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Tuesday, December 18, 2001

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**THE HONOURABLE DAN HAYS
SPEAKER**

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THE SENATE

Tuesday, December 18, 2001

The Senate met at 9:00 a.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

THE SENATE

DISASSOCIATION FROM COMMENTS BY SENATOR
ON PRIME MINISTERS OF ISRAEL

Hon. Sharon Carstairs (Leader of the Government):

Honourable senators, on Friday, December 14, 2001, Senator Prud'homme raised a question with respect to the establishment of a Palestinian state. He also asked if the Canadian government would use its good offices to bring an end to the violence in the Middle East. I agreed with Senator Prud'homme that the Government of Canada believes in a Palestinian state and that Canada would use its good offices to do what it can to achieve peace.

However, it has just come to my attention that Senator Prud'homme also made a statement in his preamble with which I cannot agree. Senator Prud'homme, in his preamble, said the following:

Now that we see the butcher of Lebanon, who is now Prime Minister, imitating two other ex-prime minister butchers, Menachem Begin and Yitzhak Shamir —

Honourable senators, I cannot agree with this characterization of these three men, and I totally disassociate myself and the Government of Canada from his remarks.

Senator Prud'homme: He is a butcher anyway.

Senator Finestone: No, he is not. It was the Christian Lebanese.

NIGHT OF ONE THOUSAND DINNERS

FUNDRAISER TO ELIMINATE LAND MINES

Hon. Sheila Finestone: Honourable senators, as a last act here in the Senate, and as a special gift today, which I had not expected, I should like to report a land mine estimate that was given to the Prime Minister last night at the reception for the ambassadors. As I leave, I report that the initiative for the Night of One Thousand Dinners has had the following estimated results. On that one night, 25,000 people attended from 31 countries across the world. The money raised to date totals \$2 million. We should be very proud of the role that we in the Senate played in hosting an evening that added to those results. For a first-time effort, Canadians can be extremely proud of this undertaking.

I can tell honourable senators, not immodestly, that when I went to dinner with Colin Powell, his remarks were a reflection of the real support the United States has and the respect with which they feel Canada has led the world in removing those incredibly horrible land mines, which do not protect the soldiers and do not protect the people and which destroy the countryside and destroy people's lives.

That initiative was started, by the way, in 1984 by Mr. Chrétien and André Ouellet, who was the critic for Foreign Affairs, was carried on by Lloyd Axworthy and is now effectively and efficiently carried on by John Manley. I was honoured and privileged to be an adviser in this field.

I forgot to mention the President of the Land Mines Foundation who founded this humanitarian initiative, Mr. Frank O'Dea. He deserves all the credit in this regard.

THE SENATE

TRIBUTE TO STAFF

Hon. Colin Kenny: Honourable senators, I wish to take a moment, as this may be our last day here, to comment on the extraordinary work that the staff has done to keep this place operating. The whole gang was here organizing things early this morning. If you look at your desk, you will see that you have a new Order Paper and Journals. Our pages were here last night working late, and they were opening the place this morning as well.

Hon. Senators: Hear, hear!

Senator Kenny: I think they understand, after hearing that ovation, how we all feel about them. I just wanted to mention that we are lucky to have such good people here who so regularly work on our behalf.

[Translation]

OVERVIEW OF LEGISLATION

Hon. Pierre Claude Nolin: Honourable senators, what a coincidence to rise after Senator Kenny, who has taken the opportunity to thank the Senate staff. I, too, wish to extend my congratulations to them.

Now, we are shortly going to adjourn for the holidays. Before we start patting ourselves on the back, telling ourselves how good we are, how well we have done our jobs, I would like us to reflect together on our work as senators.

I would like to point out for those who do not have the habit of reading the *Journals of the Senate*, that this document gives an overview of legislation once a week, under the heading "Progress of Legislation."

Honourable senators, I will briefly summarize for you our work since the end of January, as far as government bills, both Senate and House of Commons bills, are concerned. In all, 37 bills were examined. Of those 37, 12 originated in the Senate and the rest in the House of Commons. With regard to six of the Senate bills, we adopted 37 amendments, whereas two amendments were made to two of the House of Commons bills.

Before the honourable senators start saying that they are doing a good job for Canadians, I felt I ought to help them in their reflection by suggesting that they look at the overview of legislation from time to time. Then they will see that we could be doing even more than we claim to be capable of doing.

• (0910)

COMMENTS REGARDING PRIME MINISTERS OF ISRAEL

Hon. Marcel Prud'homme: Honourable senators, in response to Senator Carstairs' rather surprising remarks, I simply related history.

I do not know what you call a man who kills women and children and who, in a massacre in the village of Derr Yassin, pursues all of the villagers.

I do not know what you call a man who, between 1945 and 1947, blew up the King David Hotel, which was full of young British soldiers. Yet these two men became Prime Ministers. One was called Yitzhak Shamir and the other, Menachem Begin. They were welcomed, acclaimed and received with open arms by the authorities.

The term "butcher of Lebanon" is not mine, it is the interpretation ascribed to him. He was called the "butcher" during his invasion of Lebanon, where there were 17,000 victims.

It is unfortunate that you will not be watching Radio-Canada this Friday to see just what our "good Government of Canada" does with Lebanese torturers, who are responsible for human rights in Lebanon and who tortured their own Lebanese colleagues, fled to Israel and have just been brought over by the government. What are they doing in Montreal, Toronto, Hamilton and Ottawa?

[English]

I encourage all honourable senators to watch on Friday night. Unfortunately, it is next Friday.

[Translation]

I wanted to end the season on a note of praise and I will do so. I regret this aside by Senator Carstairs.

[English]

I regret that she sidetracked me. I came here to pay tribute to one of our colleagues, a top editorialist in her own time, for her courage. Of course it will not be seen in the large newspapers yet, but it can be seen in *Le Devoir*. People do not usually like

Le Devoir, but if honourable senators read *Le Devoir* of yesterday, they will see all the details there.

I want to tip my hat to Senator Fraser, the former editor-in-chief, along with two of her colleagues, also former editors-in-chief, for having denounced "la mainmise de ce jeune arrogant" David Asper, who is now dominating most of the press in Canada. If any senators are interested, they can read them all, from the Halifax *Daily News*, the St. John's *Evening Telegram*, the Charlottetown *Guardian*, the Montreal *Gazette*, the Ottawa *Citizen*, the Windsor *Star*, page after page.

The Hon. the Speaker: I am sorry to advise Honourable Senator Prud'homme that his time for Senators' Statements has expired.

Senator Prud'homme: I want to congratulate Senator Fraser for having stood up, written her name and denounced this "mainmise."

THE PRESS

EDITORIALS BY NEWSPAPER OWNERS

Hon. Laurier L. LaPierre: Honourable senators, I will finish the thought of Senator Prud'homme on this matter. It is a sad day for journalism and the freedom of information in Canada when an owner can dictate editorials in the press. Not only does he dictate them, but at the same time insists that editorial writers who work for the *Ottawa Citizen* must follow the national line dictated from Winnipeg and the Asper household. I find this despicable and it is the price that we must pay for the concentration of ownership of the means of information. The Senate must attach importance to this issue and invite Keith Davey to look at the whole problem of the concentration of ownership or this abuse of power will continue. We must wake up to this issue and do the work that Senator Nolin wishes us to do in the new year.

Senator Cools: Bring back Conrad Black.

[Translation]

QUESTION PERIOD

THE SENATE

OVERVIEW OF LEGISLATION

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. I have given an overview of what we have accomplished in the past year. Does the government intend to prevent the Senate from doing its job in the coming year?

An examination of the statistics indicates that two amendments were made to two of the 29 bills received from the House of Commons. Thus, 27 bills were passed without our being able to amend them, either in committee or in the House. Does the government intend to continue this policy?

[Senator Nolin]

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is very clear that the Senate does excellent work in the review of its bills. It makes considered and well-thought observations to many of them. The Senate acts as a monitor for good legislation. When we receive legislation, as indicated by 12 bills that received their first go-round in this chamber, then, of course, the Senate does what the House of Commons does, which is take a much more activist approach.

[Translation]

Senator Nolin: Honourable senators, 11 bills have been considered by the Senate and, in four of them, we moved and adopted 35 amendments.

Bill S-11, which reviewed the Canada Business Corporations Act, was considered by the Standing Senate Committee on Banking, Trade and Commerce, which moved and adopted 17 amendments, one of these at third reading.

After that, the National Finance Committee examined Bill S-23, to amend the Customs Act and to make related amendments to other Acts, and adopted 11 amendments, two of these at third reading in the Senate. In all, with these two bills, 31 of 35 amendments were adopted.

Does the minister really believe in the efficacy of this Chamber?

[English]

Senator Carstairs: Honourable senators, we must bear in mind that the bill, when it moves through the House of Commons, is also subject to an amendment process. When they receive the bill in the first instance, they frequently introduce a number of amendments, which we might well have introduced on this side had we received it first-hand.

• (0920)

When we receive a bill in the first instance, we provide the amendments, which they, in turn, might have provided if they had received the bill in the first instance.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like us to start, under Government Business, with Item No. 2, third reading of Bill C-45.

[English]

APPROPRIATION BILL NO. 3, 2001-02

THIRD READING—MOTION IN AMENDMENT NEGATIVED—
DEBATE SUSPENDED

Hon. Isobel Finnerty moved the third 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.—(Pursuant to the order adopted on December 17, 2001, all questions will be put to dispose of the bill at 12:30 p.m.)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to draw the attention of the house to the situation that we face in respect of Bill C-45. The record is clear that an error has been made, and it is our view that it should be corrected.

An Hon. Senator: It is not important.

Senator Kinsella: Unless obvious errors are corrected, it will lead many Canadians to perceive Parliament as irrelevant. When faced with a claim that two plus two equals five and that error is not corrected, then what is the purpose of Parliament?

On two occasions, it was pointed out that we understand this to be a supply bill and that we would act collaboratively to see that the supply bill is passed so that the government has the money to conduct its work.

Initially, we proposed that we would go into Committee of the Whole to have the minister and the departmental officials appear before the house to correct the error. We also attempted to propose that the \$50 million, which ought not be there, be subtracted. None of the proposals received a favourable response from the other side; rather, they wanted to perpetuate the error.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I move, seconded by the Honourable Senator Forrestall:

That Bill C-45 be not now read a third time, but that it be referred to the Senate Committee of the Whole.

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.

The Hon. the Speaker: In my opinion, the “nays” have it.

Since two senators have not risen, I declare the motion in amendment defeated, on division.

We now return to third reading debate of Bill C-45.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I believe Senator Kinsella adequately outlined the problem we brought forth earlier. Unfortunately, honourable senators will be called upon to vote on a supply bill that is flawed. It is an abdication of our responsibilities not to amend the bill, which we have a right to do. We would not be amending supply as such, but we would be making a correction to the bill. We do not have the right to increase supply, and the jury is still out on whether we can reduce supply. Some authorities say that we can and a few say that we cannot.

Our objective in respect of Bill C-45 was to make a correction to the supply bill. Well, this has been refused.

Honourable senators, when the vote is called, I will say “on division.” There is an additional item in Bill C-45 that should trouble all of us, among other elements — the reimbursement to Treasury Board of an advance of \$152 million, which was announced by the Minister of Transport to compensate aircraft carriers and those affected by the closing of airports in Canada for four or five days after the tragic events of September 11. I do not think anyone questions that compensation should be given. However, what troubles me is that the minister was able to announce unilaterally through a press release, without any debate in Parliament, that \$152 million would be allocated to applicants whose eligibility for the amounts available are determined by him and his officials.

Contrast that with what happened in the United States when they agreed to what they call a bailout package. That was agreed to only after intense discussions between both major parties in Congress and the Bush administration. They came to an understanding and passed a supply bill in Congress, which was signed by the President.

Contrast that procedure, which is a responsible approach to the use of public funds, to the procedure in Canada, where a minister can invoke a section in an act such that he is then able to convince Treasury Board that he has the authority to obtain an advance of \$152 million for a program that Parliament never had an opportunity to debate, much less approve. The only time it can be debated is when the money has to be reimbursed to Treasury Board through the Estimates and then through the supply bill.

Follow the debate in the House of Commons on this issue. Honourable senators will not find it because there was no debate. There was an evening when the House of Commons debated the problems related to the airline industry when there was only casual reference to the bailout package, which the Minister had announced outside the House. It should trouble us that, more and more, government ministers are finding ways, through their

interpretation of the acts for which they are responsible, to convince Treasury Board to make more and more advances for programs and policies that are never submitted to Parliament.

Honourable senators, this issue should preoccupy the House of Commons because, after all, their main responsibility is to maintain control over the purse. Once that is lost, authority is also lost over everything. It is as simple as that — Parliament is losing that authority.

In the Senate, we have limited authority over public funds, which is quite right, because the ultimate power over the purse belongs to the elected representatives. That is why I will not vote against a supply bill, but I will certainly express my distress by saying “on division,” which is a form of protest but not recorded as such.

I raise this matter, honourable senators, to point out a growing trend that remains unchecked. Not only are there errors in the supply bill, which should be corrected at this time, but the President of the Treasury Board has told us that it will be corrected in the next Supplementary Estimates. The implication clearly is that senators dare not interfere and that Treasury Board should be left alone: “How dare you put your nose into my bill.”

If they are to include the correction in the next Supplementary Estimates, they should remove it from Bill C-45. However, they apparently cannot do that because the bill is printed and the House of Commons is in recess: “It is only a supply bill; it is only taxpayers’ money; it is only funds over which Parliament should have direct authority.” Well, it is only funds over which Parliament’s authority is slowly eroding.

• (0930)

I wanted to speak to another issue raised by the Auditor General. It is another example of Parliament losing its authority over public funds. Over the last eight years, nearly \$10 billion has been moved out from the direct control of Parliament to non-accountable, stand-alone foundations and agencies. I include \$2 billion announced in the last budget, which will go into a strategic infrastructure foundation. I exclude an amount of \$500 million for an Africa fund because I am not sure whether that will be a separate agency or a fund within the department — plus \$1.25 billion to an innovation fund, which is in the Supplementary Estimates. The Auditor General has no oversight on those funds, which are taxpayers’ funds.

I am not criticizing the objective for which these funds are being set aside. My objection is that they are being put into private, non-profit corporations that are not accountable to Parliament, except for providing an annual report, which can say what one wants it to say. Parliament’s control over these funds is limited to such corporations having to hire an approved auditor. That is not the Auditor General. The Auditor General does more than say, “Two and two makes four.” The Auditor General makes sure that the monies have been properly spent in achieving the purpose for which they were allocated.

The government has found a way to escape the Auditor General's supervision by moving a massive amount of funds out of Parliament's authority into these private corporations, \$10 billion in a period of eight years. Just think of the interest on that amount, which should be in the current budget because it belongs to the Canadian taxpayers. As the Auditor General has pointed out, these foundations do not need a massive one-time infusion of funds.

The government has decided that, because of the huge surpluses in the past, rather than pay off the debt it was more politically acceptable to create programs such as the Millennium Fund and the sustainable development strategy. They were all for good purposes. However, removing the funds, policies and programs out of Parliament's reach means that, when there comes a change of government, it will be difficult for the new government to alter what is already in place.

The point of my repeated intervention is that parliamentarians realize that, by approving such expenditures without even a minimum of argument, they are sanctioning ministers convincing Treasury Board that their authority is so wide that they can easily access temporary advances. By allowing that to happen, we are abdicating our responsibilities — more in the House of Commons than here. However, somebody must speak up against this trend which, if it continues, will confirm that we are all becoming terribly irrelevant.

[Translation]

Hon. Roch Bolduc: Honourable senators, in the matter of highway reconstruction, we are going to find ourselves with a government-appointed board, which will decide what agreements are to be signed with the Government of Quebec and for which highways.

I recall the Duplessis years. That was the era of patronage, but Mr. Duplessis had been elected by the people. He was not embarrassed to be engaged in it. Today, we are going far beyond that: patronage done by public servants. This is disastrous!

[English]

Hon. Lowell Murray: Honourable senators, with regard to the third matter raised by the Leader of the Opposition, that is, the foundations that seem to be springing up at great expense to the public, I want to assure him and the Senate that the Standing Senate Committee on National Finance has already undertaken to look into this whole question in considerable detail after the Christmas break. We are now having some research done on the matter, and I hope that my honourable friend will come and participate with us as the committee looks into the issue.

Turning to the second point the Leader of the Opposition raised, concerning the amount of \$160 million that the Minister of Transport found to provide financial assistance to commercial airlines for losses incurred in the days following the terrorist attacks of September 11, when the committee met on the

Supplementary Estimates we put questions on this matter to the Treasury Board officials. As usual, they replied as fully as they could and offered to provide further information later.

Yesterday, I received a letter dated December 13 signed by the President of the Treasury Board, Madam Robillard. I instructed the clerk yesterday to circulate copies of the letter to the committee. My friend is an ex-officio member, so he will soon receive the letter. Just for the record, Madam Robillard gives the chronology, which began on October 1 when Minister Collette presented this proposal for a program of up to \$160 million to an ad hoc committee of cabinet. The committee recommended the approval of this proposal to the full cabinet, which approved it on October 2. She then cites the relevant section of the Aeronautics Act which provides, in the view of the government, the basis of the authority. She states:

— that provides the Minister of Transport with the authority to provide financial assistance to air carriers is Section 4.2(a) and (l) ... the sections state that:

The Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics and, in the discharge of those responsibilities, the Minister may:

(a) promote aeronautics by such means as the Minister considers appropriate; —

(l) provide financial and other assistance to persons, governments and organizations in relation to matters pertaining to aeronautics.

She says that, based on this authority and a legal opinion as to its pertinence, the Treasury Board authorized the departmental request for the establishment of a class grant program to provide assistance to Canadian airlines, especially air operators, for losses incurred due to the temporary closure of Canadian air space.

I wanted to place that on the record, honourable senators, not because I consider the issue closed. On the contrary, this is a matter that the committee will want to look into after Christmas. In the meantime, I may cause some research to be done into those particular provisions of the Aeronautics Act. It would be interesting to know the intent of the government in power and Parliament when those sections of the act were debated and passed.

It would also be interesting to see whether there is any precedent for the expenditure of a sum of this order of magnitude — \$160 million — as a bail-out to airlines using the authority of that section of the Aeronautics Act. We will find out whether there is any such precedent and the authority is solid, or whether they are just acting on creative legal advice.

In any case, I thought I would put the explanation on the record, with my comments and the assurance that the committee will be looking into the matter after the Christmas break.

• (0940)

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Finnerty, seconded by the Honourable Senator Taylor, that the bill be read the third time now.

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 who are 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.

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

And two honourable senators having risen:

The Hon. the Speaker: There will be a recorded vote. The recorded vote, pursuant to the order of yesterday, will take place at 12:30 p.m.

We have a short time to proceed with other business before I rise at 9:45 for the division bells to ring for the deferred vote on Bill C-7.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, there is an order of the house that we will dispose of Bill C-6, Bill C-7 and Bill C-45 at 12:30. Therefore, if a vote is required, we could have that vote at 12:30, preceded by a 15-minute bell. If other votes are called, we could do them all at the same time.

I thought that was the understanding. If we could vote right now, I would have no problems with doing so.

Senator Kinsella: Honourable senators, I will add more specificity. Under rule 38, all votes will be held on those items “no later than” the specified time. Therefore, since the motion is before us and if the two whips agree to a five-minute bell, we could dispose of the matter in five minutes.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have a suggestion. As we have a vote at ten o’clock, we would have a five-minute bell for this vote and a 15-minute bell for the ten o’clock vote. At ten o’clock, we would vote on both the Bill C-7 motion and the Bill C-45 motion. We could dispose of both of them.

The Hon. the Speaker: Honourable senators, is it agreed, then, that we will vote on Bill C-7 as ordered at ten o’clock today, and, as well, immediately thereafter, vote on Bill C-45?

Honourable senators, a 15-minute bell is required. We are so close to 9:45 that, with agreement, I will ask for the division bells to ring now for a vote at ten o’clock, first on Bill C-7, all matters, and second on Bill C-45, all matters.

Senator Carstairs: Honourable senators, the vote on Bill C-7 would not be on all matters, only on one of the amendments. We would then vote on all matters on Bill C-45.

The Hon. the Speaker: I thank the Leader of the Government for that clarification. The vote will be on the amendment to Bill C-7, and all matters on Bill C-45. The vote will be at ten o’clock.

In that we are so close to 9:45 and a 15-minute bell is required, with your agreement, I will ask that the senators will be called in for the vote now.

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

Debate suspended.

• (1000)

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT NEGATIVED

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.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Bolduc	Nolin
Comeau	Oliver
Di Nino	Prud'homme
Doody	Rivest
Forrestall	Roche
Johnson	Spivak
Keon	Stratton
Kinsella	Tkachuk—23
LeBreton	

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Banks	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Rompkey
Finestone	Setlakwe
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ABSTENTIONS
THE HONOURABLE SENATORS

Hervieux-Payette—1

APPROPRIATION BILL NO. 3, 2001-02

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator

Taylor, for the third 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: Honourable senators, we will now vote on Bill C-45.

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

YEAS
THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
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	Roche
Finnerty	Rompkey
Fraser	Setlakwe
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NAYS
THE HONOURABLE SENATORS

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THE HONOURABLE SENATORS

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Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Keon	Stratton—16

• (1010)

[Translation]

YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT—VOTES 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, An Act in respect of criminal justice for young persons and to amend and repeal other Acts, as amended.

Hon. Gérard-A. Beaudoin: Honourable senators, I am convinced subclauses 76(1)(b) and 76(1)(c) of Bill C-7 must be amended.

If Bill C-7 is passed without this amendment, a young offender could serve his or her sentence in a provincial correctional facility for adults. This undermines the youth sentencing regime. The Supreme Court has on many occasions recognized the need for a separate justice system for adolescents.

There is no doubt that one of the objectives of the Youth Criminal Justice Act must be to protect society. Need it be the prime objective? The needs of the adolescent would be made secondary if that were the case. The lack of any balance between the needs of the adolescent and the protection of society will gradually eliminate any difference between the youth sentencing regime and that of adults. And, as I have said, the Supreme Court has recognized the need for a separate system of justice for young people.

[English]

MOTION IN AMENDMENT

Hon. Gérard-A. Beaudoin: Honourable senators, I therefore move, seconded by the Honourable Senator Bolduc:

That Bill C-7 be not now read a third time but that it be amended, in clause 76,

(a) on page 79, by replacing lines 16 to 19 with the following:

“(b) a youth custody section of a provincial correctional facility for adults, in which young persons are kept separate and apart from any adult who is detained or held in custody; or

(c) if the sentence is for two years or more, a youth custody section of a penitentiary, in which young persons are kept separate and apart from any adult who is detained or held in custody.”;

(b) on page 80, by replacing lines 18 to 21 with the following:

“(b) a youth custody section of a provincial correctional facility for adults, in which young

persons are kept separate and apart from any adult who is detained or held in custody; or

(c) if the sentence is for two years or more, a youth custody section of a penitentiary, in which young persons are kept separate and apart from any adult who is detained or held in custody.”.

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 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: In my opinion, the “nays” have it.

And two honourable senators having risen:

The Hon. the Speaker: Pursuant to order of the house, the division will take place at 12:30 p.m.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, since it was agreed to vote on the preceding item before 12:30 p.m., I propose that the vote be held now. I leave it to the whips to decide how long the bells will ring.

[English]

The Hon. the Speaker: Honourable senators, I missed the agreement. My scroll indicates that, pursuant to the order adopted on December 17, all questions will be put to dispose of the bill at 12:30 p.m. I now understand that it should read “no later than.”

Hon. Terry Stratton: I suggest that we have a 15-minute bell now.

Hon. Laurier L. LaPierre: Honourable senators, could we not change the Order Paper to read “by 12:30” as opposed to “at 12:30”? I get all confused.

The Hon. the Speaker: It is clearly understood by everyone but Senator LaPierre and me that the vote can be taken at any time.

Accordingly, we now have an agreement between the whips to have a 15-minute bell. Therefore, we will vote at 10:35 a.m.

Call in the senators.

Motion in amendment negated on the following division:

[Translation]

• (1030)

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Dood	Prud'homme
Forrestall	Rivest
Johnson	Roche
Kelleher	Spivak
Keon	Stratton—24

NAYS
THE HONOURABLE SENATORS

Austin	Kirby
Banks	LaPier
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Morin
Cools	Phalen
Corbin	Poulin
Cordy	Poy
Day	Robichaud
De Bané	Rompkey
Fairbairn	Setlakwe
Finnerty	Sibbeston
Fraser	Sparrow
Furey	Stollery
Gauthier	Taylor
Graham	Tunney
Hubley	Watt
Jaffer	Wiebe—43
Kenny	

ABSTENTIONS
THE HONOURABLE SENATORS

Finestone
Hervieux-Payette—2

• (1040)

Hon. Marcel Prud'homme: Honourable senators, those who observed the way this morning's vote went must have noted the considerable hesitations of the senators for Quebec. Few of them will be voting in favour of the bill; some will be voting against it, while others will, for their own reasons, not be present for the vote.

I have always felt that the Senate was representative of the regions. The argument in favour of a federation in which the opinions of all must be taken into consideration has been well stated and well defended. I have taken the well-thought-out opinions of Senators Watt and Moore into account when voting on the amendments they proposed. I have listened attentively to their concerns about the First Nations. For them, this was very important. I was very much aware of their concerns, as I continue to be and will be in future. The definition of a good senator is one who understands the role of the Senate and who listens to minorities, whatever they are, and is prepared to defend them.

I must therefore — I repeat once again — regret the vote we will be taking on Bill C-7. I will regret it even more than the one we will be taking later on Bill C-36, which I will be voting against. If I had to choose to vote in favour of one of these, it would be Bill C-36. Bill C-7 does not in any way reflect the objectives of Confederation. Within each of the regions of Canada, we can be in favour or not, but this does not in any way reflect the sensitivity we must have for our fellow citizens in the First Nations community or in the multicultural community — although that is a term I detest. It must not in any way influence our representation of the regions.

As Bill C-7 has been considered at length, I have serious doubts about the role of the Senate. Canadian senators do not often have the opportunity to examine in depth what the House of Commons has often refused to examine. One of the most important roles of the Senate is to have its ear to the ground in the regions, to take initiatives in matters of human rights — as Senator Finestone has done — to be attuned to the most sensitive issues of interest to Canadians. I am sure this bill will be challenged in the courts. This morning, we missed a unique opportunity to play our role as senators, to be attentive to concerns, subtleties and differences. We do not all react the same way to certain social problems. I have always thought that, in a federation, we had to have the knowledge and sensitivity to understand so we could set the best possible example for the rest of humanity.

Honourable senators, what is the use of travelling the world over and singing the praises of Canada, as I do in various countries and as Senator Finestone has done at the Inter-Parliamentary Union? Wherever we go, we are asked about this country, which manages to keep people of such varied interests together. We are asked how we manage it. We achieve it by being sensitive every day. We are asked what keeps us going in this country. A country is created every day, it can be destroyed just as quickly, however.

The Hon. the Speaker: Honourable senators, we will resume consideration of the main motion.

Bill C-7 gave us a unique opportunity to demonstrate the sensitivity of senators and their understanding of the federal system. Why are some of us federalists, when the sweet music of other sirens would draw us to other levels of politics beside federal politics? It is because we believe that, for our fundamental liberties, two levels of government, a provincial one and a federal one, are preferable.

So important to us is respect for the individual and individual differences that we want not only two levels of government but also two chambers to ensure greater protection and security at the federal level. This is how I describe the role of the Senate to students and professors at colleges and universities, when I am invited.

The first question asked is the following: What does the Senate do? We explain that we have the opportunity to correct legislation. We are the chamber of second thought. We take our time and do not let the institution push us.

And what happens? The bells sound, and we become a weak facsimile of what I saw for 30 years in the Commons, where time and again I saw MPs with strong opinions crushed as soon as the bells sounded calling them to a vote. We were allowed to amuse ourselves by expressing our opinions, and then, when the debate ended, it was time to vote.

• (1050)

This is why I will not move any further amendments on Bill C-7, for which our support is being sought. I will vote against the bill. When the bill goes back to the other place, I hope they will have time to think. Who knows, perhaps a cabinet shuffle is in the offing. Everyone wants to become a minister in the other place. We will probably have a new minister of Justice, who will make appropriate changes to this bill so as to reflect the views of the federation, of all the regions in this bill, as opposed to those of a single region, which happens to be the region the current minister comes from.

Senator LaPierre: Honourable senators, after I arrived here and looked at Bill C-7, I went to see the members of Parliament from Quebec, who had spent almost 100 hours considering the bill in caucus. After reviewing and discussing this legislation, and despite being subjected to extraordinary pressure, they had come to the conclusion that they could support this bill, with some amendments.

My seat is not at stake. These people were prepared to put their job on the line to pass a bill which, according to their conscience, satisfies Quebecers and Canadians. And they did. I am satisfied with that, honourable senators, but what strikes me is that Senator Prud'homme is telling us that we have a duty to represent the regions as well as the whole country. If we look at all the issues through the keyhole of our regions, do you not see that this could be extremely harmful to the Commonwealth and to the general public? Would it not be possible to think that if

those whose seats will be on the line at the next general election accepted this? Senator Prud'homme has no right to impugn motives. These people voted knowledgeably and with their conscience. Honourable senators, I accept that, and it seems to me that Senator Prud'homme, who has a big heart, could do the same.

Senator Prud'homme: Honourable senators, Senator LaPierre misunderstood my comments. To begin with, senators must first and foremost represent their regions. That was the object of the debate.

Furthermore, Senator LaPierre says that he consulted members of Parliament from Quebec, and I give him credit for doing so. However, the fact is that a majority of the members from Quebec in the other chamber voted against this bill.

Senator LaPierre: It was the Bloc Québécois.

Senator Prud'homme: Either one accepts democracy for what it has given us or one does not. Senator LaPierre is sloughing off half of the members of Parliament from Quebec who do not share his opinions.

It is true that, in my great generosity, when I had to choose between personal interests and general interests during the debate on the War Measures Act, I did my duty, although unwillingly. I helped put 450 of my fellow Quebecers behind bars, but I did so believing it was for the good of Canada, generally.

Senator LaPierre is right in saying that there comes a time when we have to make a decision between the good of our region and the overall good. It was not just half the members from Quebec in the other place who voted against it. I do not wish to stir things up, but I note that Senator LaPierre is completely wrong in stating that more than half of the senators from Quebec —

Senator LaPierre: That is not what I said!

Senator Prud'homme: No, I am saying it. I am a terrible one for keeping records. I can tell you, honourable senators, that there is a tiny minority of senators from Quebec here, although there are many of us here this morning. I have seen some leave the chamber. They are therefore not present at the moment, while others have had what I cannot call the courage to remain seated and to vote against the bill or to abstain. That is the response I wanted to give to Senator LaPierre. There is no contradiction.

[English]

The Hon. the Speaker: Honourable Senator Prud'homme, I regret to advise that your time has expired.

Senator Prud'homme: And so has my answer.

The Hon. the Speaker: Does the Honourable Senator Setlakwe wish to speak?

[Senator Prud'homme]

[Translation]

Hon. Raymond C. Setlakwe: Honourable senators, with what I have just heard, I feel compelled to rise and say that I have given this bill considerable thought. I have concluded that, with the very appropriate amendments brought by the other chamber, there is one underlying principle I cannot ignore. In Canada, criminal law cannot be understood two ways. It cannot be understood one way in one part of a country and in another way, in basic terms, in another part. This is why I am pleased to vote in support of the bill.

Another underlying issue concerns me as well. I have noticed that, in Quebec, there are very few young Native people in prison, unlike in the rest of the country. It is perhaps this, more than anything else, that distinguishes our approach to this bill.

I wonder if we might not be a little more open-minded about each other, instead of continually quibbling over bills that, basically, are an attempt to improve the situation of Canadians.

[English]

The Hon. the Speaker: Does the Honourable Senator Prud'homme have a question?

Senator Prud'homme: Yes.

The Hon. the Speaker: Would the Honourable Senator Setlakwe take a question?

Senator Setlakwe: Of course I will.

[Translation]

Senator Prud'homme: Honourable senators, I have the greatest respect for Senator Setlakwe, who is the senior senator in my adopted party, the Liberal Party. He belonged to it long before I did.

In the second part of his remarks, Senator Setlakwe addressed exactly what I wanted to say. How is it that Quebec has far fewer Native young offenders than Saskatchewan? It is because the two provinces understand the enforcement of this law differently. This is what we want to see dealt with.

I took part in debates on the abolition of the death penalty in the other place. I have always said I prefer nation-wide criminal law to a collection of regional criminal laws. I have to tell you that abortion would be prohibited in eight provinces, and the death sentence would probably exist in seven provinces, if they were provincial matters.

Senator Setlakwe was right in the first part of his remarks to say that criminal law applies uniformly across Canada. The differences lie in its interpretation and enforcement.

• (1100)

You gave a most vibrant example of that, with the result that the amendments moved by Senator Watts were adopted, following a vote of 41 in favour and 40 opposed, with no abstentions. We are particularly sensitive to the situation of certain groups. Nobody can fault Quebec on that score.

[English]

Senator Setlakwe: Honourable senators, the circumstances that I try to describe are the following: The Natives who are in jail in other parts of Canada do not necessarily live on the reserves, whereas in Quebec they do mostly. When they do come off of the reserves, we will have the same problems in Quebec as we do in the rest of the country. That is why we may become more indulgent in both parts of the country at that time, more than we are now.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I agree with Senator Setlakwe when he says that there should only be one criminal law system in Canada. The Standing Senate Committee on Legal and Constitutional Affairs had long discussions on Senator Grafstein's amendment. That amendment sought to eliminate a provision in Bill C-7 that allows a province to change the age to which the act applies. Senator Grafstein's argument was that, in Canada, the act should apply to everyone. Clause 61 reads as follows:

The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

Presumptive offences are the most serious ones. This is why Senator Grafstein proposed his amendment. He wanted to standardize the application of the act. We felt that this was a good thing. Therefore, the committee accepted Senator Grafstein's amendment, but the other place rejected it. Did the honourable senator agree with one of the amendments proposed in the report to eliminate the clause that I just read?

Senator Setlakwe: No, simply because the amendments adopted in the other place meet the requirements and needs of those regions of the country that want them. They add flexibility to the act. They allow the provinces to enforce the act as they see fit, within a legal framework that applies to the whole country.

Senator Nolin: Honourable senators, a 14-year-old Gatineau boy, by Quebec order, would not come under federal law, whereas across the bridge, an Ottawa youth, by Ontario order, would. How do we explain this anomaly?

Senator Setlakwe: This is a matter left up to the courts, that is all.

Hon. Joan Fraser: Honourable senators, since it appears we have arrived at the test of regional legitimacy, as a senator from Quebec, I simply wanted to point out to this chamber that I was involved in the deliberations of the Standing Senate Committee on Legal and Constitutional Affairs, which thoroughly considered the bill. I could not attend all sessions of the committee, because of the work of the Special Committee on Terrorism. I read the minutes of the meetings. More importantly, no doubt, I read and reread the bill.

[English]

It is a very difficult bill to read. It could have been much better written. However, I have become persuaded, after months and months of serious consideration of this bill, that it is in fact a pretty good bill and, even more important, that it is better than the Young Offenders Act in several respects. I will give only one example.

Under the Young Offenders Act, a child can be tried in adult court. Under the Youth Criminal Justice Act, a child cannot be sent to trial in adult court.

As far as the system in Quebec is concerned, it is clear that the Government of Canada believes in the general philosophy that has been adopted by successive governments of Quebec — that is, of attempting to help young people in ways that do not involve imprisonment, ways that involve helping the young person to get his or her life back on track.

In this field, as in many others, we must bear in mind that we do live in a federation and that there are differences between the various regions of this federation. I had not really understood, until I was privileged to participate in the work of this committee, how deep are the divisions among the regions on this issue. The Government of Canada can pass this bill, but it is the provinces that administer justice. We are stuck with the fact that some provinces do not share the philosophy of the Government of Quebec, which I certainly share and which, as has been made plain, the Government of Canada shares. A law must be written that will push those provinces as far as possible but not lead to a state of complete chaos and open rebellion. That is what I believe this bill does.

This bill is not perfect. Of course it is not perfect. No human effort, as we say so often, is perfect, but I think it is a good bill. I believe that the Government of Quebec will be able to continue doing exactly what it has done. If there are changes, they may serve to nudge us a little further down the admirable road that Quebec has already adopted. As a Quebecer, I would be perfectly happy to vote in favour this bill.

Hon. A. Raynell Andreychuk: Honourable senators, I remind you of what Senator Wilson told us about the committee and its report. After studying for quite some time, after dialogue, debate and consensus-building in the best parliamentary form, the

committee's bottom line was that 13 amendments were necessary to make the bill acceptable. The majority of committee members had that point of view. The majority generally rules in a democracy, although the minority was in fact heard.

Honourable senators have chosen not to adopt the bottom line of that committee. Therefore, I do not see how I can support the bill. The minister's representative indicated that the one amendment that passed simply tinkered around the edges of the bill. Perhaps the minister is right that the amendment we passed regarding Aboriginals is not sufficient for Aboriginals. We knew that in the committee, but we said that it would be one, among 12 other amendments, that could start to make this bill effective. If this chamber does not take into account the wishes of the majority of committee members, we will not have an acceptable bill.

I said yesterday, quoting Professor Waller, that we need a crime-prevention strategy. Professor Doob said that no justice system gives us prevention of crime. We need an effective strategy of implementation. That is the point Senator Fraser addressed. If the provinces do not share the resources or the collective will to put this act into place, children who come before the justice system will be poorer than they are now under the Young Offenders Act.

• (1110)

Kim Pate, representing the Elizabeth Fry Society, works daily with youth. She put it best when she said that if there is a difference and disparity between the opinions of the federal government and the provinces — and in this case I note that the provinces are going in different directions — then we will not have a successful bill.

It is strange that criminal law should be what we collectively believe is the bottom line to which we have to adhere. If we have a province going in one direction and other provinces going in another direction, where is the collective will? Surely, this measure will be doomed to failure if we cannot find some common consensus. The common consensus is resources. If there is no money to back up this bill, it will not work. The amount being spent now is not sufficient. It is, again, tinkering around the edges.

The Young Offenders Act stood to have a chance, and it had some good things in it. What is wrong with the Young Offenders Act now are the amendments we put into it on the pretention that we were solving the problems of the youth justice system.

Therefore, one of the 13 recommendations that is absolutely necessary, one which we spoke to in committee, is that there has to be a review process. We have to ensure that the provinces take youth justice seriously and provide the resources. We have to ensure that the federal government puts in the resources. We have to be certain that children will not be victimized again by a bureaucracy rather than receiving resources.

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Therefore, I move:

That Bill C-7 be not now read a third time but that it be amended,

(a) on page 150, by adding, immediately after line 40, the following:

“Review of Act

158. (1) Three years after the coming into effect of the Act and at the end of every five-year period thereafter, the Minister of Justice shall undertake a comprehensive review of the operation of this Act and cause to be laid before both Houses of Parliament a report thereon including any recommendations pertaining to the amendments to this Act that the Minister considers necessary or desirable.

(2) For the purpose of the report referred to in subsection (1), the Minister shall consult the Attorney General of every province and persons, groups or class of persons or a body appointed or designated by or under this Act or an Act of the legislature of a province and representatives of aboriginal people of Canada.

159. (1) As soon as the Minister of Justice’s report has been laid before both Houses, a comprehensive review of the report and of the provisions and operation of this Act shall be undertaken by such committees of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Parliament to determine if the objectives of the Act are met in various provinces across Canada.

(2) The committee referred in subsection (1) shall, within six months after the completion of the review undertaken pursuant to that subsection or within such further time as Parliament may authorize, submit a report on the review to Parliament including a statement, if any, as to any changes the committee recommends.”; and

(b) by renumbering clauses 158 to 200 as clauses 160 to 202, and any cross-references thereto accordingly.

Honourable senators, we need to impress upon ourselves, the provinces and the federal government that children come first, that we will put in place a youth prevention strategy against crime, and that it will be effective.

The Hon. the Speaker: Before the Honourable Senator Andreychuk continues, I must ask: Honourable senators, is it your pleasure to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Did you wish to continue speaking, Senator Andreychuk?

Senator Andreychuk: I made my final comments, and I am sure they are on the record.

I simply want senators to understand that it is extremely important to take youth seriously and to ensure that we do not go away today, as we did in 1995, which was when the Young Offenders Act amendment came into force, thinking that we were helping children when we were not. I believe this review puts the onus back on our shoulders and our consciences.

Hon. Marcel Prud’homme: Will the honourable senator entertain a question?

The Hon. the Speaker: Will Senator Andreychuk permit a question?

Senator Andreychuk: Yes.

Senator Prud’homme: Was the honourable senator’s amendment not an amendment put to the committee by Senator Joyal?

Senator Andreychuk: Yes, it was, and I was very supportive of it.

Hon. Terry Stratton: Honourable senators, pursuant to rule 38, I suggest that we stack the votes on the amendments and the bill itself and hold those votes at 12:30 p.m., if that is agreeable.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I did indeed think we would proceed in this fashion. However, do I understand correctly that we have heard the last amendment of this bill?

There is another amendment, so we will have two amendments and third reading of the bill.

[English]

The Hon. the Speaker: Honourable senators, this is a practice to which we often agree. However, it requires agreement. Is it agreed?

Hon. Senators: Agreed.

The Hon. the Speaker: The amendment of Senator Andreychuk will be dealt with as per our order of yesterday, at 12:30 p.m., along with the suggestions of both sides.

We are now back to debate on Bill C-7, as amended.

[Translation]

• (1120)

Hon. Pierre Claude Nolin: Honourable senators, the brief comments made by Senator Setlakwe lead me to reintroduce an amendment that had been accepted by the committee. I am referring to Senator Grafstein's amendment, which seeks to eliminate clause 61 from the bill. Again, this clause reads as follows:

The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

MOTION IN AMENDMENT

Hon. Pierre Claude Nolin: Honourable senators, I move, seconded by Senator Andreychuk:

That the Bill, as amended, be not now read a third time but that it be further amended

(a) in clause 61, on page 68, by deleting lines 23 to 28; and

(b) by renumbering clauses 62 to 200 as clauses 61 to 199 and any cross-references thereto accordingly.

[English]

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

Hon. Consiglio Di Nino: Would Senator Nolin take a question for clarification?

Senator Nolin: Yes.

Senator Di Nino: Was this amendment presented in committee?

Senator Nolin: Yes, it was.

Senator Di Nino: Was there a vote in committee? If so, was it defeated or approved?

Senator Nolin: Senator Grafstein put that amendment in committee and it was debated. It was agreed to by the vast majority of the committee. It was not agreed to unanimously. That was not news to us because Senator Grafstein had announced his amendment many weeks prior to the final session of the committee dealing with the clause-by-clause consideration of the bill. His arguments were very simple. The Criminal Code, which is the authority, the criminal power of Parliament, is the *modus operandi* of Bill C-7. Given that it is the exclusive power of Parliament, the provinces should not be allowed to change how the federal law is applied in the provinces. That is the argument of Senator Grafstein.

Senator Di Nino: The Honourable Senator Nolin indicated that the amendment was put at committee and was passed. Did the report from the committee include the amendment?

Senator Nolin: Yes, the report included the amendment.

Senator Di Nino: It was part of the report of the committee.

Senator Nolin: It was part of the report under Item No. 6 of the amendments.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I would like those who will be reading the *Debates of the Senate* later to fully understand what happened today. Senator Andreychuk was kind enough to tell me clearly that the amendment she moved was, in fact, not her amendment. It is an amendment that was drafted. It is of course her amendment, but we could say that it is a Joyal-Andreychuk amendment. Now, Senator Nolin, who worked for four months — I know because I know the staff who worked with him on this bill — thought, as a naïve young senator, that he might be able to improve the legislation. Today, he has come up face to face with reality. He is finding out that all the work that one might do is almost useless when the final decision is made by government authorities. I want him to assure me, and also Senator Andreychuk, who confirmed to us that this was a Joyal-Andreychuk amendment, that it is indeed a Grafstein-Nolin amendment that you share?

Senator Nolin: That is exactly it.

[English]

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

Hon. Senators: Question!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Honourable senators, will all those in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Honourable senators, will all those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: There will be a recorded division at 12:30 p.m., in sequence, as per the agreement of this house.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I now call Item No. 4 on the Order Paper, resuming debate on third reading of Bill C-6.

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—VOTE DEFERRED

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,

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill 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.—(Pursuant to the Order adopted on December 17, 2001, all questions will be put to dispose of the Bill at 12:30 p.m.)

Hon. A. Raynell Andreychuk: Honourable senators, I rise to speak to Bill C-6 in support of Senator Murray’s amendment. The honourable senator has eloquently spoken to the issues and to the need for this amendment.

• (1130)

In committee, the need for the amendment was pointed out to us by virtually all witnesses, and Senator Murray referred in particular to a witness who is much respected for her ability to draft legislation and who is now teaching at the University of Ottawa. Clause 13 indicates that there is a prohibition of water removal. Yet clause 13(4) indicates that subclause (1) does not apply in respect of the exceptions specified in the regulations.

I want to underscore what I said in committee and in support of Senator Murray’s amendment: We are finding that regulations are no longer technicalities. Most bills are now being “gutted,” if I may use that term. The essence of what used to be the prerogative of Parliament to legislate is now falling under regulations.

It is very worrisome when it concerns something as sensitive as the prohibition on the export of bulk water, as this bill contemplates. Minister Manley indicated that it was not his

intention to export bulk water, and I accept that. Minister Manley’s record speaks to his being a man of his word. I believe that he will follow the intent of this bill. Therefore, it is not a question of trust or mistrust; it is a question of there being entirely too much government by regulation. We do not know how long this legislation will stay on the books, giving carte blanche to what any succeeding government may wish to do with respect to the export of bulk water.

I have no difficulty with the present administration of Minister Manley, and I accept that that is not their intention. However, we do not know what succeeding governments will think and do. Will they share the same perspectives? Will they look at the environment in the same way?

Honourable senators, we must stop this erosion of parliamentary control by allowing virtually everything to be included in the regulations. It is time that we reclaim the responsibility for implementing legislation and allow only technical issues to be dealt with in regulations. We must not succumb to the argument that is being made that it is always more efficient to work through regulations. We should not confuse expediency with efficiency and correct parliamentary procedure.

I wish to support Senator Murray’s amendment. Water will be the issue that oil was in the last decade. We will now hear from someone who has a much greater expertise in this area.

Hon. Mira Spivak: Honourable senators, during the committee hearings on this bill, I listened carefully to the testimony of the minister, his officials and other witnesses. I rise to speak in support of Senator Murray’s amendment. However, there have been other amendments. I also want to add some general comments on the process and the bill. The minister told the committee:

By adopting Bill C-6, Parliament will set down in law an unambiguous prohibition on bulk water removal of boundary waters... It affirms an approach that is comprehensive, environmentally sound, respectful of constitutional responsibilities and consistent with Canada’s international trade obligations.

In agreement with Senator Andreychuk, I do not doubt the minister’s word. He truly believes that. However, on every count, witnesses to the committee said otherwise. The bill is not unambiguous and it is not comprehensive. It does not directly address the environmental effects of bulk water exports. In fact, the words “environment” or “ecology” are nowhere to be found in the bill. Its constitutional footing is soft and it is a transparent effort to skirt, not face up to, our international trade obligations. That is what was said by all witnesses, except the minister and his staff.

The argument could be made that these witnesses were called at the request of my colleagues on the committee. That is correct. It begs the question: Why were no outside experts brought before the committee to concur with the bill when they could have been?

The objective of this bill is one part of a three-pronged approach to protecting Canadian watersheds from bulk exports. For the other prongs, the government is relying on studies by the International Joint Commission and on the eternal goodwill of the provinces. Even now, that goodwill is questionable. One province wants royalties from water exports when the economies of exports improve. Another waits quietly on the sidelines. Will other provincial governments reverse their current policies? It is naive to expect that none of them will want to export water when water becomes a profitable commodity. It will be the oil of the 21st century.

As for transboundary waters, something that is clearly in the control of the federal government, this bill does not cover the waterfront. The bill does not set out the water basins to which it will apply. That is a matter for the minister to decide. Draft regulations list three water basins: Great Lakes, Hudson Bay and the Saint John River.

One witness suggested that nothing west of Manitoba would be protected. More important, whatever protection this government gives through regulations today can be removed next year by this government or at any time by any future government without reference to Parliament. The amendments have addressed that problem.

The minister claims that the bill is environmentally sound. His officials speak of the need for this bill to protect our freshwater resources in their natural state. They speak of the government's environmental approach to prohibiting water exports. However, this bill is by no means a proposed environmental legislation. As many witnesses observed, the bill contains no references to the environment — not one.

In the draft regulations, we find no reference to the environment in the definitions and no reference to the environment in the context of water removals, also known as bulk exports. The only time the environment is mentioned is in reference to licensing projects, which could include water exports if a minister chooses and the IJC agrees. If the minister makes that decision, any project licence must be "compatible with the management of the resources, environment and economy of Canada." I respectfully suggest that management of the environment is very different from protection of the environment.

Mr. Nigel Bankes, Professor of Law at the University of Calgary and an authority on the IJC and the Boundary Waters Treaty, spoke on the bill's environmental and constitutional weakness. He stated that, as currently drafted, the bill does not offer environmental protection and is on shaky ground constitutionally. It is treading on the provinces' constitutional authority over water as a natural resource. Instead of giving us an environmental protection bill or even a trade bill that could be constitutionally valid, the government has tied its policy to the 1909 Boundary Waters Treaty and the Boundary Waters Treaty Act, neither of which speak of the environment.

As the chairman pointed out at the committee, they speak of the natural level or flow of boundary waters. In 1909, those

words had nothing to do with environment protection. They were put there to protect shipping and navigation. These are the same words found in Bill C-6.

The constitutional problem lies in clause 13, the proposed prohibition section, which goes beyond the treaty. The treaty does not prohibit projects that would affect the natural level or flow of boundary waters. Rather, article III of the treaty creates a regulatory scheme that requires the government and the IJC to approve any new project that affects water levels or flows. Scores of them have been approved.

In subclause 13(2) of the bill, bulk exports are prohibited not only if they affect the natural level or flow but also if they are "deemed" to have that effect. In other words, there is no need for demonstrable proof or scientific evidence. If the government says so, it is so.

• (1140)

Those extensions of the treaty cost the government its right to rely on section 132 of the Constitution Act. That section gives Parliament the authority to make laws that implement an international treaty. Bill C-6 is not merely implementing a treaty; it is breaking new ground.

Moreover, the deeming provision, which says that the real world does not matter, may be administratively attractive. Governments can deem black to be purple for administrative purposes, but courts say that they cannot do it for constitutional reasons.

Professor Bankes cited the *Sutherland* decision relating to the Natural Resources Transfer Agreement as an example. Some learned members of the committee did take issue with his position. However, the government's legal counsel did not answer the major concern, particularly with respect to the deeming clause.

If the government cannot rely on section 132 of the Constitution Act, on what might it rely to withstand a constitutional challenge? One senator suggested that the government could exercise its criminal law power. Bill C-6 provides for large fines and imprisonment: therefore, there is no constitutional problem. The learned senator suggested that the department has very eloquently brought the criminal power to bear along with the treaty. In reply, Professor Bankes referred briefly to the Supreme Court decision on the *Hydro-Québec* case, which expanded the notion of criminal law.

We must look carefully at that important ruling. First, it does acknowledge that the Constitution gives Parliament broad powers to make criminal law. However, assigning a heavy fine or jail term to a law does not automatically make it constitutionally valid. Aside from the Charter, there is one qualification that has been attached to Parliament's plenary power over criminal law.

Citing Mr. Justice Estey, Mr. Justice La Forest wrote that the power "...cannot be employed colourably...it cannot permit Parliament simply by legislating in the proper form to colourably invade areas of exclusively provincial legislative competence."

If water in its natural state is a provincial matter, how can Parliament properly enact the criminal law? What is the test to determine whether Parliament's action is colourable?

Mr. Justice La Forest turned to a ruling by Mr. Justice Rand for guidance, wherein Mr. Justice Rand states:

Is the prohibition...enacted with a view to a public purpose which can support it as being in relation to criminal law? Public peace, order, health, and morality: these are the ordinary though not exclusive ends served by that law.

In his majority decision on the *Hydro-Québec* challenge to the Canadian Environmental Protection Act, Mr. Justice La Forest established that the protection of a clean environment is also a legitimate public purpose.

All around this bill, the government is suggesting that it has an environmental purpose. Yet, in the drafting, the government is tying the bill solely to a historic treaty created to promote commercial shipping. Perhaps the case could be made that commercial shipping is a public good, and certainly the government has constitutional authority over navigation. However, if a water export project demonstrably affects neither, but is only deemed to affect it, can the law stand the test?

Honourable senators, we had an amendment in committee that suggested that the word "environment" be used in one of the clauses and that it be specific to the bill. That amendment was rejected by the committee, and it was rejected here, too.

Professor Bankes offered a solution. He proposed amending the bill to give the minister the authority to reject projects that endanger the integrity of the ecosystem of the water basin. In other words, he would clearly give the bill an environmental focus. An amendment with the same intent, but with somewhat different wording, was put before the committee, as I just stated, and before this chamber. It was rejected, as were all the amendments that would establish Parliament's clear intent to prevent bulk water exports.

In Mr. Justice Lamer's dissenting opinion on the *Hydro-Québec* case, there is another warning that we should not ignore. Speaking of the use of the criminal law powers, Justice Lamer wrote: "It would be an odd crime whose definition was made entirely dependent on the discretion of the executive." Yet, this is exactly what we have in Bill C-6, with its extraordinary use of regulations to determine what constitutes a bulk export, where the law applies and what exceptions are permissible.

Is Bill C-6 environmentally and constitutionally sound? There are very strong reasons to suspect that it is not. As if we need further proof, officials have not yet decided whether the amended Boundary Waters Treaty Act should be subject to the Canadian Environmental Assessment Act. Currently, it is not.

With this bill, honourable senators, we are giving the minister the authority to license projects, including exceptions granted for water exports, without the need for an environmental assessment.

Is this bill consistent with Canada's trade obligations? Trade experts before the committee said very clearly that by avoiding any reference to water exports we are not avoiding our trade obligations. In fact, they suggested that a bill that imposes an outright export ban would be better.

Honourable senators, saving the best for last, is this bill an unambiguous prohibition on bulk water removals? It is ambiguous in the extreme. It reserves for the minister and his political and departmental advisers virtually every important decision that can be made on water exports. The bill is silent on everything from the very definition of bulk removal to the types of exemptions that may be granted. Parliament is silent. It is given no opportunity to say anything in the years ahead.

Inside the committee room, officials said that they need those powers to deal with new circumstances as they arise. The effect, however, is to remove the need to return to Parliament, to change course or to make decisions about our nation's fresh water. The notion that a minister and his advisers should have such a free range is inimical to the concept of parliamentary democracy. It is part of a growing, dangerous tendency, as Senator Raynell Andreychuk stated in the committee, to remove parliamentarians from law-making. In this session alone, we find extraordinary use of the regulatory authority. We find extraordinary use of regulatory authority in this bill, in Bill C-5, the proposed species at risk act, Bill C-11, the immigration bill, and in the two anti-terrorism bills, Bill C-36 and Bill C-42.

This is shocking to Canadians, honourable senators, who believe it is important to cast ballots for MPs to represent them and to write to senators hoping that we will amend bad laws hastily passed by the Commons. Bill C-6 is certainly one of those laws, if for nothing else, for its efforts to make Parliament even more redundant.

By concurring with this bill, honourable senators, we are acting against our own interests and against the interests of those who succeed us in the chamber and the House of Commons. Are we here to sit in committee, to listen to learned experts, and then do nothing about it, not even to contemplate the slightest hint of amendment? If we are here to allow the principle of legislation, which should be in the bill, to simply be in regulation, then why are we here?

Mr. Radwanski, on another matter, stated in committee that if the principles of legislation are in the regulations and not in the legislation, then we ought not to pass the bill. He was referring to human rights, but I would say that is an accurate observation of every bill. Further, I would say that we need a remedy for this situation. In the coming year, I would hope that we would find a remedy to this tendency to put everything into the regulations and not into the legislation. I support Senator Murray and his amendment.

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

The Hon. the Speaker: Honourable senators, I am sorry, but I have been advised by the deputy clerk that the time for Senator Spivak's speech, questions and comments has expired.

• (1150)

Senator Corbin: Is Senator Spivak asking for an extension of time in order that questions might be asked?

The Hon. the Speaker: Is Senator Spivak requesting leave to continue?

Senator Spivak: I would ask for leave to continue.

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

Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we are attempting to keep speeches as close to 15 minutes as possible. However, I would agree to one question and one answer to allow Senator Spivak the opportunity to respond.

Senator Taylor: Honourable senators, in the interests of brevity, I will try to keep my question concise.

Perhaps I misunderstood the argument of the honourable senator when she said that water in its natural state is a provincial matter. When we speak about "boundary water," it means that water will cross the boundary. Does the federal government not have complete say in commodities that cross boundaries, even with something as provincial as oil or gas? If water crosses a boundary, the federal government must have some input.

Senator Spivak has said that water in its natural state is a provincial matter. That is true when water is in its natural state. However, we are discussing bulk water exports. How is the federal government kept out of that matter?

Senator Spivak: I am not sure how to respond to that question. In the three-pronged policy, the provinces agreed that they should not export bulk water. The federal government has complete jurisdiction over all navigable waters and trade. It would take further study — and we hope to have an opportunity to do that — to sort out all of the conflicting opinions on the issue of water and whether or not it is a good. If it becomes a commercial item, does it then become a good? This issue is not as clear as it might be. My remarks were made in that context.

Hon. Eymard G. Corbin: Honourable senators, in speaking to this amendment, I shall put aside my hat as the sponsor of Bill C-6. I am prompted to make some comments about this amendment as an observer of the phenomenon that occurred in relation to this bill.

To this day, I never cease to be amazed at the onslaught of senators opposite to what is basically a straightforward bill. This proposed legislation would implement practices that have been in place for the last 90 years. Senators opposite have read into this bill more than is actually there. In my opinion, these senators have gutted the efforts and the straightforwardness of the bill and the regulations. If we were to follow their suggestion to put aside the regulations and incorporate everything by way of legislation,

we would hamstring or cripple the ability of the executive and the bureaucracy to properly apply the provisions of the treaty and the legislation on a day-to-day basis. This is an important point. If the regulatory provisions were included in the bill, we would have no rules at all. I find that to be a ridiculous proposition.

I totally subscribe to the legitimate concerns expressed by senators opposite with respect to the perceived transfer of legislative powers to regulatory powers. This has been an ongoing concern since the creation of Parliament.

During my first years on Parliament Hill, in the late 1960s, I sat with an honourable member of the other place named Joe Clark. We sat on the same committees. He would consistently raise the issue of regulatory powers, and he was not the only one who did so. I raised the matter on one occasion as well, as have other members of Parliament.

If there is this perceived concern about the erosion of what are traditionally our parliamentary prerogatives by the inclusion of those prerogatives in regulations, then we ought to do something about that. However, in my opinion, this straightforward bill is an ill-chosen vehicle by which to launch that kind of attack.

Pursuant to rule 86(1)(d), honourable senators established the Joint Committee for the Scrutiny of Regulations to which we appoint eight senators. I do not know how many members from the House sit on that committee. If this issue has come to the head that we are asked to believe it has, then that committee has an onus to examine that area thoroughly and to report to our respective houses with proper recommendations.

Senators opposite have used this bill as an omnibus receptacle of their general concerns about trade and environmental issues. That is not what this bill is all about. This bill is based on the treaty and it is straightforward. Senators opposite have gone overboard in trying to dress this bill as something that it is not.

The concerns of honourable senators opposite are legitimate, and I share some of those concerns. However, it is typical of environmental seminars across the country that people become so worked up that, at times, they are sucked into their own vortex.

Some Hon. Senators: Oh, oh!

Senator Corbin: I appeal to all honourable senators: Let us be candid. Senators opposite have said that this is a good bill. This is a good bill.

Senator Tkachuk: It is a bad one!

Senator Corbin: Honourable senators appreciated my explanations of the bill; they all said that. Senator Carney said that much. They thought I did a great job. Then, in committee, they tore the bill apart. You have to make up your minds, honourable senators. You have to trust the wording of the bill and the intent of the draft regulations.

• (1200)

Consider the trade issue, and water as trade. I should like to put on the record a quote from a book called *Water* by Marq de Villiers. I shall quote from page 278 which states:

CELA —

— which is the Canadian Environmental Law Association —

— believes that Canada caved in to American pressure when it failed to exempt bulk water sales under NAFTA. In a way, however, the story is even odder than that. No less a person than Pat Carney, Canada's trade minister during negotiations, seems to have believed that water had been exempted and was puzzled to find out it had not. The story was told by Brian McAndrew, a *Toronto Star* reporter:

The extract from that article reads as follows:

It [the tipoff that water was not after all exempt] began with a question to a senior policy adviser to Pat Carney.

"It's exempt, it's right there in black and white," the advisor said.

But after trying to find the reference in the text, the adviser came up dry. "I don't know what happened. We discussed it. It should be there."

The next tipoff came when Carney was tossed the same question during a constituency meeting three months later.

"Water is exempt from the deal — it's right in the agreement," she replied. She too was asked to point out the wording in the text. After consulting an aid, she said, "it was there."

What do we have here? We have an attempt to put in a boundary waters treaty issues that should have been concluded under NAFTA, another treaty. That is bootlegging of the worst kind, and it is subverting the intent of the treaty and the intent of this legislation.

Honourable senators, I beg of you to support this legislation. Put your ghosts and scarecrows in the closet and let us get on with the business of administering what has been a very good treaty for both Canada and the United States over the years.

Hon. Sheila Finestone: Honourable senators, I wish to thank the honourable senator for his clearly enunciated evaluation of the situation. I remember very well the comments of Pat Carney. I remember very well the debates as we were dealing with the Free Trade Agreement. I was very concerned that the same thing was being repeated here. I am glad to hear that it is not.

Those who wonder whether it is worthwhile to sit on the Standing Joint Committee of the Senate and the House of Commons on Scrutiny of Regulations should think again because that committee can bring about important and substantive changes. It has been my pleasure to serve on that committee. For anyone interested in supervising what regulations do in comparison or in contrast to the intent of a bill, good and constructive work can be done on that committee.

Hon. Lowell Murray: Honourable senators, I should like to ask Senator Finestone a question. Since her good memory obviously extends at least back to 1988, I should like to ask her a question about a more recent event, that being the signing by Canada, the United States and Mexico of the NAFTA and an

accompanying protocol thereto, in 1994, I believe, which made a very clear statement on the non-presence of water issues in the NAFTA treaty. Does the honourable senator remember who signed that statement for Canada?

Senator Finestone: There is every possibility that I could so remember. Thank you.

Senator Murray: Does the name Jean Chrétien ring a bell?

The Hon. the Speaker: Honourable senators, is the house ready for the question on Bill C-6?

Hon. Senators: Question!

The Hon. the Speaker: The question is on the amendment of the Honourable Senator Murray.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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 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 haven't risen:

The Hon. the Speaker: By agreement, the division will take place at 12:30 p.m. today.

Hon. Terry Stratton: It is my understanding that we will now be voting on the amendments to Bill C-7, Bill C-7 itself, the amendment to Bill C-6 and Bill C-6 itself.

Senator Carstairs: That is right.

The Hon. the Speaker: Honourable senators, is it agreed that the bells will begin to ring five minutes earlier than originally agreed and that they will ring for 20 minutes rather than for 15 minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: Call in the senators.

• (1230)

The Hon. the Speaker: Honourable senators, it is our intention to vote on Bill C-7 and Bill C-6, in that order. Potentially, we will have three votes on Bill C-7: first, the motion in amendment of Senator Nolin; second, the motion in amendment of Senator Andreychuk; and then third reading, as amended. We will then move to Bill C-6 and deal first with the motion in amendment of Senator Murray and then third reading.

YOUTH CRIMINAL JUSTICE BILL

THIRD READING

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, as amended, be not now read a third time but that it be amended further,

(a) on page 150, by adding, immediately after line 40, the following:

“Review of Act

158. (1) Three years after the coming into effect of the Act and at the end of every five-year period thereafter, the Minister of Justice shall undertake a comprehensive review of the operation of this Act and cause to be laid before both Houses of Parliament a report thereon including any recommendations pertaining to the amendments to this Act that the Minister considers necessary or desirable.

(2) For the purpose of the report referred to in subsection (1), the Minister shall consult the Attorney General of every province and persons, groups or class of persons or a body appointed or designated by or under this Act or an Act of the legislature of a province and representatives of aboriginal people of Canada.

159. (1) As soon as the Minister of Justice’s report has been laid before both Houses, a comprehensive review of the report and of the provisions and operation of this Act shall be undertaken by such committees of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Parliament to determine if the objectives of the Act are met in various provinces across Canada.

(2) The committee referred in subsection (1) shall, within six months after the completion of the review undertaken pursuant to that subsection or within such further time as Parliament may authorize, submit a report on the review to Parliament including a statement, if any, as to any changes the committee recommends.”; and

(b) by renumbering clauses 158 to 200 as clauses 160 to 202, and any cross-references thereto accordingly.

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 on page 68, clause 61 as follows:

(a) Delete lines 23 to 28; and;

(b) Renumber clauses 62 to 200 as clauses 61 to 199 and any cross-references thereto accordingly.

Motion in amendment of Honourable Senator Nolin negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Moore
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Pitfield
Finestone	Prud’homme
Forrestall	Rivest
Grafstein	Roche
Johnson	Spivak
Joyal	Stratton
Kelleher	Tkachuk
Keon	Watt—31
Kinsella	

NAYS

THE HONOURABLE SENATORS

Austin	Jaffer
Banks	Kenny
Biron	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Rompkey
Ferretti Barth	Setlakwe
Finnerty	Sibbeston
Fraser	Stollery
Furey	Taylor
Gauthier	Tunney
Graham	Wiebe—43
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, we are now voting on Bill C-7, the amendment of Senator Andreychuk.

Motion in amendment of Honourable Senator Andreychuk negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Moore
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Pitfield
Finestone	Prud'homme
Forrestall	Rivest
Grafstein	Roche
Johnson	Spivak
Joyal	Stratton
Kelleher	Tkachuk
Keon	Watt—31
Kinsella	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Banks	Kenny
Biron	Kirby
Bryden	LaPierre
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Christensen	Mahovlich
Cook	Milne
Cools	Morin
Corbin	Phalen
Cordy	Poulin
Day	Poy
De Bané	Robichaud
Fairbairn	Rompkey
Ferretti Barth	Setlakwe
Finnerty	Sibbeston
Fraser	Stollery
Furey	Taylor
Gauthier	Tunney
Graham	Wiebe—43
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The next question is on the motion for the third reading of Bill C-7.

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

YEAS
THE HONOURABLE SENATORS

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

NAYS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—24

ABSTENTIONS
THE HONOURABLE SENATORS

Grafstein
Joyal
Pitfield—3

• (1250)

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—THIRD READING

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,

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill 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.—(Pursuant to the Order adopted on December 17, 2001, all questions will be put to dispose of the Bill at 12:30 p.m.)

The Hon. the Speaker: Honourable senators, we are now voting on Bill C-6, the amendment of Senator Murray.

Motion in amendment negatived on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Buchanan	Nolin
Comeau	Oliver
Di Nino	Prud'homme
Doody	Rivest
Forrestall	Roche
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—25

NAYS THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
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
Ferretti Barth	Robichaud
Finestone	Rompkey
Finnerty	Setlakwe Sibbeston
Fraser	Stollery
Furey	Taylor
Gauthier	Tunney
Grafstein	Watt
Graham	Wiebe—50
Hubley	

ABSTENTIONS THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, we will now move to the vote on the third reading of Bill C-6.

• (1300)

[Translation]

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

YEAS
THE HONOURABLE SENATORS

Austin	Joyal
Bacon	Kenny
Banks	Kirby
Biron	LaPierre
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Moore
Cools	Morin
Corbin	Phalen
Cordy	Pitfield
Day	Poulin
De Bané	Poy
Fairbairn	Robichaud
Ferretti Barth	Roche
Finestone	Rompkey
Finnerty	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Grafstein	Tunney
Graham	Watt
Hubley	Wiebe—51
Jaffer	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Meighen
Buchanan	Murray
Comeau	Nolin
Di Nino	Oliver
Doody	Prud'homme
Forrestall	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—24

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

ANTI-TERRORISM BILL

THIRD READING—MOTION TO
ALLOCATE TIME ADOPTED

Hon. Fernand Robichaud (Deputy Leader of the Government, pursuant to notice given on December 17, moved:

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).

He said: Honourable senators, it is my duty to inform you that we have not been successful in reaching an agreement to dispose of all stages of Bill C-36.

[English]

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

[Translation]

Senator Robichaud: Honourable senators, after numerous attempts, we have still not been successful in reaching agreement on the approach to be taken to dispose of Bill C-36. This is a rather important bill. We have carried out a preliminary study of it. We have held an exhaustive debate on second reading. We have considered it clause by clause in committee. We have debated the committee report. The debate began, of course, in this chamber, and the bill has been debated on several occasions. Amendments have been put. The bells have been rung numerous times. One evening, when we could have had four hours of debate, we had three hours of bells and one hour of speeches.

Honourable senators, noble efforts have been made on both sides of this chamber to reach an agreement. We did not succeed. I therefore find myself obliged to move this motion in order to get the bill passed.

[English]

Some Hon. Senators: Shame!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we have arrived at the stage where the guillotine has been imposed by the government in this house, just as it was imposed in the other House.

Senator Lynch-Staunton: Shame!

Senator Kinsella: When one looks around the walls of this honourable house, one sees the images of those who struggled for Canadian freedoms. Unfortunately, those images were not able to transcend the message that Canadian freedom has been brought about not by accident but by deliberate decisions and deliberate acts of Canadians since 1867.

However, when the guillotine is brought down on a measure, it causes us, and I hope the Canadian public, to pause for a moment to at least ask why parliamentarians have arrived at this impasse. We have arrived at this impasse not because this side did not recognize that we are in a time of crisis or in a time of strain. It is difficult to know which term to use because, as far as Bill C-36 is concerned, from the minister up or down, we have been reminded that there is no emergency and this is not emergency legislation. Reference is made, however, to the tragedy of September 11, and other arguments are advanced that governments need special powers, notwithstanding that no *prima facie* case has been made about the nature of the threat in Canada that would cause us to give the government special powers because it did not have sufficient powers or tools to deal with criminals, such as those associated with the tragedy on September 11. Witness after witness who appeared before the committee, as well as those individuals who have been writing about this in the media and elsewhere, have correctly pointed out that the crimes that have been or can be associated with the September 11 tragedy could be prosecuted under the present laws of the land.

However, this side was quite prepared to show good faith and a sense of collaboration because we adopted Bill C-36 at second reading. We accepted the principle that the state should be given some extra powers. We made it perfectly clear however that, contingent to the state having extra powers, there had to be extra safety valves to guard against the possible abuse of these special powers. We were looking for the balance, and we were pleased that the special committee of the Senate that considered the subject matter of Bill C-36 initially came forward with a unanimous report, which was adopted by the Senate. The report outlined where changes could be made to the bill to bring about a balance between the protection of human rights and civil liberties of Canadians, and the extra powers that the state argued for successfully, because we adopted the bill at second reading. We accepted the principle.

The government would move the guillotine to shut down debate and bring this bill to a vote, as they did in the House of Commons. Every Canadian can count. We know this is a Liberal-dominated Senate. It is a pity that the abandonment of liberal principles as espoused by Pierre Elliott Trudeau and Lester Pearson did not manifest themselves with the present class of Liberal parliamentarians. They have failed Canadians. The use

of instruments like the guillotine and the use of their massive domination of this house speaks to the frustration of senators who do important work on legislative committees in special studies, only to be steamrolled by this majority.

This is what we are dealing with in the motion that is before us. It is using power to secure more power. It was not necessary. A common report had been adopted by the Senate, with this house embracing the first report of the special committee that considered the subject matter of Bill C-36.

• (1310)

Honourable senators, I know that every senator must have a concern — the amber light must be flashing — as to who might become the targets of this extraordinary power that will be in the hands of the police, federal and provincial peace officers wherever, as well as secret service agents, the agents of CSIS and military agents. Who will be their targets in Canada? My fear is that we will not have to look very far. We do not need a great deal of imagination to identify a large number of Canadians who will be targeted, who will be harassed, who will be victimized and, quite frankly, who will lose their freedom because of the powers that the state will acquire under this act.

Honourable senators, we need not reach back very far to see where it has happened in the past. It happened in the early 1970s on the streets of Montreal. I do not think there was ill will on anyone's part, but many Canadians lost a lot of freedom. Multiply the number of days in captivity against the hundreds who were detained under the emergency powers invoked under the War Measures Act.

Look back a few more years, honourable senators, to what happened to Canadians of Japanese ancestry. There was not necessarily ill will on anyone's part. At that time, there was no Charter. If we find goodness in evil, as Saint Augustine sometimes refers to in his *City of God*, perhaps this is one of the contributions that Japanese Canadians have made to the growth of Canadian freedom. Their freedom had suffered.

Who will be the targets over the next few years? As members of Parliament, in this house and our colleagues in the other place, to whom do we have to make sure that our telephone numbers are available so we do not become the new Canadian *detenidos* or *desaparecidos*, well known in countries in the southern part of this hemisphere? It can happen in Canada. This is not American television. It has happened in our own lifetime. We saw it in the streets of Montreal in the 1970s, and it was seen in Canada during the 1940s.

I worry particularly for the victimization that I fear would fall from the maladministration of these powers against Canadians of Arab origin. I worry for those who are members of visible minority communities. I worry for those whose religious expression has them look different because of their religious head garb, whether it be the Sikhs in their turbans or the publicly worn head garb of many other faith communities. It has happened in the past, and I fear it will happen again.

It is regrettable that this government will not see the light. There was no opposition to the state having these extra powers. We were asking for a little creativity —

The Hon. the Speaker: Under the rules, the deputy leaders have 10 minutes to speak to this motion, and Senator Kinsella's time has expired.

Hon. Consiglio Di Nino: Before I begin, how much time do I have, Your Honour?

The Hon. the Speaker: Normally, I would alternate side to side. Does Senator Di Nino mind if I go to Senator LaPierre?

Senator Carstairs, do you wish to speak?

Hon. Sharon Carstairs (Leader of the Government): I do indeed wish to speak.

The Hon. the Speaker: Under the rules, leaders have half an hour to speak.

Hon. Marcel Prud'homme: Point of order!

The Hon. the Speaker: On a point of order, Senator Prud'homme.

Senator Prud'homme: Senator Di Nino had a good question when he asked how much time he is allowed. It is two and one-half hours. No one can speak more than 10 minutes. That means we could have 15 speeches of 10 minutes each, if I am right.

The Hon. the Speaker: That is correct. Rule 40(2)(c) says that with respect to this debate, no senator may speak longer than 10 minutes. There is an exception, however. The Leader of the Government in the Senate and the Leader of the Opposition in the Senate may each speak for up to 30 minutes.

Hon. Anne C. Cools: Honourable senators, I am curious. Maybe we are being held in suspense, or maybe the best is coming later or the best will be last. When Senator Robichaud gave notice of the motion last night, he began by informing the Senate that it was not possible to reach an agreement. To the extent that the difficulty in reaching agreement seemed to be the *raison d'être* for the motion, I would have thought that, following on Senator Robichaud's remarks, we would have had some insight, if not some explanation, and at least some gleaning of the reasons why the opposition had difficulty in coming to an agreement. I just thought that the leader on the other side would have been given ample opportunity to tell us what the difficulties on his side were with the motion itself.

Senator Prud'homme: Is that a speech?

The Hon. the Speaker: I think that is an intervention, Senator Cools, and Senator Carstairs has asked for the floor.

Senator Carstairs: Honourable senators, Senator Kinsella began by indicating some concern about the motion to limit time on this debate, but Senator Cools is quite correct that he then

began to debate the principle of the bill. Right now we are dealing with why it is necessary to impose time allocation. That is what I should like to do, and no, honourable senators, I will not take the 30 minutes that I am allowed to take.

It is very important, honourable senators, that we realize that thus far on third reading, 20 senators have spoken. That is a highly unusual number to speak at third reading on any bill. Today is not the first or the second or the third or the fourth or the fifth day of debate — it is the sixth day of debate. Five hours and seventeen minutes of actual speeches have been given for debate at this stage of the bill.

Ironically, last Thursday night, the bells rang for four hours, which was caused by the other side, in comparison to the two hours and thirty-one minutes that they allowed for debate.

Some Hon. Senators: Shame!

Senator Carstairs: In total, nine hours and seventeen minutes have been devoted to third reading of Bill C-36, including the speeches and the bell ringing.

It would seem only logical and reasonable to me that if honourable senators were genuinely interested in debate, they would not allow bells to ring for four hours. They would get on their feet, and they would, in fact, speak.

In the preceding five sitting days, the senators on the other side have proposed the adjournment of the debate seven different times. On Friday, December 14, 2001, debate could have continued, but the opposition whip deferred the vote on Senator Lynch-Staunton's motion in amendment to Monday, December 17, therefore effectively shutting down the debate in this chamber.

• (1320)

What we are proposing by this motion is to add up to six more hours to the debate, which means that if each senator had 15 minutes, 24 more senators could speak. If honourable senators look at the numbers from the recorded division this morning, they will notice that the other side had 23 senators, I think, at maximum numbers. Twelve Conservative senators have already spoken to the bill at third reading. Of those 12, nine are here today. Presumably, they have put on the record what they wanted to say. That leaves a maximum of 14 Conservative senators present today with the right to speak to this bill.

I say, "Get on with it!" Let us have the speeches. Let us move the time allocation motion. Let us begin the actual debate on the substance of Bill C-36.

Some Hon. Senators: Hear, hear!

Senator Di Nino: Honourable senators, of all the proceedings in this chamber, this is the one that disturbs me most. My friend, Senator Kinsella, has called this measure a "guillotine." It has been called "closure" and "time allocation." I call it the "muzzling of Parliament."

What is interesting is that in the first speech I gave in the Senate some 11 years ago I said something similar. I have been tremendously impressed with the men and women in this chamber, for they are men and women of great ability and great intelligence. They are men and women of unique and valuable experiences and talents. They are men and women for whom I have high esteem. I refer to the people who sit next to me and to those who sit across from me.

It is disturbing to see that what Andrew Coyne wrote about in a *National Post* article of November 18 may very well be happening before our eyes. His article talked about the death of Parliament or, perhaps, the death of democracy. I should like to read a few comments in that regard. In talking about Mr. Gray's defence of the government's use of the guillotine in the other place, Mr. Coyne quoted Mr. Gray as follows:

"Parliament is not only a place for debate, it's a place for taking decisions."

I agree with him. Mr. Coyne continued:

But the truth is that it is neither, and hasn't been for some time. Having had little or no opportunity to debate the legislation or to propose amendments, government MPs will stand in their place when called today and vote the bill through, in strict obedience to the party line, as they always do.

Closure and party-line voting are objectionable at the best of times. But to apply these parliamentary tourniquets to legislation such as this — hasty in drafting but permanent in effect, with all manner of implications for the rights of citizens and all sorts of potential for abuse — is simply beyond belief.

I wish to read to honourable senators some of the comments made by other Canadians who care. Patricia Winston, from Montreal, wrote:

The more we learn about this Bill, the more it becomes clear that its measures, hastily conceived to address an uncertain but emotionally charged threat, may very well represent a deeper threat themselves. Civil rights and liberties have been hard won, and they represent the struggle of many generations; and so to witness the first signs of an impending retreat is very worrisome.

In an article in *The Toronto Star*, which in the Toronto area, for those who do not know, we call the Liberal propaganda organ, it was stated that Bill C-36 will give:

— unprecedented powers to some cabinet ministers arbitrarily to impose interim orders that have more in common —

The Hon. the Speaker: Is the Honourable Senator LaPierre rising on a point of order?

Hon. Laurier L. LaPierre: I thought His Honour said that we were to speak on the Senator Robichaud's motion and not on the

bill itself. Am I wrong? If I am wrong, I shall sit down and apologize. This honourable senator is certainly speaking about Bill C-36.

The Hon. the Speaker: Honourable senators, I have indicated that we have a great deal of leeway in these matters; I do not find Senator Di Nino off topic.

Senator Di Nino: If the Honourable Senator LaPierre wishes to speak, why does he not wait until I am finished? Please give me that courtesy, and I will do the same for you.

Senator LaPierre: I listen to you with great interest.

Senator Di Nino: Thank you. I appreciate that.

Let me read once again that quote from *The Toronto Star*. The article states that Bill C-36 will give:

— unprecedented powers to some cabinet ministers arbitrarily to impose interim orders that have more in common with martial law and banana republics than Canada's democratic traditions.

Mr. Telegdi, a Liberal member of the other place, said the following:

— the legislation we are debating gives extraordinary powers to the solicitor general, the courts and the police. It must contain at the very least a feature of accountability. I notice that the motion for a parliamentary oversight committee will not be voted on since it was ruled out of order. I regret that because the amendment would have protected one of our most basic tenets of democracy: accountability to this Chamber. This accountability is absolutely necessary because without it we lose an essential element of the democratic process. If we fail to protect the process, we will lose it.

Mr. Telegdi spoke in this manner because he comes from a communist country, where experience taught him something that, perhaps, most of us were not subjected to.

Honourable senators, Canada has attracted millions of people from all over the world. One of the reasons people come here, as my mother, father and I did in 1951, is that we respect democracy and the democratic process. Closure does not respect democracy nor does it respect the democratic process.

In an article in the *Ottawa Citizen* on December 15, it was reported that a Jane Russow, former leader of the Green Party, was put on what is called a "threat assessment list" by the RCMP, who were concerned about what her actions would be during the APEC demonstrations. The article says, in part, the following:

The allegations come as Parliament considers legislation that would make it easier to eavesdrop on, arrest and question suspected terrorists. Some critics fear the new laws would be used to crack down on anti-globalization activists and other demonstrators, a charge the Liberal government denies.

While they may deny, we are starting to see some of the results, even though the law has not been passed.

On December 15, in an article in the *Montreal Gazette* entitled "Canada cracks down," we are told that 10 people are now being held as security risks.

The criticism of this bill and of what is happening is widespread. In my opinion, it will become even more so. Almost everyone in the field of law and in the business of looking out for our interests is opposed to this measure.

Let me refer once again to the article in the *Montreal Gazette*. For those who think that profiling is not happening, let me refer to a statistic that article refers to. Of the 10 people detained for security reasons, there are eight Arabs, one Sikh and one Tamil.

I shall conclude, honourable senators, with some comments about why I think what we are doing is wrong. To do that, I wish to read from an article that appeared in the *Kitchener-Waterloo Record*. It states:

If there was ever a time Canadians needed the sober, second thought of their Senate, it is now. If there was ever a golden opportunity for this same Senate, so ignored, so maligned, so dismissed as useless over the years, to prove that it is worth the cost of keeping its chambers open, it is at this moment as it examines, debates and seeks to improve the anti-terrorism bill, C-36.

For the good of the nation, this dangerous piece of legislation, conceived in panic, written in unseemly haste, delivered in the clenched fist of a majority government, should be rejected in its current form and returned to the House of Commons with the terse command: "Fix it."

• (1330)

Mr. John Reid, Canada's Information Commissioner, said that the bill gives the government the power to muzzle the release of information that could be politically sensitive.

The Hon. the Speaker: I must advise Senator Di Nino that his 10 minutes have expired.

Senator Di Nino: Thank you.

Senator Carstairs: Question!

The Hon. the Speaker: Is the house ready for the question? Is there a senator on the government side who wishes to speak?

Hon. J. Michael Forrestall: Honourable senators, I wish to participate in this debate. My opposition to closure is well known to those who know me well. I will not address the bill directly at this time, but I am uncertain as to whether I will have an opportunity to speak to it for two or three minutes, no more, at a later date and before the question on Bill C-36 is put to the chamber.

Honourable senators, 31 years ago last October, I made a dreadful mistake in public life. For those who may be interested, I have been in public life for about 47 years, one way or another. In company with my colleagues who at the time believed that there was apprehended insurrection in our nation, I made an extreme error in judgment.

I learned shortly afterward that, of the 500 or so individuals who were incarcerated under the extraordinary power that we gave to government under the War Measures Act, virtually none of them was charged. I know of families that did not know where their spouses, sons, sisters or brothers were. Counsel was unable to assist these people, and I know that their rights as Canadian citizens were seriously affected.

I believe Bill C-36 is excessive.

Honourable senators, in all my years in public life, from November 1957 to this day, the man who was my mentor was the Right Honourable Robert L. Stanfield. He said that the War Measures Act was not only but the worst mistake he ever made in public life. Honourable senators, I will not make that mistake again because I made it then. I have an opportunity to apologize to Canadians who were seriously affected by that decision 31 years ago, and I will not lend support to proposed legislation that is excessive and intrusive.

To date, we have heard nothing more than an appeasement from our friends to the south. I am not soft on terrorism, but I am very concerned about the rights of Canadians. I will vote against this bill and I will do so not with a heavy heart, but with a sense of forgiveness.

Hon. Terry Stratton: Honourable senators, I do not usually speak to issues such as this if I am not directly involved. However, this bill disturbs me greatly, even though I am the epitome of a WASP. I stand before you with all the credentials of a WASP in that I ask myself: Why should I worry about it? Honourable senators, I worry about minorities. I am concerned about the fact that this is aimed directly at people whom we all know and like, and who are directly or indirectly targeted as a result of what happened on September 11.

Honourable senators, I should like to tell you about my high school days when I knew a young Japanese boy who became my friend and who later became my business partner. As a matter of fact, two Japanese individuals became my partners in business. I want to relate their story to you because of what happened to them during the Second World War. I will never forget their story.

These two youths came from happy, contented families on the West Coast. Their parents were fishers, and they were living a good life. As a matter of fact, the family of the individual to whom I referred has one more generation in Canada than I have. From that historic fact, I would view him as being as Canadian as I, if not more Canadian.

As honourable senators all know, the government marched up to them and said: "You must leave this place and all your lands and holdings will be confiscated." That was a really tragic event. One of the youths ended up working on a farm outside Steinbach, Manitoba. In his own country, he was treated as a serf.

Kids pay little attention to stories like that, but when he told me about it, I was appalled. Every minority sitting in this chamber and right across Canada must think of that story and of what could happen — the internment and the conditions that those people faced. Fortunately, my friend was young at the time and did not have to restart his life because it had barely begun. In the end, he viewed it as beneficial; otherwise, he would still be a fisher on the West Coast. His family had everything taken from them, and they had to start over again.

Honourable senators, when we realize the enormity of that, and when we understand why that happened, we say that it could never happen in this day and age. I say: Wrong. With this bill, it can happen again. If I were a minority in Canada today, I would be upset and concerned about Bill C-36, because I would perceive it as targeting me, perhaps not directly, as a minority. That fundamentally bothers me, and I simply cannot accept it on the basis of Canada's history and on the basis of what I learned about and lived through.

Honourable senators, think about that when you are voting. I, as you know, will vote against the bill based on that simple, factual story.

Recognize that, in today's times, it is not too great a problem — except for a significant few who will be put away and who will disappear. However, if we get into much more difficult times than now, you can rest assured that what will happen will be far nastier than what you and I think could happen today.

• (1340)

I recall the vote on the Charlottetown Accord. There was a referendum. Suddenly, before we knew it, the racism number was being played. It certainly was obvious at meetings in my part of the Prairies. Honourable senators, racism lies just below the surface, waiting for an opportunity to emerge. My concern is that passage of this bill will allow such racism to emerge much more quickly.

Honourable senators, there must be conditions attached to the implementation of this legislation. We should insert a real sunset clause. The last thing any person wants is to have his or her rights taken away and marched off to an internment camp with no recourse. My fear is that that could happen. We are told that that will not happen, but I fundamentally disagree with that.

Senator Di Nino: I should like to ask a question of Senator Stratton. At the beginning of his remarks he said something that caught my attention. He referred to himself as an Anglo-Saxon and he asked why he should care. What is happening in this

country today is a beacon to the world on how people can live together without all those frictions that are created by race, colour and creed, because of intermarriages and so forth. I am sure that Senator Stratton has experienced this. He may be an Anglo-Saxon, but his grandchildren, great-grandchildren, son-in-law or daughter-in-law through marriage would make those generations coming after him not such a recognizable individual group of people as we may have had in the past. Would you not agree with that?

Senator Stratton: Honourable senators, I am the definition of a WASP, although I claim Celtic roots. For the most part, my children and grandchildren are blond-haired and blue-eyed.

Senator Di Nino: For now, anyway.

Senator Stratton: Yes, for now. For their sake, I hope that will happen in the future and that they do not have to live with this dreadful fear I have talked about.

[Translation]

Senator Prud'homme: Honourable senators, I was very surprised when I read News Release No. 164 issued by Canada's Department of Foreign Affairs on December 14, 2001:

[English]

"Canada reports to UN Security Council on counterterrorism measures."

[Translation]

Under UNSC Resolution 1373, Parliament reports to the committee in New York, which is responsible for anti-terrorism and which monitors the implementation of the resolution.

I will go directly to this paragraph and tell you why we are making a serious mistake in a country that is recognized as a democratic one throughout the world. The minister, Mr. Manley, was very pleased — and I am talking about an excellent friend — to report that Canada has taken measures since September 11, and even prior to that date.

I can read it to you in English, because I have both versions with me. It deals primarily with some clauses of Bill C-36.

[English]

— the Public Safety Act (Bill C-42) and the Act to amend the Aeronautics Act (Bill C-44), as well as Canada's implementation of the United Nations Suppression of Terrorism Regulations. Canada will submit a further report to the Committee once the legislation now before Parliament has been passed.

However, if you read that communiqué, this must be done before December 27, 2001.

[Senator Stratton]

[Translation]

I have just discovered the reason for this panic. Why must we use closure as quickly as possible? It is so that Canada can boast to the United Nations and say: "Here, all the measures we took have now become law. We imposed them on a refractory House of Commons. We imposed them on a Senate committee. We can now tell you that the work was done properly."

I watched what happened when the House of Commons sent us this bill for preliminary study, under Senator Fairbairn's able leadership. Since I attended every meeting, or almost, I came to notice the Liberal membership on the committee. There were seven Liberals under the able leadership of Senator Fairbairn, five Conservatives and one independent, namely, me, who did not belong to an organized political party. I was the thirteenth member of a committee of twelve. They did a remarkable job.

I still remember the strength of character displayed by Senator Bacon. She was clear, concise and accurate when the time came to discuss the sunset clause. She does not tend to repeat herself, as I do. She thought about the issue and she was categorical.

Something remarkable occurred afterwards. When the bill was sent back to the other place, the same committee met again. To my great surprise, four of the seven Liberal members on the committee had been changed. I still do not know what to make of this. These people had done their homework. They had thoroughly examined the bill when the preliminary study was done, even before the legislation was submitted to the House of Commons.

• (1350)

These seven Liberal senators, after vigorous debate behind closed doors, were convinced of the need to present the report that was presented and adopted in this chamber.

The blade of the guillotine is falling again, at a different angle. I thought that this practice of wanting to change committee members whenever they were unfortunate enough to displease the party in office, the minister, the deputy minister or the whip, was in effect only in the House of Commons, which I left eight years ago already.

Today, the government is asking us again to pass this bill. While there is some hesitancy, we will not be taking the time required to reach a consensus and we will have to leave it up to the courts. As a matter of courtesy, I wish to point out that the Governor General will, perhaps, have a surprise when she comes to give Royal Assent later.

I will speak again at the end of the six hours of debate. I wish to record my profound disagreement with this decision to impose closure.

[English]

I say openly, in front of Senator LeBreton and other honourable senators who I have not consulted, that I would have preferred that we rise before Senator Robichaud had time to do what he was about to do, in order to show our immense

displeasure. By doing so, we would have attracted the attention of Canadians to the Senate. We would have calmly walked out of the Senate, not in the type of disgusting show that I witnessed when the GST was being debated in the Senate years ago, when any respect that Canadians had for the Senate was almost destroyed.

Honourable senators, that gesture could have been dramatic. Perhaps the leadership of the official opposition will consider my proposal when the time comes for third and final reading. I will be prepared not to use the speech that I have here — it contains excellent quotes from Canadians from every province who are begging us to reconsider — nor will I repeat what my friend, Senator Forrestall said about the events of 31 years ago. I would hope that colleagues will reflect, but I am afraid it is too late.

Some Hon. Senators: Question!

The Hon. the Speaker *pro tempore*: Honourable senators, is the house ready for the question?

Some Hon. Senators: Question!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Will all those senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Will all those senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Pursuant to rule 40(1)(c), any standing vote requested in relation thereto shall not be deferred and shall be taken subject to the provisions of rule 66(1), which provides for a one-hour bell, unless there is an agreement.

Senator Rompkey: I believe there is agreement on a 15-minute bell.

Senator Stratton: That is agreed.

The Hon. the Speaker *pro tempore*: Is that agreed?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: The vote will be held at 2:10 p.m. Call in the senators.

• (1410)

[Translation]

THIRD READING

Motion agreed to on the following division:

On the Order:

YEAS THE HONOURABLE SENATORS

Bacon	Kenny
Banks	Kirby
Biron	LaPierre
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Milne
Cook	Moore
Cools	Morin
Corbin	Pépin
Cordy	Phalen
Day	Pitfield
Fairbairn	Poulin
Ferretti Barth	Poy
Finnerty	Robichaud
Fraser	Rompkey
Furey	Setlakwe
Gauthier	Sibbeston
Grafstein	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Watt
Jaffer	Wiebe—47
Joyal	

NAYS THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Murray
Bolduc	Nolin
Buchanan	Oliver
Di Nino	Prud'homme
Doody	Rivest
Forrestall	Spivak
Johnson	Stratton
Kinsella	Tkachuk—20

ABSTENTIONS THE HONOURABLE SENATORS

Nil

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.

Hon. Gérard-A. Beaudoin: Honourable senators, Bill C-36 contains a number of shortcomings, including one very significant one. This shortcoming could imply that a person would be found guilty of facilitating an act of terrorism in the absence of *mens rea*. In order to commit a crime, in criminal law — and this is something we learn in every faculty of law in first year — there must be two things: the *actus reus*, a crime committed; and the *mens rea*, the intent to commit a crime.

As the Canadian Bar Association said in its brief on November 27, 2001, “full *mens rea* should always be a requisite element;” that is, the intent to commit a crime.

Chief Justice Lamer, in a dissenting opinion, but not on this issue, in *Bernard* (1988) gave an explanation of the fundamental nature of the *mens rea* requirement.

To warrant the condemnation of a conviction and the infliction of punishment, one who has caused harm must have done so with a blameworthy state of mind. It is always for the Crown to prove the existence of a guilty mind beyond a reasonable doubt.

In other words, “suspicion” is insufficient grounds to arrest someone. That is why, honourable senators, we have a duty to correct this flaw in Bill C-36 and to provide for a complete *mens rea* where the commission of an act of terrorism is concerned.

[English]

MOTION IN AMENDMENT

Hon. Gérard-A. Beaudoin: Therefore, honourable senators, I move, seconded by Senator Andreychuk:

That Bill C-36 be not now read a third time but that it be amended in clause 4,

(a) on page 29, by replacing line 40 with the following:

“83.19 Every one who knowingly facili-”;

(b) on page 30, by deleting lines 1 to 9.

That is the line that says:

(2) For the purposes of this Part, a terrorist activity is facilitated whether or not

(a) the facilitator knows that a particular terrorist activity is facilitated;

(b) any particular terrorist activity was foreseen or planned at the time it was facilitated; or

(c) any terrorist activity was actually carried out.

Thus, a person may be convicted even if there is no *mens rea*, which means the intention to commit a crime.

• (1420)

The Hon. the Speaker: The house has heard the motion. Is it 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: In my opinion, the “nays” have it.

And two honourable senators having risen:

The Hon. the Speaker: There will be a division on this amendment as provided for in rule 39.

Hon. Terry Stratton: Honourables senators, with the agreement of the house, we should bundle the vote with respect to Bill C-36 and the amendments.

The Hon. the Speaker: I thought we had agreed to that already. Out of an abundance of caution, let us agree to it again. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Laurier L. LaPierre: Honourable senators, I rise to speak on the amendment to Bill C-36 by the Honourable Senator Murray and seconded by the Honourable Senator Buchanan.

I shall preface my remarks by stating that I think that the only time in my life that I did not oppose transfer, deportation or the application of stringent laws was in the First World War — I will not yet born — when the Ukrainians were deported. However, the secret was kept. In 1980, when Patrick Watson was chairman of the CBC, a young Ukrainian had just learned from his grandmother that the family had been deported. It had been kept a secret because they were so ashamed of it.

I protested the deportation of the Japanese and was suspended from grammar school for a week. I also protested at the end of

Pacific Street in Sherbrooke, where Drummond and Pacific come together. There was a camp of Germans, Austrians and other so-called “undesirables.” They were in Sherbrooke, and they were used by the government to do various things. I protested against that. As well, honourable senators, I certainly was not in favour of the War Measures Act.

In preparation for this, I must tell you that my inclination was to vote against this bill as it ran so much counter to what I think. However, I sat down and looked at the anti-terrorist bills of other democracies that are not so close to the target that is now constantly everyday resident to us, which is the United States of America. I looked at the terrorist bills of Israel, Germany and France. I have also looked at the bill of the mother of Parliament, where all the liberties of the parliamentary system reside, as I am told by everyone — the United Kingdom. Their terrorist bill is much more stringent than ours.

Of course, Great Britain has a long history of terrorism, coming from the creatures of Northern Ireland associated with that mouthbag of platitudes, Jeremy Adams, and the other incarnation of the devil, Ian Paisley. Great Britain has had experience with that; I understand that. I also understand that I live next to the United States and that I must not take any chance or any risk.

Is the bill protective enough? I would have preferred a sunset clause from beginning to end. However, I am satisfied that two of the most stringent items in this bill are now sunsetted.

I do not attach much importance to review three years down the road, five years down the road or a year down the road, because I know enough about that. However, I do not share the pessimism of many who think that this will be carte blanche for the development of a nasty racism in our country and of targeting a considerable number of citizens. I trust the validity, the compassion and, above all, the determination to diversity that the Canadian people have made a condition of their national existence. I trust that.

I am opposed to the motion of the Honourable Senator Murray. I do not want to take refuge behind the cloak of an official that I do not control in the final analysis. I do not want to take refuge for the application and oversight of this bill to someone I do not control.

I want, and I repeat again, the Senate to become the overseer of this legislation through all kinds of processes. Let us develop a Web site of astonishing attraction that will bring people to it, where they will be able to describe and state what ails them about it. Let us have chats on this Web site. We can staff them. There are close to 100 of us. Let us hold public meetings and public forums across the country.

Let us put ourselves in the centre of this entire affair so that, in the final analysis, Canadians will say, “We have the Senate to see to it that all our rights and liberties are maintained, in spite of the state of terrorism and the action that had to be taken in order to protect our children and our grandchildren.” We must act; it is not someone else who must act.

My friend Senator Prud'homme tells me all the time that over there they are told what to do. That was then; this is now. I do not care. I shall not stand here and be told by Senator Carstairs what to vote for. I sit down, I think and I act accordingly.

I want this bill because it will protect us. However, I want to be part of the solution to whatever danger it holds. You may smile, you may laugh, you may take refuge in Aristotelian physics, if you like. At the end of the day we will all be held responsible, whether we vote for it or not.

I suggest, therefore, that honourable senators vote for this bill and then set up a mechanism whereby we will fulfil our destiny by being responsible for our actions.

Vive le Canada!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the honourable senator accept a question?

Senator LaPierre: No, I have exhausted my wisdom, sir. Thank you.

Hon. Jeremiah S. Grafstein: Honourable senators, I, too, rise to speak on Bill C-36, and specifically Senator Murray's amendment. I shall be mercifully brief, as the debates here and in the other place have been reasoned, intense and most enlightening.

When we look out and survey today's geography on international terrorism, we discover there are 30 savage, raging so-called wars around the globe. Some observers have suggested that 28 of them are nourished and flourished in part by xenophobic fanaticism fanned by paranoid hatreds, where innocents are not out of bounds of decency but, rather, targeted as a daily routine.

Why? Ethnic cleansing is exercised all in the name of imagined palaces of purity. Down through the dusty corridors of history, even martyrdom is despoiled. Sainted martyrdom was always defined as an anathema to the annihilation of innocents.

The Geneva conventions, born almost a century ago, are now tattered by these asymmetrical atrocities whose mission is devoted to destroying civilizations, common values forged in blood and incorporated in the UN Charter.

Civic societies are targeted for terror. Our open, civic society, premised on pluralism and equality, falls prey to the tentacles of international terrorism, which deploys the modernity they abhor — modern networks and modern technology to take hostage and, worse, victimize our liberties at home and abroad.

• (1430)

How, then, can we support a sunset clause while there is a clear and present danger posed by international terrorism? If we

could guarantee a sunset clause on international terrorism, we could invoke a sunset clause and cut down the generous and special police powers and ministerial powers granted under this bill. Regretfully, I do not believe that during the remainder of my term in the Senate I will be fortunate enough to see any respite in international terrorism or its global reach, the global networks that reach into the broad and dark corners of the earth.

International terrorism, which has pushed its most miserable militancy, mutilates, moderates and degrades the human condition below the gradient of the "rule of law."

So here we are, honourable senators. We are left, therefore, to ponder excessive use, if any, of the generous police and ministerial powers, especially difficult to survey when the war against international terrorism goes underground once again, as it will and as it does, as it retreats from the headlines. Still, we will not be allowed any pause to root out these infected branches before they undermine and disorder the roots of our civic society and suffocate the oxygen of our individual liberties.

What are we, as parliamentarians, to do? What of our parliamentary surveillance of these generous police and ministerial powers? By amendment in the other place, the Attorney General and the Solicitor General must report — quantifying the use of these police powers annually by the quantitative and statistical reports — to both Houses.

At its inception, Bill C-36 included a three-year parliamentary review by both Houses through its committees. A committee of the Senate could be deployed earlier for further oversight, but, regretfully, past experience demonstrates to me that budgets, business and changing priorities too often crowd out the necessary. This leaves us in a rather tendentious and contentious position.

Reliance on the courts is neither wholly satisfactory nor salutary because many of us believe so devoutly in the separation of powers. A parliamentary officer, independent of government, would be preferable to demonstrate Parliament's external and eternal vigilance in protecting our civic society, especially in times of extremism and fanaticism. Hence, I will support Senator Murray's amendment, which is so carefully tailored to the proposal I made before the committee and which was approved unanimously by that committee. In so doing, of course I will support Bill C-36.

Hon. A. Raynell Andreychuk: Honourable senators, I have spoken to the general issues that have concerned me in Bill C-36, but obviously this is my final opportunity to put on the record other concerns I have about Bill C-36.

I continue to restate that the Government of Canada was aware of terrorism prior to September 11 and that there are many pieces of legislation that can go to support and secure us as a nation and to assist our allies. The government did act not only on Bill C-11 but also on the existing immigration bill to take further steps.

[Senator LaPierre]

Throughout the study of Bill C-36 and Bill C-11, which have some companion issues, the issues again were resources and training. The government has, both after September 11 and in this recent budget, earmarked more money to do the job. The original issues for both CSIS and the RCMP were the fact that they did not have the proper manpower. In a recent RCMP statement to the press it was indicated that, even with the increase of funds and due to the terrorism issue, they are directing their time, attention and resources to terrorism. Many other community issues that fall into the criminal sphere will go unattended unless there are further resources.

Honourable senators, we should not feel that Bill C-36 is the only issue to do with terrorism. We require a multi-faceted and multi-resourced response. Many of the pieces to that response were in place before September 11 and others were put into place following the tragic events of that day. Bill C-36 is but one of many pieces of legislation already on the books and some in the process of being placed on the books.

The haste with which Bill C-36 went through both the House of Commons and the haste of the process here in the Senate is regrettable. It is unfortunate that we are not taking more time to analyze the bill clause by clause because I believe that we could improve the bill.

I was pleased to hear Senator LaPierre speak about a sunset clause. However, his statements would have been more welcome had they been given at the beginning, when we were voting for a sunset clause, because I, and others, would have accepted Bill C-36 with a sunset clause. The dilemma is that we do not have one on those issues that need a sunset clause and a re-evaluation. Therefore, we in this house must not trust the government to do the right thing, and we must exercise our responsibilities, that is, we must be a check and a balance on the executive. In that spirit, there are three things I wish to discuss.

First, I am still extremely worried about these so-called entities and how one gets on a list and how one removes oneself. Removal seems to be better because there is some judicial ability for anyone named, be it an organization or an individual, to clear their name. However, how does one find oneself on that list? The damage is done, as witness after witness told us. Anyone who has worked in and around criminal law will tell you that if you are accused, it is difficult to clear your name. It is difficult to clear your name in a community and in a job application. The taint follows you, even if it is not correct; that is, even if there is an admission later that there was no substance to the allegation. What marks Canada differently from other societies is that one individual counts. We do not always look to the collective good; we weigh individual rights against the collective good. We must be careful not to taint one Canadian citizen unnecessarily.

While on the Human Rights Commission, I heard the horrific stories of individuals from other countries. The response from those other countries was that that is the price the country pays.

What has made Canada the country that everyone wants to live in — and certainly our citizens, and I am one, count ourselves grateful to live here — is the fact that each of us counts. Each of us has the tools to defend ourselves. I am afraid that this bill lessens that ability. Again, it is not a question that such defence tools should be lessened, but do we have the right balance? In my humble opinion, that balance has not been struck. We have not passed the test. We have taken a power and said, “Trust me, and we will correct it if there is some injustice.” I do not think that is the way a mature Parliament and mature society should address itself.

• (1450)

As well, in the haste to look at other clauses, we have not considered the fallout on charities. Canada prides itself on the volunteers we have, the charitable organizations and the non-governmental activity to which we subscribe. In fact, we spend many of our aid dollars to help NGOs around the world. We heard evidence before the special committee that there is a chill effect going through charities and there will be less likelihood of people donating and being involved in charities which deal with overseas issues and especially as they relate to cultural groupings. I think that is unfortunate, and we need to look at that again.

Honourable senators, at this time I wish to turn of the definition of “terrorist activity.” I am supportive of the definition which states:

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

The bill then enumerates all of the United Nations conventions. I believe that those definitions are appropriate, although as an aside, I muse as to why no one in the United Nations system has been able to come up with a definition of terrorism.

However, we include in the bill another terrorist activity. The proposed section 83.01(1)(b)(i)(A) reads as follows:

in whole or in part for a political, religious or ideological purpose, objective or cause.

In other words, we are saying that motive counts: religious, ideological or political. I do not believe that religion, ideological or political purposes should be included in this proposed section, particularly since we try to separate religion and state. Here we are putting them side by side. As prosecutors pointed out to us, this will restrict the kind of terrorist activity an accused person can be charged with in Canada because it will be based on a religious, ideological or political purpose, and we will have to prove the motive. How do you prove motive? It is most difficult. What about the motive of drug dealing or international crime or human trafficking or just plain greed?

Prosecutors have said we have narrowed our ability to attack terrorism because we have put this proposed section in. Criminal law is not about motive; it is about intent. The other proposed sections flow very deliberately and correctly and point to intent, and we know how to prove that. I do not have the time to go into the criminal aspects of this; however, I think it is inappropriate, because when one person is charged because of the motive of Islamic faith, then everyone who has that faith feels the brunt of that issue. When everyone feels something about a political cause, what happens?

Honourable senators, I wish I had more time. Since this bill is so important, I hope that all of you have read the committee proceedings, where we dealt with this issue in detail. It seems to me that this is the most fundamental issue, and that this proposed section should be removed to protect society and to give us security against terrorism, but at the same time diminish the effect that we would have indirectly.

MOTION IN AMENDMENT

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

That Bill C-36 be not now read the third time, but that it be amended in clause 4 by replacing line 46 on page 13 and lines 1 to 4 on page 14 with the following:

“(i) that is committed in whole or in part with the”

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will all those in favour of the motion in amendment please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those 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: The division will be taken in sequence with all of the other votes on Bill C-36 as provided for in the order of this house.

Senator Andreychuk: I believe I still have some time. I want to make one other point.

[Senator Andreychuk]

The Hon. the Speaker: Does the honourable senator wish to speak to her amendment?

Senator Andreychuk: May I continue?

The Hon. the Speaker: I am reminded that the Honourable Senator Andreychuk should have been permitted to speak before the question was put.

Is leave granted to allow Senator Andreychuk to speak to her amendment? The question has been put and disposed of, subject to a vote. Is it agreed that Senator Andreychuk may make additional comments?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe there would be consent to allow the Honourable Senator Andreychuk to finish her remarks, using the time remaining from her original speech.

[English]

The Hon. the Speaker: Senator Andreychuk may continue for the balance of the time she would have had, had she continued speaking for 15 minutes.

Senator Andreychuk: I understood I had to wait for the vote before I could continue. That is my understanding from what happened this morning.

Honourable senators, the fact is that we have been in lockstep with Americans. We share this continent and we share their concerns, as they should share ours. I have no difficulty with being responsive and reactive to their issues, and I trust that they will be to ours.

What troubles me about our definition of “terrorist activity” is that we have borrowed it from the British. The Americans do not refer to religion. In fact, they painfully, in their legislation, point out that no group, and in particular Muslims and Arabs, should be targeted in any way, and that it will not be tolerated. We have borrowed a section from British legislation and included it in this bill. With the greatest of respect, they have a long history of a Protestant-Irish-Catholic-Northern Ireland situation. It is, therefore, their right to determine their definitions, but for us to adopt those definitions in our laws, when so much of what we are doing is in lockstep with the United States, seems inappropriate, unnecessary, and targets minorities.

Minorities continually remind everyone that security comes when the minority's security is in tact. Once a minority feels vulnerable, we are all vulnerable. The action of our Canadian multicultural society must be to say to all citizens, “You count, you count equally, and you will not be in any way targeted or tainted.”

Honourable senators, I believe that Bill C-36 unnecessarily contains subtle wording that makes minorities ill at ease. Minorities come to this country to escape excesses. We must not undermine their security when they come here. They come for something better. When a policeman knocks on their door, they are unnerved. Many minority members of our community who have been here for 30 or 40 years still feel that way. Perhaps that explains why Mr. Telegdi spoke against Bill C-36 and why we have been inundated with letters from minorities stating: "This must not happen to us."

• (1450)

We should, in fact, amend this bill. We should adopt a sunset clause, but I make an appeal that we not forget the minorities in our administration of this proposed act. With respect to all those senators who say that some role must continue, I believe there should have been a sunset clause and an oversight role. If not, I ask honourable senators to indicate how we will protect Canadians.

Hon. Noël A. Kinsella (Deputy leader of the Opposition: Does the honourable senator think she will find some evidence to support her argument that the visible minority community in Canada has every reason not to trust, as Senator LaPierre is prepared to do? If one examines the annual report of every Human Rights Commission in Canada, is it not true that one finds in those reports hundreds of complaints of racial discrimination that the Human Rights Commissions have investigated? Is that not hard evidence that we ought not to be trusting?

Senator Andreychuk: I thank the honourable senator for that question. We have human rights laws to erect good fences between neighbours so that we act and respect each other. However, as we were told by the Canadian Human Rights Commission and other commissions in our human rights study, there is also a need to educate in Canada and around the world. Each new wave of immigrants that has come into Canada has had to find its way into the fabric and mosaic of Canada. Intolerance does not always come from bigotry and prejudice. It comes from misunderstandings and lack of education.

The Hon. the Speaker: Senator Andreychuk, I am sorry to advise that your 15 minutes plus a minute have expired.

Senator Kinsella: We are asking for leave for a few more minutes. Let us not stop her in mid-answer. For heaven's sake, the guillotine is on. We have up to six hours and we have used only one. Surely we could be given a little consideration.

The Hon. the Speaker: Senator Kinsella's microphone is not on. I should explain why I stood when I did. I had to interpret Senator Robichaud's description of leave, which was that the honourable senator should have the balance of time remaining to her to complete her remarks and deal with questions and comments. That is why I interrupted when I did, honourable senators.

Is Senator Andreychuk asking for additional time?

Senator Andreychuk: Just to finish two sentences.

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

[Translation]

Senator Robichaud: Honourable senators, under the circumstances, we will allow Senator Andreychuk one more minute to respond to Senator Kinsella's question.

[English]

Senator Kinsella: Honourable senators, on a point of order, we are under the guillotine. We know when this debate will end. We are trying to put a few last points on the record. What is the other side afraid of? Let Senator Andreychuk answer these questions. Let us have a few more moments with her.

[Translation]

Senator Robichaud: Honourable senators, we merely want the debate to continue. As the opposition has pointed out, there is limited time and we would like all honourable senators who wish to speak to have an opportunity to do so. As the Honourable Senator Andreychuk had used up all of her speaking time before putting the motion, we divided her speech in two. By allowing her to conclude, we are showing considerable flexibility.

[English]

The Hon. the Speaker: Senator Andreychuk, please conclude your answer.

Senator Andreychuk: Honourable senators, we live constantly on our guard to ensure that we treat all people in Canada properly, and that is why we have a host of human rights and civil liberties mechanisms. We must not short-circuit them, because it has taken years to build them and they have a place of pride in Canada.

This bill has a number of points that seem to hit minorities unnecessarily. They are in the definition of the charge of terrorist activity and the definition going to charities and entities. These are not necessary, if our target is terrorists. The blanket is too wide and we should reconsider.

Hon. David Tkachuk: Honourable senators, I spoke to Bill C-36 with respect to the first amendment on the sunset provisions, and I was rudely interrupted. I should like to finish the speech for the record.

I served on the committee that studied this bill, and I wish to thank Senator Fairbairn and Senator Kelleher for their chairmanship of the committee. I have been chairman and deputy chair of committees, and I was particularly impressed with how we all felt that we were always treated fairly. Everything went exceptionally well, and I was impressed at how little rancour there was in the room. We all agreed, but when we got here, no one agreed to anything. We do not quite understand that. However, as far as the committee proceedings are concerned, it was a pleasure to work with everyone there, including both sets of Liberals that participated on both ends of the committee study.

Instead of a coherent plan to fight terrorism, we have before us this bill, and instead of a plan to make Canadians safe and secure, this government is attempting to pass into law draconian legislation that will make necessary and temporary powers a permanent part of our social fabric. We have reason to be suspicious.

While accepting the concept of sunset provisions in the committee, when we got to the Senate chamber here, the sunset provisions were changed in the House. We now have a resolution that everyone on the government side supports, but it is not a sunset provision at all. It is simply a resolution. There will be no debate. There will be no committees. There will be no opportunity for the public to participate. There will be no sunset of the original law. We simply have a resolution put forward by a majority government and passed by both Houses with no participation by the Canadian people.

With actions such as those, it is no wonder that we on this side of the house fear that Parliament will protect the rights of Canadians, that the Senate will somehow protect the rights of Canadians, when we know what a whipped majority does with the rights of Canadians. We are experiencing it now under Bill C-36.

As the Liberals are finding out, and as they found out following the adoption of Bill C-68, the gun registration bill, legislation by itself does not solve problems. Registering firearms did not solve the problem of violent crime, as we were told by the Minister of Justice at the time. It only created a bureaucratic quagmire that has cost the taxpayer over \$500 million to date, with no end in sight. Bill C-68 has put innocent Canadians on the defensive. I have heard that many, probably thousands, will not comply and that the government has downsized its estimate as to the amount of long guns available in Canada.

• (1500)

We remember the original scare tactics. We were told that there were 12 million unregistered long guns in this country. We are now told that the figure is 2 million, and it may have been estimated to be less than that so that the percentages look good.

I keep hearing about access to the courts. I have news for honourable senators: People do not like to go to court. I know there are a lot of lawyers here who say that the Charter will protect us, the courts will protect us. People do not like to go to court. People in Yorkton are not saying: "Oh, the Charter of Rights will protect me. I will not worry about those police." I do not think so.

This is an affront to the responsibility of Parliament. This is our responsibility. In everyday life, people do not want to go to court. They expect parliamentarians to protect their rights; they cannot afford to go to court. If we fail in protecting their rights, as we are surely doing with Bill C-36, then the courts, by default or neglect, become the corridor of last resort.

Surely, the courts are not there to protect us from Parliament. The courts are there to protect us from our excesses in Parliament.

[Senator Tkachuk]

As a non-lawyer, I see the law in much more general and philosophical terms. The details sometimes escape me, because I am not learned or studied in its past application and interpretation. We all know that we live by it and certainly either experience or observe its consequences.

In committee, I was struck by how many senators seem to rely on the Charter of Rights as the bulwark to protect us from our own intransigence. They should all read the constitution of the former USSR. At face value, you would think that all those artists, writers and ordinary citizens stuck in gulags, mostly for saying and thinking about notions of democracy and freedom, deserved to go to prison. Their constitution guaranteed every right imaginable, including freedom from hunger, as long as you wanted to stand in line at 30 below zero in the streets of Moscow and other villages around Russia. It guaranteed freedom and the right to work, as long as you picked up the teaspoon or the broom that the government, at the point of a gun, told you that you had to use. Those in power and those governed in that country had lost respect for the law. They had great laws. Great rights were guaranteed in their constitution. Its implementation and interpretation were used not for justice for its citizens, which is why we are here, but, rather, as an ally to maintain the dominance of the ruling party, which, in that case, was the Communist Party.

The law, as far as I know, as a non-lawyer and as a parliamentarian, needs respect. Thus, the rule of law is sacrosanct.

In the Prairies, I witnessed a disregard for the gun registration bill. Once people suspect that it is not themselves being protected but that, for the sake of efficiency and expediency, their rights have been sacrificed, there will be no revolution in this country, just a slow erosion of the rule of law. We will not even notice it. We will just begin to accept it. We have history to teach us that that is exactly what happens. It is always men of good faith and parliamentarians saying: "Do this. Everything will be fine. You can trust us. Everything will work out." It just happens, and we all know that it happens.

They will care less for the concept of the rule of law. Once the state is not on their side, the people will take matters in their own hands. This is stuff we understand as politicians because this, frankly, is the essence of politics. That is why we are here, to protect them, not us.

Honourable senators, I intend to vote against this bill, hoping that I am wrong about my fears and never having to say "I told you so."

Hon. Marjory LeBreton: Honourable senators, I have sat in my seat this entire day because I want to be able to reflect on this day after the weeks and months have gone by.

I am terribly troubled by Bill C-36. Like Senator Andreychuk and many of my colleagues, I could have supported it had there been a proper oversight provision and a sunset clause.

Like my colleague Senator Forrestall, I happened to be around here in the early 1970s. To leave my office on the fourth floor of the Centre Block, I had to step over a young corporal who sat at my door with a machine gun lying across his lap. At the time, I worked with Mr. Stanfield. Public opinion was incredible during the October Crisis, similar to what we have been witnessing as a result of the horrific acts in New York, Washington and Pennsylvania on September 11.

Horrific acts took place in the province of Quebec, with the kidnapping of Mr. Cross and the murder of Mr. Laporte. I remember the public saying "Do something." They were panicking. The government of the day and the Prime Minister brought in the War Measures Act. Of course, we are all familiar with the famous "Just watch me" quote of Prime Minister Trudeau. In two years, "just watch me" just about watched himself get defeated out of government. In a short two-year period, public opinion had turned against the government.

Senator LaPierre says that he trusts the system. He asks us in the Senate to act as the oversight. That is a very nice concept. However, if Senator LaPierre believes that he can convince his colleagues of that, he must also believe in the tooth fairy.

I was also struck by Senator Carstairs' admonishment of those of us on this side for what she thought was a rather lengthy amount of time for this debate. She talked about how many times the bells rang several nights ago. Just making such a statement is an affront to democracy.

We on this side fought the good fight. I am standing here because it is my duty to express the thoughts of the hundreds of people who have e-mailed me and written to me on this matter.

Honourable senators, I am very proud of my colleagues on this side of the chamber. In committee, as well as here in this chamber, they have conducted themselves in a very constructive way. We have always been a constructive opposition. We have never been an obstructive opposition. The ringing of the bells and votes are democratic procedures of this chamber.

We have not gone around blowing horns in the ears of senators opposite, or blowing kazoos in their faces. We have not had senators starve themselves on benches outside the Senate to make their point. Those acts are the reason the Senate fell into such disrepute. We have such a bad reputation because people remember and think about those acts. We on this side at least must give ourselves some credit for having tried.

We can count. There are 60 senators opposite and there are 30 of us, along with 5 independents. I thank the independents for supporting us on this.

I, like Senator Tkachuk, hope I will not be able to say "I told you so." I hope I am wrong about this bill, but I believe that in a very short period of time the Canadian public will be very concerned about what they have seen happen in this Parliament. I do not think they will like what they see.

• (1510)

I find myself wondering how many times Parliament has to make such a terrible mistake before the public finally wakes up. Let us consider the history of this very institution. Boatloads of Jewish people, who came to our shore seeking refuge from Nazi oppression, were sent back to certain death; we interned the Japanese; we invoked the War Measures Act; we trampled on the rights of students during the APEC meetings; and now Bill C-36 will give government, ministers and the police extraordinary powers. By the way, all of those acts happened under a government of the Liberal stripe. I have to ask myself: Are we not within our right to question some of these decisions?

Honourable senators, as the process went along I ran into the three young Muslim lawyers who appeared before the committee on Bill C-36, and I was most impressed. They were fine young men. I talked to them for 15 minutes on the street in front of the Victoria Building, and I was struck by what they said. They were all expressing the same concerns that we are trying to address in this chamber. My good friend, Mr. Goldy Hyder, is the Right Honourable Joe Clark's former chief of staff and a Muslim. He told me about some of the things that are happening in the community.

We are on the horns of a dilemma in that we all, of course, abhor terrorist acts, but we must balance our efforts to protect our citizens and the human rights of our citizens. Someone may say that we have two issues and one vote, and this is troubling, but sooner or later partisanship has to be put aside. I am as partisan as the next person, and I have supported the government on issues such as the gun control bill because I felt that it was the right thing to do.

Honourable senators, I urge you to at least acknowledge and care about what the witnesses said when they testified before the committee. I think of those young Muslim lawyers who appeared as witnesses. Senate committees are a good venue for witnesses to express their opinions, and our witnesses are right to think that their evidence will make a difference to the outcome of this bill. Let us be honest with them at the beginning and tell them that they are wonderful witnesses; that we have read their briefs; that we agree with everything they have said; but that what they have said will not count, and we do not care. That is the message we are sending to them.

Honourable senators, I did not have a vote during the enactment of the War Measures Act because I was a staffer then. However, I do remember Mr. Stanfield being railroaded by his caucus into supporting it because they believed that public opinion was so strong that we would be committing political suicide to do otherwise. As my colleague Senator Forrestall said: It was a decision that Mr. Stanfield regrets to this day.

I will vote against Bill C-36. As Senator Tkachuk said, I hope I am wrong, but I rather think that I will not be wrong about this: This government will rue the day they enacted Bill C-36.

Hon. Joyce Fairbairn: Honourable senators, the pre-study and the examination of the government's first anti-terrorist response to Bill C-36 has proven to be quite a ride for those who served on the Special Senate Committee on Bill C-36 since October 17, when it was first formed.

To be faced squarely with the brutal terrorist acts of September 11, which killed thousands of individuals in the United States, and with the contingent dangers to Canada as its friend and neighbour, across the longest undefended border in the country, was an unbelievable shock to the people of Canada, its government and its Parliament. To be presented with one of the most complex and challenging pieces of legislation ever placed before our Parliament was daunting and, for some, disturbing.

Honourable senators, may I say at this late point in the debate that the senators whom I watched and listened to, who sat around that committee table for 58 hours listening to and questioning 76 witnesses and debating the results, were simply exceptional. Together, they brought tremendous experience to most of the areas touched by the bill, including security, criminal law, constitutional law, human rights, international relations, communications and, of course, political life.

Some also brought the perspectives of groups and organizations from across the country who believe they will be particularly affected by this legislation. I want to thank Senator Jaffer and Senator Andreychuk for their insights.

I served as the chair in partnership with our terrific deputy chair, Senator Kelleher. Our job was to manage an intense, complicated and sometimes very emotional assignment with a view to ensuring that we had a representative variety of witnesses and that they and the committee itself had the time to exchange questions and answers. Now, that is not easy to accomplish when there is an element of urgency. I thank Senator Kelleher, our staff, the researchers at the Library of Parliament and Ms Heather Lank, our phenomenal Clerk of the Committee, for all their time and extra effort.

From all the testimony and legalese, one fact remained constant: Terrorism is real, it is with us now with its potential risk, both outside and inside our borders, and it will not go away. In fact, in one guise or another, it has been an integral part of history, often culminating in war, as the people in Afghanistan know today.

It is also enormously troubling, and Senator Furey touched on this yesterday, that there were various reports indicating advance signals were available that something was about to happen in the United States. However, no one in the security and intelligence establishment got a handle on that. That speaks to a long-standing concern of mine that Canadians and their allies have not been intense enough in their concern or cooperation about this kind of potential disruption, particularly on Canadian soil.

To a degree, we seem to have let down our guard. Perhaps we have been aware of our danger, but we have not been adequately

prepared with the response, perhaps because of the euphoria that accompanied the end of the Cold War and the destruction of the Berlin Wall. Whatever the reason, resources have not met the need.

That leads me into what I consider to be the heart of Bill C-36. It is not only an attempt to maintain and strengthen a system that will punish those who have committed dreadful crimes and atrocities but also an effort to do something infinitely more difficult: It will establish, through law, a regime that will prevent those who would commit acts of terrorism from doing so; it will prevent planes from taking off on suicide missions to destroy buildings or sensitive facilities; it will thwart destruction by bombs in places of work and of worship; and it will cut off, at the source, the collection and transfer of the resources destined to fund these and other acts of violence that wreak havoc with individual lives.

Most particularly, all of this must be done while, as so many senators have said, balancing the protection of the rights and freedoms that we take for granted. Those rights and freedoms make Canada the envy of others from every corner of the world and they encourage people to come to Canada to add to the soul and the future strength of Canada. We want those people to come here, we want our doors to remain open. We want our citizens and their families to be safe, but we also want to be able to send out a message backed by the heft of law, security and political will that Canada will not tolerate the actions of those who knowingly and willingly facilitate the commitment of terrorist acts.

• (1520)

We must, to the very best of our ability and our actions, send the message that Canada is not a viable haven for terrorist hopefuls, nor is Canada a training ground or stopping-off point for those who would wish to damage and destabilize our neighbour, the United States of America. The tools for this job are contained, in part, in Bill C-36.

Was I comfortable with the original version of this bill? No, I was not, any more than I was comfortable with the context in which the production of such a bill was forced. That was why I was part of our committee's consensus to recommend changes to this bill in the pre-study report we were asked to prepare by the government. In 22 recommendations, we made a strong pitch for the government to consider. This was even before the House of Commons Justice and Human Rights Committee had begun its work.

Honourable senators, make no mistake: The special committee's recommendations were considered seriously by the Attorney General and by the government and were critical to the changes that were subsequently made. Of our suggestions, eight were accepted, and four of them were partially accepted. Several new changes were introduced which were directed at the causes of our concern; and the others were either not addressed or rejected in the other place. The bill that came back to us was, in essence, a different bill, and I believe it was better.

In spite of fears honestly and sometimes passionately expressed, this bill itself does not remove fundamental rights and freedoms. The Charter of Rights and Freedoms has not been undermined or negated. The notwithstanding clause has not been invoked. On several occasions, the Attorney General went out of her way to state that the provisions of this bill are in conformity with the Charter.

All Canadians, including the full range of our rich multicultural society, will continue to enjoy their Charter rights. However, some of the witnesses before our committee, as we have heard senators mention over the past few days, continue to be fearful that this will not be the case if the proposed provisions in this bill are implemented. They need not only reassurance but also concrete evidence that their concerns are being taken seriously.

We worry about all the fears that were articulated by Senator Kinsella, Senator Andreychuk and others in this debate. They are pretty transparent in terms of the desire of all of us to balance security and liberty. It was for this reason that honourable senators on this side wished to attach some observations to the final report of our committee. Among those observations were suggestions to accelerate training in the area of peace and security for those who deal with individuals on the ground. We want the government to regard this as a priority. We were told in committee that such training is already in progress.

While appreciating the recent announcements, as well as last week's budget, of increased funding, we urge that there be no ceiling on resources if more should be required. We want those in ethnic and cultural communities with fears and particular personal experiences to be accorded a method of sharing their concerns with our police and security agencies. We also want their representatives to have a meaningful channel through which they can assist government review agencies to get behind the statistics and give Parliament and the public qualitative information on how the powers of the bill are being carried out, instead of just receiving the bare numbers of arrests, hearings and detentions.

Among our many concerns, two issues have been discussed widely here. The first was the sunset clause, which we in our pre-study recommended should be five years, covering all parts of the bill except those referring to international conventions. I agreed with that at pre-study primarily because of the concerns surrounding preventive arrests and investigative hearings. Consequently, I did not oppose the government decision to place the sunset clause on only those two elements of the bill. We want to see how these are conducted and whether they should be continued.

Honourable senators, let there be no doubt about the ability of this house to study and debate a resolution. While resolutions may not be amendable, they are able to have the full focus of debate with committee hearings and witnesses and more debate. In fact, I was the chair of one of the committees on Newfoundland resolutions. It was one of the toughest jobs I have had to do in my life.

Honourable senators, there is a process in place. At the end of that process, if there were a vote in either House against these provisions, that would automatically sink them.

I also believe the new measures in the bill to increase the elements of review and oversight through reporting will be carried out in a manner that will respect the stated intentions of government to inform the public and Parliament and to maintain the balance of protection for citizens. During our pre-study, I also supported the concept of the appointment of a parliamentary officer. The government did not, although it added other measures such as annual reports by the federal and provincial Attorneys General, as well as parliamentary review. We were not particularly clear in our report as to how the officer would do the job.

Even though members on the other side have argued vigorously that the review mechanisms overseeing police and security functions, as well as the government itself, are neither sufficient nor appropriate in some cases, I believe they should be given a fair chance to operate. In the context of this bill, I do not share the view that government and security authorities cannot be trusted and that they may whitewash any evidence of abuse of the powers. I simply do not believe that, honourable senators, and I am far from naive.

I have also been persuaded, after listening to witnesses and repeatedly questioning officials, that the jurisdictional differences regarding the ability or advisability of a federal commissioner endeavouring to monitor and report on the activities of those who carry out many of the powers of this bill, which lie within provincial jurisdiction, are real and serious concerns. It is not a simple thing in our country to reach into other jurisdictions without causing repercussions that could easily undermine the whole purpose of the action.

Honourable senators, there are those in this chamber with lengthy experience and a sense of responsibility who have spoken about their skepticism of achieving openness and candour in the process of oversight as proposed in this amended bill. I humbly confess that I have observed, written about, advised and participated in our parliamentary system for almost 40 years and, by choice, have closely monitored its strengths and its weaknesses. I love the place and I respect the system.

I have been saddened over the decades to see Parliament's role diminished in the eyes of the public by pressures of the times, both executive and through communications. However, its strengths still remain. I firmly believe that the Parliament of Canada has within its own powers and responsibilities the opportunity to act as a watchdog of this critical security process.

I believe that a strong light will shine relentlessly on those who implement this bill. Mistakes and failures will not be easily hidden away. I say with as much force as I can muster and through my personal experience: Never underestimate the Senate of Canada.

• (1530)

The Hon. the Speaker: I regret to advise that the 15 minutes allotted for Senator Fairbairn's speech, comments and questions have expired.

Senator Fairbairn: As Senator Andreychuk would say, I have a couple of sentences left.

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

Hon. Senators: Agreed.

Senator Fairbairn: Honourable senators, I will conclude with a wry comment. Despite all of the criticism and ridicule that has been directed at this chamber since Confederation by those who do not know us, do not know who we are and do not understand what we do, this place in fact has a rich history of major contributions through its initiatives on issues that others refuse to tackle or neglect to address, but which have profound implications for the lives of Canadians. I look around this chamber and see senators on both sides who have carried important issues from coast to coast in Canada and have changed the lives of people and their perspectives about themselves and their futures.

This, senators, is one of those issues. I do not regard engagement of the Senate in an ongoing overview of the implementation of this legislation as just a viable option. With the Standing Senate Committee on Human Rights in mind, I believe it is our duty to seek a mechanism to exhibit the will, the fairness, the objectivity and the tenacity to ensure that this bill works for the people it is intended to protect. We can do this whenever we want. We do not have to wait for three years. It can be done by a collective agreement in this house, whatever the mechanism. The choice is ours, colleagues, and it is our responsibility.

Senator Kinsella: Honourable senators, I wish to compliment Senator Fairbairn on her excellent speech. I am very much intrigued by the recommendation she made at the end of her remarks. Would she support us seeking the unanimous consent of the house to empower the Standing Senate Committee on Human Rights to undertake the type of oversight of which she spoke?

Senator Fairbairn: Honourable senators, that is not my decision to make. That would be an extremely important issue to be discussed by the leadership on both sides of this house. I mentioned the Human Rights Committee because it has been mentioned before. It may be that the house would wish to consider another mechanism or another committee, but I would support whatever the leadership of this chamber would agree to.

Hon. Marcel Prud'homme: Honourable senators, I have here a letter addressed to an honourable senator. It reads:

Thank you for your letter stating your satisfaction with the radical nature of Bill C-36. I appreciate the opportunity to address your explanation.

You say "Bill C-36 is ground breaking legislation" and "that many provisions will test the boundaries of the Charter of Rights and Freedoms." Yet you refuse to allow for needed amendments that would protect those basic Canadian civil rights.

In addition, your unwillingness to pass this legislation after Christmas begs the question of "why so fast"? Canada does not need these laws today. The widespread and serious opposition to this Bill over the last two months must have made that clear. In our view there is no need for this Act, but if you must pass it, amend it first. Protect due process by adding a comprehensive sunset clause and an independent parliamentary oversight provision.

Finally, what Canadians really deserve is to be listened to. The Minister of Justice and the PMO did not listen when it came to Bill C-36. You are a member of a Chamber of sober second thought. Please amend this Bill. The Brits did it. Otherwise, what will you be able to say in good conscience, when asked why you voted the way you did: *I was only following orders.*

That letter comes from the Ukrainian-Canadian Congress and is addressed to the Honourable Lorna Milne, Chair of the Standing Senate Committee on Legal and Constitutional Affairs.

Dear Senator:

Please do all you can to halt Bill C-36 (and C-35, for that matter). Others have given you no end of detailed argument. I only offer this thought: the sort of self-destructive reaction that C-36 represents is "exactly" what Osama bin Laden hoped to provoke by terror attacks.

The attacks were not only ends in themselves, but tools to deflect democracies into totalitarian reactions and internal quarrels. Does the Canadian Government truly wish to contribute so generously to the long-term success of a fanatic's plans?

That letter is from Dr. Michael Wilson, a retired professor from Saskatchewan.

Dear respected politicians and senators of Canada,

I am a Canadian. I was born in Canada. I have been here for all 25 years of my life. I speak fluent English....

I treasure the rights and freedoms that I enjoy in Canada. But the possible passing of Bill C-36 makes me nervous about my future, and the future of my family and friends.

Why? Particularly because I am Muslim. I dress in a manner that identifies me as Muslim. I wear a head scarf. When people see me, they often assume that I cannot speak English or that I have just immigrated here. I cannot relate to the violence of Sept. 11. My faith does not teach violence or terrorism. My family lives a peaceful life and we contribute as much as we can to Canadian society.

It is no secret that Muslims are being more carefully watched and racial profiling seems a reality. Am I and the thousands of people like me in Canada going to be held under suspicion now just because of our beliefs, our dress or the colour of our skin? I worry very much that Bill C-36 is going to make our lives very difficult. It will take away basic civil liberties.

I urge you all to reconsider how much damage this bill will cause.

That letter is from Winnipeg, a place to which I will travel to address this group of people.

We hear, honourable senators, that the FBI is asking for more money to come into Canada. They did not ask Canada for permission. They are asking Congress for money to do so. Although we have not said whether we will accept that, they are already asking permission to better place themselves.

Honourable senators, these letters make all of the arguments that you have heard. However, I know it is no use. I thought that when I came to the Senate we would listen to each other's arguments. I came here with strong views, but I was ready to listen to the strong views of others. When I am not knowledgeable about the issue being discussed, such as agriculture, I make a point of listening to the senator speaking.

• (1540)

I would listen to every kind of expert, and the Senate seems to have experts in abundance. That is exactly what we should do because it is in the interest of Canada to do so. However, it seems that every bill now comes with a mindset, so what is the use of debating?

What is the use? Honestly, how can we go to universities and colleges? How can His Honour continue to receive teachers, as he does so well, and invite senators to participate in discussions with them? Their first question is: What do you do in the Senate? We tell them that we modify the role of the House of Commons and that our committees scrutinize proposed legislation. What purpose is served by having all these Canadians come here, at the expense of the taxpayer — and that is the right thing to do — where they are so warmly received? What is the use of Senator Beaudoin putting months of effort into preparing amendments? What is the use of Senator Nolin and all of these Liberals working night and day, with the best staff, the best researchers, the best witnesses, if at the end of the day we say, "The fun is over; let us pass the bill?"

Honourable senators, I should like to read to you something that is related. I shall not reveal its author until the end; you may be surprised. It is from Toronto and is dated December 17, 2001.

In a strongly worded press release...urged Ottawa to say no to U.S. demands to establish a new Federal Bureau of Investigation (FBI) detachment in Toronto as well as refusing to allow U.S. soldiers to be stationed in Canada.

"The idea of soldiers being used to control the Canada-U.S. border is repulsive enough," Mr. X said, "but allowing them to be stationed here is totally unacceptable. Cooperation is one thing, and we support it fully, but occupation is something else and that is our principal comfort."

"An invasion by the FBI is equally intolerable," Mr. X added. "First the government of Canada accedes to U.S. pressure to pass legislation that makes this country a police state and then considers a U.S. request to allow their police to be involved in how this Draconian legislation will be used. The answer Ottawa must give Washington is a polite but absolutely firm ...NO!"

What the United States has been doing since September 11th goes far beyond what is necessary for security purposes. It is in the process of establishing an Imperial Empire with considerations far broader than security concerns. In fact geopolitics is foremost.

"This is the reason we must say no to the FBI. Their initial concerns might be security but they would soon be involved in industrial espionage and keeping Washington posted about any Canadian activity that might be primarily in Canada's interest." Mr. X alleged. "That is one of the functions of U.S. police and CIA operations worldwide, and we have more than enough of them in Canada already."

Even before September 11th the propaganda war in favour of a common perimeter, a customs union and the adoption of the U.S. dollar, all measures designed to bring Canada more tightly into the elephant's embrace, was intensified. "Since September 11th, using the tragic events of that day as a cover, an all-out assault on our sovereignty has begun," Mr. X added.

"It is time for Ottawa to draw a line in the sand and say, ...This far and no further. No common perimeter, no customs union, no monetary union, no more FBI detachments in Canada and American troops stationed on Canadian soil.' If they don't, they might just as well run up the white flag and admit surrender."

I read that and said, "My God, who is that guy?" Then I remembered: That is the man I supported for the leadership of the Liberal Party in 1968, Mr. Paul Hellyer, whose devotion to Canada is certainly equal to anyone's here in this chamber. This man is an ex-Minister of National Defence, elected in the 1940s, minister at the tender age of 25, before 30. Here is a man who has reflected, who has time. Some people may say, "Oh, that is Paul; he is on another trip."

I have received so many e-mails and letters. I have 740 pages of material. I said to my colleagues: "If you run out of time to prepare a speech, make an extract from everything you have on your computer: Take one phrase from each of the letters that you have received."

I can tell His Honour that every city across this country, every province, every group of Canadian people, from the farmers' unions to the teachers unions to civil libertarians to lawyers, will have been represented in those extracts. How can all these people be wrong? How can they be wrong?

I do not believe that Canadians at the end of the day are wrong. That is one of the reasons I will vote against this legislation.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, it is quite obvious that anything I say will not make an iota of difference in voting intentions.

Senator Taylor: Go ahead and try.

Senator Lynch-Staunton: Nonetheless, I think it is important to put on the record a number of anxieties and apprehensions about this bill that I know are shared by more than one person who will be voting in favour of it.

First, I want to join with others to commend Senator Fairbairn for the excellent way in which she chaired the committee in both instances. She did so with fairness, with patience, with understanding and with a gentle firmness, all of which made a big difference in helping the proceedings to go as smoothly as they did. I thank her again for her excellent work.

That being said, she did tell us about the committee spending 58 hours hearing for the most part many witnesses. As well, we spent hours here in debate, as did the other place. Nonetheless, we are still being asked to go into the unknown, to commit an act of faith, but, unfortunately, an act of blind faith.

I do not know of any one person in this country, including the officials in the Department of Justice and other departments who put this proposed legislation together, who can with confidence explain the exact meaning and interpretation of all of its clauses. That person just does not exist.

This bill amends 22 acts. This bill in many cases is worded in such a way that certain clauses can lend themselves to contradictory interpretations. On more than one occasion before the committee, when asked to comment on various contentious or controversial clauses, the minister and/or her officials had to say: "Yes, in so many words, you could give that interpretation to them, but that is not our intention."

That is the kind of blind faith we are being asked to accept. Certain interpretations that the department gave as reassurance may not be maintained as this bill remains on our statute books for who knows how long and others become responsible for its application.

In saying that, let me refer to the War Measures Act, which rightfully has a place in this debate. That act was meant only to be used for the crisis caused by World War I. It stayed on our

books for nearly 75 years. As has been recalled more than once here, in 1970, under a regulation arising from the War Measures Act, as it was proclaimed in October, nearly 500 Canadians were arrested in peacetime on suspicion of belonging to an unlawful organization.

The War Measures Act was never enacted to be used in peacetime. Never. In examining the reaction of those who were there at the time, Mr. Trudeau, years later, was known to say that he was appalled at the number of arrests that were made. Never, ever did he expect that that would be the outcome of invoking the act. Mr. Turner, who was Minister of Justice at the time, was against the enactment, but lost in cabinet. I believe it was Mr. Jamieson who, in his memoirs, wrote that some of the arguments brought in favour of enacting the War Measures Act, such as a claim that the FLQ had caches of arms and dynamite, were false. The cabinet had been given erroneous information.

• (1550)

Honourable senators, I am not pointing the finger at any particular authority on this. Whether the authority was municipal, provincial or federal is irrelevant. The point is that decisions were taken at a time of crisis without proper information and for the wrong reasons. In Bill C-36, judges can accept hearsay evidence. That is unheard of in our court system. Under this bill, however, hearsay evidence in certain cases is eligible to be presented in court to support a charge against an individual. "It is unheard of, but do not worry," we are told, "it will be used with discretion in only unique cases."

We are told that the bill, thanks to the amendments, contains some built-in oversight provisions such as judicial review and various existing agencies will be called on to ensure that the clauses we have been particularly concerned about are applied in the way the government intended. We have been told that one of those agencies will be the RCMP Complaints Commission. As I understand it, honourable senators, the RCMP Complaints Commission waits until complaints are lodged. It has no oversight function. Some of the other agencies mentioned have more or less that same limited responsibility.

The Human Rights Commission was mentioned. The Human Rights Commission only hears complaints. It has nothing to do with the oversight of any legislation. As I understand it, it hears complaints of discrimination.

There was also mention of judicial review. Yes, there is an element of judicial review, which is reassuring, but much of the judicial review is after the fact. One example of that in the original bill was where an item was called "the list of terrorists." That expression was found to be somewhat excessive. The government found the objection to be valid; therefore, it will be called "the list of entities." However, the definition of "entity" is "any group or individual who is suspected of engaging in terrorist activity," so it is a cosmetic change.

More important, without warning, without public evidence, without going to court to prove his assertion, the Solicitor General can put any entity on that list. An individual so listed who has reason to feel that he has been wrongly listed has only one recourse, and that is to go to the Solicitor General and ask to be taken off. The person who puts the name on is the same person to whom one would go to ask to be taken off. The Solicitor General, within 60 days, will agree or not, without showing any evidence of why that person was put on the list in the first place. Only then does the judiciary come into play. The listed individual, having lost his appeal to the Solicitor General, who has no obligation to give any reason for that person being on the list, by that time has had his assets seized, his bank accounts frozen, has become a non-person, his reputation sullied, is then allowed to go to court. If he loses his case, or the government loses the case, then there is the right to an appeal. That is not judicial review. That is not protection of the innocent.

There was a case in the United States brought to my attention by Senator Tkachuk, where the United States and European authorities had drawn up a secret collective list of suspected terrorists. Finland put that list on their Web site by mistake, and it was on that Web site long enough for the names to become public. One of the individuals named on the list had been arrested in Florida because he happened to room with one of the individuals who was on one of the planes on September 11. This person was an innocent German who happened to be a roommate of the terrorist and a student. He was on the list, he was arrested, harassed, investigated, and his assets were frozen. His reputation was ruined. The police, realizing they had made a mistake, apologized, and that is all he got as satisfaction. This bill, as written, can allow such a thing to happen because the innocent have no protection under the proposed provisions of the bill. That is just one example, and I could cite others.

Finally, Senator Fairbairn has reminded us that, in the comments of the majority in the final report of the committee, an appeal was made to the government to ensure that those who are called on to administer the act and to apply it have enough resources and training at their command. That leads one to conclude that they do not have enough resources or training at their command at present because this act will not only be the responsibility of the RCMP. Every province, every Attorney General and every police force in Canada has the possibility of being involved. How will all of those people be trained to understand the huge powers that this bill will give them and to use them in the way intended?

Honourable senators, they do not have that training now. They may be getting the resources, but they certainly do not have the ability to exercise, in a proper way, what we are being asked to give them, the same way as in 1970 the police authorities had absolutely no training and no understanding of what the enactment of the War Measures Act meant in peacetime. They were told by someone in authority, "Here is a list."

Senator Prud'homme: Even people in Gastown, in Vancouver.

Senator Lynch-Staunton: They were told: "Here is a list. Go and knock on the door and arrest them in the middle of the night. You can detain them for up to 21 days." I believe, of the 480 or so people who were arrested, only 18 were eventually found guilty, and not all of them under the War Measures Act. The solution to the FLQ crisis in terms of finding out who were the kidnappers, the murderers and who were members of the main cells, had nothing to do with the War Measures Act. It was all police work, as it is in enforcing the Criminal Code, the Emergencies Act and other acts. All the tools are there. The ones that are missing are in C-36 are the ones that can be used to excess, and that is why I will vote against this bill.

Senator Kinsella: Honourable senators, I should like to ask a question of my honourable colleague. I wish to follow up on the suggestion that was made by Senator Fairbairn that the Standing Senate Committee on Human Rights be given a mandate forthwith to carry on the parliamentary review that we all seem to agree is so important. Would the Leader of the Opposition express his concurrence with that idea?

Senator Lynch-Staunton: If the Honourable Senator Kinsella is given leave to make such a motion I will be happy to second it, and we can resolve the matter right now, before we adjourn for the Christmas break.

Hon. Sharon Carstairs (Leader of the Government): Question!

Senator Kinsella: Honourable senators, I would request leave of the Senate to bring forward a motion to the effect that the Standing Senate Committee on Human Rights be given the mandate to carry out the parliamentary oversight that was envisaged and underscored by Senator Carstairs and Senator Fairbairn.

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

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted.

Is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: I will then proceed to put the questions on Bill C-36. I will do them in the reverse order.

Is there agreement that the bells should sound and with regard to a time for the vote?

Hon. Bill Rompkey: I believe there is agreement on a 15-minute bell.

The Hon. the Speaker: It is now precisely four o'clock. Honourable senators, is it agreed that votes will take place at 4:15 p.m., with a 15-minute bell starting now?

Hon. Senators: Agreed.

• (1620)

The Hon. the Speaker: Call in the senators.

Motion in amendment of Senator Beaudoin negated on the following division:

• (1610)

Motion in amendment of Senator Andreychuk negated on the following division:

YEAS
THE HONOURABLE SENATORS

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—24

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—24

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—45
Hubley	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Maheu
Cook	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—45
Hubley	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, we will now vote on the motion in amendment of the Honourable Senator Murray.

Motion in amendment of Senator Murray negated on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Di Nino	Nolin
Doody	Oliver
Eyton	Pitfield
Forrestall	Prud'homme
Grafstein	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—25
Kinsella	

NAYS
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Joyal
Banks	Kenny
Biron	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Maheu
Christensen	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Graham	Taylor
Hervieux-Payette	Tunney
Hubley	Wiebe—42

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1630)

The Hon. The Speaker: We now move to the vote on the third reading of Bill C-36.

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

YEAS
THE HONOURABLE SENATORS

Austin	Hubley
Bacon	Jaffer
Banks	Joyal
Biron	Kenny
Bolduc	Kirby
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Maheu
Christensen	Mahovlich
Cools	Milne
Corbin	Moore
Day	Pépin
De Bané	Poulin
Eyton	Poy
Fairbairn	Robichaud
Ferretti Barth	Rompkey
Finestone	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Grafstein	Tunney
Graham	Wiebe—45
Hervieux-Payette	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Lynch-Staunton
Atkins	Meighen
Beaudoin	Murray
Di Nino	Nolin
Doody	Oliver
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Spivak
Keon	Stratton
Kinsella	Tkachuk—21
LeBreton	

ABSTENTIONS
THE HONOURABLE SENATORS

Pitfield—1

[Translation]

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

December 18, 2001

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 18th day of December, 2001, at 4:45 p.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like all items on the Order Paper to be deferred until the next sitting of the Senate, retaining their respective places, with the exception of the Government Notices of Motions, as agreed to earlier today.

Hon. Marcel Prud'homme: Honourable senators, yesterday I indicated that I would be speaking today to the motion by Senator De Bané on the situation in the Middle East. I see that those of us on this side have more class than some on the other, perhaps, but I am going to accept the motion by Senator Robichaud. However, I do not want to be faulted for not speaking to Senator De Bané's motion as I had said I would yesterday. I wanted to do so today, but I am prepared to bow to the request from the government side.

[English]

The Hon. the Speaker: As Senator Prud'homme is not withholding consent, is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

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 Tuesday, February 5, 2002, at 2 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

• (1700)

ROYAL ASSENT

Her Excellency the Right Honourable Adrienne Clarkson, Governor General of Canada, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Acting Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica (*Bill C-32, Chapter 28, 2001*)

An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts (*Bill C-34, Chapter 29, 2001*)

An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (*Bill S-31, Chapter 30, 2001*)

An Act to amend the Carriage by Air Act (*Bill S-33, Chapter 31, 2001*)

An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts (*Bill C-24, Chapter 32, 2001*)

An Act to amend the Export Development Act and to make consequential amendments to other Acts (*Bill C-31, Chapter 33, 2001*)

An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect (*Bill C-40, Chapter 34, 2001*)

An Act to amend the Air Canada Public Participation Act (*Bill C-38, Chapter 35, 2001*)

An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (*Bill S-10, Chapter 36, 2001*)

An Act to amend the Criminal Code (alcohol ignition interlock device programs) (*Bill C-46, Chapter 37, 2001*)

An Act to amend the Aeronautics Act (*Bill C-44, Chapter 38, 2001*)

An Act to amend the International Boundary Waters Treaty Act (*Bill C-6, Chapter 40, 2001*)

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 (*Bill C-36, Chapter 41, 2001*)

The Honourable Bob Kilger, Deputy Speaker of the House of Commons, then addressed Her Excellency the Governor General as follows:

May it please Your Honour.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bill:

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 (*Bill C-45, Chapter 39, 2001*)

To which bill I humbly request Your Honour's assent.

Her Excellency the Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

The sitting of the Senate was resumed.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, before proposing the adjournment, I want to thank my colleagues opposite for their tremendous cooperation, which greatly facilitated our work.

I also want to thank those who, directly or indirectly, also facilitated our work through their dedication, whether they work on the floor of the chamber, in administrative offices or in senators' offices. Merry Christmas to all.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to associate our side with the words of the Deputy Leader of the Government.

On behalf of my colleagues on this side, and in my own name, I wish to extend to colleagues opposite every joy during the season of peace.

During the year 2002, we look forward to the Senate of Canada continuing the important work that it has undertaken.

To you and to your staff, honourable senators, and to all of those who assist us in making our work possible, we wish you the best of the season and all blessings in the year 2002.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I concur in the tribute paid to our whole staff.

[English]

I also wish the Honourable Senator Carstairs the best. I learned something from Orville Phillips, who said, "We can fight like hell here, Marcel" — and he was here for 35 years — "but remember that, when you pass through these doors, we are friends and we can talk to each other."

Merry Christmas. For those who are not of the Christian faith, happy New Year.

The Senate adjourned until Tuesday, February 5, 2002, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(1st Session, 37th Parliament)
Tuesday, December 18, 2001

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02 Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd 01/06/06	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01	01/12/18	30/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06	01/12/18	31/01
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					

**GOVERNMENT BILLS
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs	01/12/12	0	01/12/18	01/12/18	40/01
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08 negated 01/12/10	11 1 at 3rd 01/12/13	01/12/18		
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	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	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-23	An Act to amend the Competition Act and the Competition Tribunal Act	01/12/11							
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs	01/12/04	0 + 1 at 3rd	01/12/05	01/12/18	32/01
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	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	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0	01/12/06	01/12/18	33/01
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22	01/12/18	28/01
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21) 01/11/22 (reintroduc ed)	01/11/27	Energy, the Environment and Natural Resources					
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28	01/12/18	29/01
C-35	An Act to amend the Foreign Missions and International Organizations Act	01/12/05	01/12/14	Foreign Affairs					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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	01/11/29	01/11/29	Special Committee on Bill C-36	01/12/10	0	01/12/18	01/12/18	41/01
C-37	An Act 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	01/12/04	01/12/17	Aboriginal Peoples					
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications	01/12/06	0	01/12/11	01/12/18	35/01
C-39	An Act to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts	01/12/04	01/12/12	Energy, the Environment and Natural Resources					
C-40	An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect	01/11/06	01/11/20	Legal and Constitutional Affairs	01/12/06	0	01/12/10	01/12/18	34/01
C-41	An Act to amend the Canadian Commercial Corporation Act	01/12/06	01/12/14	Banking, Trade and Commerce					
C-44	An Act to amend the Aeronautics Act	01/12/06	01/12/10	Transport and Communications	01/12/13	0	01/12/14	01/12/18	38/01
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	01/12/05	01/12/17	—	—	—	01/12/18	01/12/18	39/01
C-46	An Act to amend the Criminal Code (alcohol ignition interlock device programs)	01/12/10	01/12/12	Committee of the Whole	01/12/12	0	01/12/13	01/12/18	37/01

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08 Senate agreed to Commons amendment 01/12/12	01/12/18	36/01
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology	01/12/14	0			
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	<i>Bill withdrawn pursuant to Commons Speaker's Ruling</i> 01/06/12	
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10 Energy, the Environment and Natural Resources	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		(Subject-matter 01/04/26 Social Affairs, Science and Technology)	(01/12/14)				
S-22	An Act to provide for the recognition of the <i>Canadien</i> Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					
S-35	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	01/12/04							
S-36	An Act respecting Canadian citizenship (Sen. Kinsella)	01/12/04							
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