Moncton, in 1999. Sadly this great champion and promoter of Acadia left us one year after doing such a tremendous job for New Brunswick. Fernand Landry exemplifies what the Acadian people is: dynamic, visionary, tenacious and kind.

I will quote from Senator LaPierre who reminded us how lucky Canada is to have had two French-speaking peoples who can communicate among themselves and with others. Two peoples who settled here thanks to Champlain, during the first decade of the 17th century.

Thanks to our accomplishments, we can now face the future with confidence. I am very proud of the Acadian people and of its numerous accomplishments as well as our contribution to the social, economic, and cultural fabric of Canadian society. As Senator Corbin so eloquently put it, a modern, progressive and energetic Acadia is a force to be reckoned with in today's Canada. He added that it is appropriate for the Canadian government to declare August 15 the Fête nationale des Acadiens et Acadiennes, a people whose vitality, courage and loyalty are greatly admired by all Canadians.

[*English*]

What a great occasion for Senator Day to give his maiden speech. I am sure all the Acadians in his area will be happy to read it.

[*Translation*]

If you have not yet planned your Christmas menu, I urge you to go over Senator Robichaud's speech, it will make your mouth water. He talked about salt cod, broiled meat and poutine à trou.

I urge you all to support this motion and then to come and celebrate August 15 with the Acadians. You will be thrilled by the many riches of our marvellous Acadia. As the singer and poet Donat Lacroix says "Come and see Acadia, my enchanting country!"

Honourable senators, pursuant to rule 30, with leave of the Senate, I should like to modify my motion to the effect that a message be sent to the House of Commons to inform it that the Senate has adopted the motion.

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

[Senator Losier–Cool]

Hon. members: Agreed.

Motion, as amended, agreed to.

[*English*]

INTELLECTUAL PROPERTY RIGHTS OVER PATENTED MEDICINES

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to three diseases which are sweeping the developing world and which draw many to ask whether intellectual property rights over patented medicines have not taken precedence over the protection of human life.—(*Honourable Senator LaPierre*).

Hon. Laurier L. LaPierre: Honourable senators, I rise to support and am pleased to speak on this inquiry initiated by Senator Finestone. I should like to do it before Senator Finestone leaves us tomorrow.

I make her comments mine when she says that we need to realize that the preoccupation of the West with the development of medicine tailored to North American afflictions such as impotence has left us vulnerable to tropical diseases that we in our complacency seem to have ignored.

My purpose today is to convince us all that the rise in drug prices is endangering the lives of millions of people living on the African continent, and the WTO TRIPS, or override Senator Finestone spoke of in her speech in this house, are simply not being used.

Honourable senators, listen carefully to the following, which can be found in the Impact of HIV/AIDS on Adult Mortality in South Africa, prepared by the Medical Research Council of South Africa:

> While there is inevitably some degree of uncertainty because of the assumptions underlying both the model and the interpretation of the empirical data, we estimate that about 40 per cent of the adult deaths aged 15-49 that occurred in the year 2000, were due to HIV/AIDS and that about 20 per cent of all adult deaths in that year were due to AIDS.

• (2140)

When this is combined with the excessive death toll in childhood, it is estimated that AIDS accounted for about 25 per cent of all deaths in the year 2000 and that it has become the single, most frequent cause of death. The projections show that, without treatment to prevent AIDS, the number of AIDS deaths can be expected to grow in the next 10 years to more than double the number of deaths due to all other causes. It will result in 5 to 7 million cumulative AIDS deaths in South Africa by the year 2010.

Furthermore, 4.5 million people will die this year of AIDS and related diseases in Africa. We must also consider the implications of the spread of tuberculosis. AIDS and tuberculosis have been referred to as the "deadly pair." In South Africa, it is estimated that 32.8 per cent of the people who have AIDS also have tuberculosis. The problems defined above are mainly due to the stigmatization of HIV and TB patients, as well as confusing messages. For example, people have the misconception that all TB patients are HIV-positive or are suffering from AIDS. As a result, patients do not complete their treatment. Therefore, it is useful for policy-makers and program managers to implement health promotion strategies by disseminating clear and easy to understand information. Health education materials, such as pamphlets and posters, should be made available in communities throughout South Africa.

As well, there is malaria, which, according to South African medical authorities, has been on the increase since 1995, with more and more cases being reported each year.

Honourable senators, South Africa is dying. Africa is dying. It is not because the authorities are not conscious of it, nor is it because South Africa does not have a plan, because it has. I do not know what the World Trade Organization can do and, frankly, I do not care. However, I do know what my country can do: make sensible and effective provisions to assist Africa.

This is the year of Africa, we are told, and yet the budget of December 2001 states that, if my memory serves me correctly, we shall find $500 million for the Africa Fund. I have no doubt that we shall find this money at the end of the day, especially since the Prime Minister has adopted the African team for the upcoming G8 summit in the beautiful Rocky Mountains of Canada. I would like him to cajole and threaten the powerful leaders of rich countries to get their act together to do something constructive to assist this "grand fléau." Canada must lead, and our Prime Minister is committed to that. Let it be done. Prime Minister Chrétien must take that $500 million with him in his suitcase. Canadians will thank him, as they should, for the right and moral use of our money.

However, money is not enough, and aid is not enough. AIDS will not be eradicated or eliminated across Africa until the African woman is free and the machismo nonsense of too many ignorant males disappears. I had hoped to develop this issue further, but unfortunately, time does not permit. Still, it is a tremendous scourge. Women who are poor must consent or allow themselves to be raped so that they may feed their children. In that process, AIDS passes from the male to the mother and then to the child. It is a scandalous situation, and the time has come to free the women of Africa and the poverty that surrounds them.

Africa cannot continue in this way. We talk about terrorism; and we are hysterical and paranoid about it. The United States may well invade little countries of Africa that it believes — for it has no proof — favour terrorism. That is a blind and stupid view. Terrorism will grow in Africa if nothing is done by the mighty rich of the world to create some equality of living between the Africans and us. We cannot be blind, and we cannot take refuge in our power and strength.

Honourable senators, the spin that explains our national security and interest, and the need to protect them, is not working. We must take refuge in the truth, and the truth is that Africa is dying, and Africans will not do us the favour of dying willingly.

We can spend an immense portion of our national wealth and income to protect ourselves from the evil terrorists who are said to abound. We may do that. We may find them, kill them, starve their people in the process and use our power to send their land into the Stone Age. We can do that. However, Canadians cannot escape the simple conclusion that, if we continue to follow the Americans blindly and associate our national interests with theirs, and if we do not begin now to repair the ravages caused by our inertia and lack of concern, we will be the perpetrators of our own demise, as terrorism grows and grows.

The time has come to wake up and have a love-in with Africa. It will be different from the love-in we had in New York, even though our national interests, security and prosperity are, of course, associated more closely with New York than with Cape Town. We must wake up, honourable senators. Our country, our citizens, must wake up. Consequently, one of these days it may be possible that AIDS will be enrayé dans l'Afrique.

On motion of Senator LaPierre, for Senator Morin, debate adjourned.

UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—MOTION IN AMENDMENT—DEBATE ADJOURNED

On the Order:

> Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:
>
> That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years,
>
> And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(*Honourable Senator Stratton*).

Hon. Terry Stratton: Honourable senators, I rise today to speak to the motion of the Honourable Senator Roche in respect of Canada's position on the development of a national missile defence system by the United States.

The creation of a new defence system of this nature requires the United States to withdraw from the anti-ballistic missile treaty, which it had signed with the Soviet Union in 1972, because the treaty specifically prohibits such development. The United States gave notice last week under article 15 of the 1972 ABM treaty that it intends to withdraw from the treaty in six months' time.

There are strong suggestions that the United States plans to continue with the development and deployment of a national missile defence system. President Bush has indicated that the events of September 11 provided additional proof that such additional defensive measures within the United States are required.

A parliamentary round table on the subject of national missile defence held in Ottawa last August reviewed the background, the issues associated with the possible abrogation of the treaty, with the possible reaction in other parts of the world, the alternatives, the role of Parliament in the debate, and what an appropriate Canadian response might be.

In my view, the continuance or abrogation of the treaty is a matter that clearly lies between the signatories. Canada is not a signatory and so our role is, at best, minimal.

Canada has enjoyed a period of relative peace and international stability since the signing of the treaty, and concerns about intercontinental ballistic missile warfare have diminished significantly, partly because of significant changes in international politics during the intervening years. We would certainly be loath to see any action taken that might tend to tip the balance toward uncertainty and a likelihood that such missiles would actually be used.

That being said, the American fascination and preoccupation with advanced technology makes it hard to believe that they will not actively pursue a NMD system to a final conclusion, regardless of the views of others.

• (2150)

With continuing improvements in technology, it seems only a matter of time before the United States solves the technical problems and creates an operational NMD. If we accept the notion that this process has an element of inevitably to it, it is arguable that it would be in our best interests to ensure that we are not left entirely on the sidelines. Exactly what steps we ought to take and the position that we ought to adopt are matters that should properly be the subject of a study of a committee of Parliament.

Honourable senators, a motion to refer the matter to committee is fully appropriate. However, I share the concern previously expressed that the terms of the motion contain a predisposition or, effectively, a judgment as to what the conclusion of the committee's review ought to be. Senator Finestone's amendment was intended to provide some clarification. I would be interested to hear from others as to whether they consider the terms of the motion, as amended, to fulfil the expectation that the subject matter given over to the committee is without a major bias toward a particular finding.

Hon. Douglas Roche: Honourable senators, I will be brief. The Table has advised me that inasmuch as I have not spoken to the amendment to this motion, I am entitled to make a speech.

It is my purpose in rising to seek the consent of the Senate to withdraw the motion. Inasmuch as the consent of all senators is required for this action, I believe that I owe the Senate an explanation, which I will now give. I will not go into the substantive issues underlying this matter.

This motion was introduced in the Senate on February 8, 2001, and it occasioned debate. Senator Stratton was quite right when he said there was a point of view expressed in the terms of the motion — it was my point of view.

As the debate unfolded, it was brought to my attention that the subject matter might well go forward to committee. I gave my assent. Senator Finestone introduced an amendment to that effect.

There was then a discussion as to which committee it should be referred, the Standing Senate Committee on Foreign Affairs or the Standing Senate Committee on National Security and Defence. Then there was a discussion as to whether or not my motion, as written, would go to the committee or the subject matter underlying my motion would go to the committee. That is the point highlighted by Senator Stratton.

It is clear to me that there is a debate going on as to what actually would go forward to the committee. I do not want such a debate. I have a point of view. Other senators have a point of view. We all respect that right.

Fundamentally, I am seeking that the subject matter, per se, of the anti-ballistic missile treaty and the national missile defence system go before a committee for their own wisdom in studying it in the manner in which they wish. I will come back to that point in a moment.

If the issue was important before, which it was, the issue is even more important now. It has achieved a new magnitude of importance with the withdrawal by the United States from the anti-ballistic missile treaty.

I said that I would not go into the substantive issues tonight, and I will not. I will only say it does have profound consequences on the policies of the Government of Canada, particularly with our policies in keeping space free of weapons.

I only wish to make the point here tonight that this issue is extremely important and it is my view that it should go forward.

In order to make that happen, I must first withdraw the motion as it is currently written so that there will not be any debate on what the motion means. The motion was amended by Senator Finestone. I have secured from Senator Finestone her signed permission to withdraw the motion and her amendment to the motion. I could certainly make available to His Honour Senator Finestone's permission to proceed.

If I receive the consent of the Senate to withdraw my motion, Motion No. 3 as it stands on the Order Paper right now, I would appreciate that. However, I signal now that once I achieve the withdrawal, it will be my intention to give notice that, at an appropriate time, I will move that the subject matter of the anti-ballistic missile treaty and the proposed national missile defence system be referred to the Standing Senate Committee on National Security and Defence for study and report back to the Senate no later than May 31, 2002.

I will explain the date May 31 as follows: Six months' notice is required to achieve withdrawal from the ABM treaty. That notice was given by the Bush administration about December 13, meaning that by the middle of June it will come into effect. I thought it would be appropriate if the standing Senate committee would examine this issue in its wisdom in order to give a report to the Senate in time for members of the Senate to apprise themselves of the report of the committee and then express a viewpoint on what they think should be done.

I hope the explanation is clear. I hope it is clear that I am seeking to withdraw the present motion in order to clear the floor from any interpretation of my particular position on the subject matter. Once I achieve the withdrawal, I will then, at the appropriate time, signal to His Honour that it will be my intention to give notice that I will move a new motion in the terms of which I have just read.

Hon. Bill Rompkey: I move the adjournment of the date.

Hon. Nicholas W. Taylor: I have a question, honourable senators.

The Hon. the Speaker: Will Senator Roche accept a question?

Senator Roche: Of course.

Senator Taylor: What is bothering me is that Senator Roche has been stampeded by Senator Stratton's worry about an expressed opinion. It is very difficult to bring forward any motion that does not express an opinion, and certainly one in which the able members opposite cannot pick holes.

I want to see this thing go ahead. I am willing to go along with everything the honourable senator has said, stampede or not. What bothers me is when the honourable senator says "at a suitable time." I would love it if the honourable senator would say that that is tomorrow.

Senator Roche: Honourable senators, I am prepared to move ahead on the motion tonight. If honourable senators are so disposed, I would be happy to do that. If there is no agreement, then I will do it at an appropriate time. I will signal to His Honour that I will give the notice.

The honourable senator opposite says that a motion cannot be shorn of opinion. I have done my best to put language forward that is devoid of an opinion. Here is the language: I will move that the subject matter of the anti-ballistic missile treaty and the proposed national missile defence system be referred to the Standing Senate Committee on National Security and Defence for study and report back to the Senate no later than May 31, 2002.

• (2200)

Hon. Tommy Banks: I understand what the honourable senator is getting at. Would the honourable senator consider consulting with the Chair of the Standing Senate Committee on National Security and Defence about the likelihood of being able to meet the date deadline that is proposed in the motion?

Given the present schedule of that committee, the work that it has undertaken to do, and the nature of the question asked on the other point, is it realistic to ask that or any committee to report back to the Senate on such a question in May, given that the Senate will resume sitting in February? If the honourable senator thinks that is enough time, then I would only ask that he consider the first point. However, I do have some hesitation about the date.

Senator Roche: On the first point, I did consult with the Chairman of the Standing Senate Committee on National Security and Defence on a previous occasion. He indicated that the committee would be prepared to follow the direction of the Senate, whenever such direction is received by the committee.

With respect to the honourable senator's other question on the matter of the date and whether the time frame is too tight, if it is, then we could ask for an amendment at an appropriate stage. However, the date that is there is not my choice. It is the date that falls within the six months that is provided in the ABM treaty for withdrawal. In other words, the United States will withdraw from the ABM treaty on or about June 13, 2002. If the Senate is to study this matter to determine in what manner it can give advice to the Government of Canada, then we have no choice but to conduct our work within the confines of the dates as prescribed in the treaty.

The Hon. the Speaker: Honourable senators, under rule 30, Senator Roche has asked for leave to withdraw his motion. I take it from Senator Rompkey's motion to adjourn the debate that there is at least one dissenting voice. That is why I did not put the question regarding leave. Accordingly, I am now prepared to entertain Senator Rompkey's motion.

It is moved by the Honourable Senator Rompkey, seconded by the Honourable Senator Cook, that further debate on this motion be adjourned to the next sitting of the Senate.

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

Is there a dissenting voice?

Senator Taylor: Yes, there is. On division.

On motion of Senator Rompkey, debate adjourned, on division.

NOMINATION OF HONORARY CITIZENS

INQUIRY—ORDER STANDS

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Prud'homme, P.C., calling the attention of the Senate to the way in which, in the future, honorary Canadian citizens should be named and national days of remembrance proclaimed for individuals or events.—(*Honourable Senator Banks*).

Hon. Marcel Prud'homme: Honourable senators, I should like to ask a question of information.

The Hon. the Speaker: Honourable senators, it is not uncommon for such questions to be asked. However, this being a debatable item, leave is required.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Prud'homme: Would Senator Banks kindly give us an indication of when and if he will participate in debating this matter, as it has now appeared on the Notice Paper for 10 days?

Hon. Tommy Banks: Honourable senators, I intend to speak within the first few days upon the resumption of our business in February.

Order stands.

THE SENATE

MOTION TO ESTABLISH SPECIAL COMMITTEE ON SUPPORT FOR LA RELÈVE IN THE ARTS—CORRECTION TO TRANSLATION

On Motion No. 106:

> That a special committee of the Senate be appointed to examine the important issue of providing support for the next generation (La Relève) in the Arts;
>
> That the special committee consist of five Senators, three of whom shall constitute a quorum;
>
> That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence as may be ordered by the committee;
>
> That the committee have power to authorize television and radio broadcasting or dissemination through the electronic media, as it deems appropriate, of any or all of its proceedings and the information it possesses;
>
> That the committee have power to sit during adjournments of the Senate pursuant to rule 95(2) of the *Rules of the Senate*; and
>
> That the committee present its final report no later than two years after it is appointed.

The Hon. the Speaker: Honourable senators, I have been informed that there is an issue related to the text of this motion on the Notice Paper, specifically the translation of the French words "La Relève" into English. I understand that there is an agreement that the English translation is "the next generation."

Is it agreed, honourable senators, that the English version of the motion include the words "the next generation" in place of "La Relève"?

Hon. Senators: Agreed.

The Senate adjourned until Tuesday, December 18, 2001, at 9 a.m.

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Monday, December 17, 2001