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Wednesday, February 6, 2008

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, February 6, 2008

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

Prayers.

SENATORS' STATEMENTS

THE HONOURABLE JOHN CROSBIE, P.C., O.C., Q.C.

NEWFOUNDLAND AND LABRADOR—
CONGRATULATIONS ON INSTALLATION
AS LIEUTENANT GOVERNOR

Hon. Ethel Cochrane: Honourable senators, on Monday, February 4, 2008, I had the pleasure of attending the installation of the twelfth Lieutenant Governor of Newfoundland and Labrador, His Honour the Honourable John Carnell Crosbie.

In his 77 years, His Honour has served in many roles: lawyer, minister in Liberal Joey Smallwood's provincial cabinet; minister in Progressive Conservative Frank Moores' provincial cabinet; federal cabinet minister in the Clark and Mulroney governments; and chancellor of Memorial University of Newfoundland and Labrador, to name just a few.

He is an Officer of the Order of Canada and one of Canada's best-known political leaders. His trademark is being an outspoken Tory, and he is known as much for his quick wit and sharp tongue as he is for his many political successes, including NAFTA and the free trade agreements.

• (1335)

Today, honourable senators, he is a new man. In his first address as Lieutenant Governor, he conceded: "My partisan days have now ended —

Some Hon. Senators: Hear, hear!

Senator Mercer: More or less.

Senator Tkachuk: We should not have appointed him, then!

Senator Nolin: That is a good one.

Senator Cochrane: — but, my respect for politicians and the political process, and those who engage in that process, is as great as ever."

Honourable senators, I wish His Honour, the Honourable John C. Crosbie, the Lieutenant Governor of Newfoundland and Labrador, and Her Honour Jane Crosbie, continued success as they begin this newest chapter in their astounding public service careers.

I am sure that, together, they will set a new standard and will leave an indelible mark on that office.

At this time, I would also like to express my appreciation to the Honourable Edward Roberts and his wife, Eve, for their years of service to the people of Newfoundland and Labrador.

Hon. Senators: Hear, hear!

NUNAVIK INUIT LAND CLAIMS AGREEMENT BILL

Hon. Charlie Watt: Honourable senators, I am happy to rise on the report of Bill C-11.

Honourable senators, Bill C-11 is a reprint of Bill C-51 that was tabled in March 2007. At that time I made a comment and raised serious concerns. We were prepared to study this bill, but the government decided then to —

The Hon. the Speaker: Order. The honourable senator has joined in Senators' Statements. The time for Senators' Statements is reserved for statements on issues other than those issues that are on the Order Paper. It would be out of order to address a matter that is on the Order Paper at this time.

However, if the honourable senator has another statement to make, we would be happy to hear from him.

Senator Watt: I am trying to speak to the report stage of Bill C-11. Is Your Honour saying that I am out of order?

The Hon. the Speaker: That is correct.

[*Translation*]

GATINEAU PARK

Hon. Pierre De Bané: Honourable senators, Gatineau Park, a jewel in the crown of the nation's capital, is the only federal park without any framework legislation.

It was the first national park recommended by Quebec in 1912, but was never granted that status or protection in legislation. The park still belongs to all Canadians and Parliament should have a say in its management, as has long been the case for all other federal parks.

The park's confusing and changing boundaries must be set in legislation. Its territorial integrity must be consolidated and protected by a fair, transparent and rational land policy. Quebec must have a say in any changes to the park's boundaries and the development of its management plans, as set out in Bill S-210, introduced last session.

Over the years, many citizens and environmental groups have encouraged the government to manage Gatineau Park in the public interest and as part of a long-term protection program.

• (1340)

And most recently, on September 25, the environment minister, John Baird, publicly announced that Gatineau Park was a "national treasure" and that the Canadian government was going to offer it legal protection.

Honourable senators, the time has come for the government to honour its commitment and to provide the legal and legislative protection for Gatineau Park that citizens and environmental groups have been calling for for over 50 years.

[*English*]

JUNIOR ACHIEVEMENT MONTH

Hon. Donald H. Oliver: Honourable senators, I rise today to draw your attention to Junior Achievement Month.

February marks Junior Achievement Month in Canada, and it is during this time that we celebrate continued success of Junior Achievement Canada and the difference Canadian youth are making in this country.

Junior Achievement is an international, non-profit organization that was established in Canada in 1967. Its goal is to inspire and educate youth about business and economics. Through programs that teach leadership and entrepreneurial skills, youth are able to reach their highest potential.

Junior Achievement believes firmly that an investment in our enterprising young people is an investment in our future. I also believe this to be true. As a past director of Junior Achievement in Halifax, Nova Scotia, I have seen the importance of this program in teaching and inspiring today's youth.

This month, I will once again be meeting with youth from Ontario who have made a meaningful and lasting difference in their communities and are candidates for the TD Canada Trust Scholarship Competition.

Last year, I was overwhelmed to learn of the outstanding work our youth were doing across the country. One scholarship recipient from last year, for example, created a multicultural organization which aimed to eliminate cultural discrimination within her local community. She raised funds for UNESCO and also worked for DAREarts and their Centipede Children for Peace Movement. At her high school, she was on the students' council, head of production for Culturefest and president of the political discussion club. In her spare time — it was hard to believe she had any at all — she enjoyed playing the saxophone.

Honourable senators, today's youth are accomplishing incredible achievements. I am grateful to organizations such as TD Canada Trust and Junior Achievement Canada for recognizing these feats.

The youth of our country are our future. If the ones that I have met through my work with young Canadians are any indication, I am sure that the future will be very bright.

[*Translation*]

ROUTINE PROCEEDINGS

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

DRINKING WATER IN FIRST NATIONS COMMUNITIES—PROGRESS REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Progress Report of the Action Plan for Drinking Water in First Nations Communities dated January 17, 2008.

• (1345)

ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

AMERICA REGION MISSION, NOVEMBER 6-7, 2007—REPORT TABLED

Hon. Rose-Marie Losier-Cool: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Canadian branch of the Assemblée parlementaire de la Francophonie respecting its participation in the America region mission of the APF held in Port-au-Prince, Haiti, on November 6 and 7, 2007.

CANADIAN NATO PARLIAMENTARY ASSOCIATION

ANNUAL SESSION, OCTOBER 5-9, 2007—REPORT TABLED

Hon. Pierre Claude Nolin: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the NATO Parliamentary Association respecting its participation in the annual session of the NATO Parliamentary Association held in Reykjavik, Iceland, from October 5 to 9, 2007.

[*English*]

PARLIAMENTARY TRANSATLANTIC FORUM, DECEMBER 10-11, 2007—REPORT TABLED

Hon. Pierre Claude Nolin: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian NATO Parliamentary Association which represented Canada at the Parliamentary Transatlantic Forum held in Washington, D.C., United States, from December 10 to 11, 2007.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY GUARANTEED ANNUAL INCOME SYSTEM

Hon. Hugh Segal: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on the implementation of a guaranteed annual income system,

including the negative income tax model, as a qualitative improvement in income security, with a view to reducing the number of Canadians now living under the poverty line;

That the committee consider the best possible design of a negative income tax that would:

(*a*) ensure that existing income security expenditures at the federal, provincial and municipal levels remain at the same level;

(*b*) create strong incentives for able-bodied people to work and earn a decent living; and

(*c*) provide for coordination of federal and provincial income security through federal-provincial agreements; and

That the committee submit its final report no later than June 30, 2009; and

That the committee retain all powers necessary to publicize its findings until 90 days after the tabling of the final report.

[*Translation*]

QUESTION PERIOD

THE CABINET

RECORD OF GOVERNANCE

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, as the Leader of the Government in the Senate is no doubt aware, today marks the second anniversary of her minority government taking office. This is not necessarily a celebratory occasion for Canadians, but rather a time to reflect on a disturbing record.

Consider, for instance, the dismantling of the Canadian Wheat Board; the abolition of the Court Challenges Program; the budget cuts to Status of Women Canada; the sorry management of national finances, which, according to some economists, could eventually lead to a deficit; the serious financial irregularities during the last election campaign; the repeated, arbitrary firing of high-ranking government officials; the sabotage of international negotiations on climate change and rejection of the Kyoto Protocol; the empty-chair policy on the international scene, although Canada was once considered a model internationally; the betrayal of the Maritime people by reneging on the Atlantic Accord; and the appalling abandonment of First Nations peoples by reneging on the Kelowna agreement. The list goes on.

Can the Leader of the Government in the Senate tell us when her government will stop disgracing Canada internationally, governing according to a reformist philosophy, dismantling social programs, reneging on agreements with the provinces and impairing Canada's financial health? Can the Leader of the Government in the Senate tell us when her government will start governing for all Canadians, rather than just the minority that elected it?

• (1350)

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, as I have said in this place many times, Canadians did not elect a Conservative government two years ago in January — sworn in two years ago today — to carry on failed or unfulfilled promises and commitments made by the previous government.

The honourable senator's comment on Status of Women Canada is patently false. The fact is more money was put into SWC to provide service where it counts — with women in their communities, rather than with advocacy groups talking to each other on the telephone.

Not every program is meant to go on forever. New governments always re-evaluate and reassess the existing programs. Canadians understand that procedure. The only group of people that does not understand that process is the Liberals, who want us to carry on with failed programs which they, by the way, had 13 years on which to deliver.

In terms of our international role, I can cite no better source than the recent report from the former Liberal Deputy Prime Minister, John Manley. Mr. Manley made it clear that Canada has regained its international standing and that we should not fall back away and lose that position.

Senator Hervieux-Payette: If the Leader of the Government in the Senate is convinced that Canadian women are happy, could she tell the house why the Court Challenges Program of Canada has been abandoned? That program assured women that the equality clause would be available to them. Can the Leader tell us why the government abandoned these women even though the government knows that they cannot afford to go to court when their rights are being ignored?

Senator LeBreton: Honourable senators, women are people, too. They are not the preserve of a certain political party. Many women support the Conservative Party. Our government has brought in many programs to support women, including young mothers and families through the Universal Child Care Benefit of $100 per month for children under the age of six.

In my portfolio as Secretary of State for Seniors, we added $10 million to New Horizons for Seniors, which Senator Chaput had predicted would be cut by the government. This program assists seniors, the significant majority of whom are women.

Senator Hervieux-Payette: Perhaps the honourable leader and I do not read the same statistics. According to what I read, there are nearly 1 million Canadian children living in poverty. Usually, these children have mothers who are living in poverty, just like so many senior citizens; and that is a disgrace.

Can the Leader of the Government in the Senate tell me what she has done to alleviate the poverty suffered by these women and their children?

Senator LeBreton: I hate to point out something factual to the honourable senator, but poverty did not begin on February 6, 2006.

The honourable senator asked about what the government is doing to support Canadians who need help. The government is investing billions of dollars to strengthen vital social programs, including income assistance; the Working Income Tax Benefit to move people up from below the poverty line; the Universal Child Care Benefit; support for seniors; skills training; post-secondary education. We cut the GST from 7 per cent to 6 per cent and then to 5 per cent. Poor people have to buy things, too, on which they pay GST. In addition, they still receive the GST rebate. The GST is often the only tax that low-income Canadians pay because many of them are not on the tax roll. I remind the honourable senator when she talks about poverty that she has a leader who threatens to raise the GST. Through the extension of the labour market agreement for persons with disabilities, the government is investing $223 million to support programs delivered by the provinces and territories that help people with disabilities to find meaningful employment. Budget 2006 announced an investment of $1.4 billion to establish three housing trusts for the provinces and territories to invest in affordable housing. As well, the government has introduced a new homelessness partnering strategy to combat homelessness in Canada.

• (1355)

The honourable senator cannot stand there and say that we have not addressed this issue. We have addressed it in a more meaningful way in two years than the honourable senator's party did in 13 years.

[*Translation*]

NATIONAL DEFENCE

AFGHANISTAN—TRANSFERRING OF DETAINEES

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate and, by extension, for the Prime Minister.

[*English*]

My question is on the subject encompassing the law of armed combat, Geneva Conventions and prisoner transfers. I would like to remind honourable senators that on January 24 the spokeswoman for Mr. Harper said that our transfer policy and agreement remains unchanged in that the Canadian Forces acted alone in the change of policy in the field in regard to the transferring of prisoners, a subject that is of enormous concern as we are being examined in terms of fair treatment of our prisoners. It is a fundamental element of the law of armed combat.

On January 25, however, Ms. Buckler said that she misspoke, and that she needed to call a few reporters to say that, upon reviewing the story, she had made a mistake. She said that she should not have said what she did and that she would not comment on the operational decisions of the military.

My specific question is this: Is it possible that after the government fired a Minister of National Defence over the handling of prisoners, which matter is now before the courts, and considering that we have troops in the field who are conducting these operations, which are of great concern in terms of armed conflict and ethics, that the Canadian Forces have changed their policy in the field and that the chain of command did not inform the Prime Minister of such a significant change? Is it possible that that happened?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I do not know where the honourable senator has been, because the Prime Minister's communications person did say that she misspoke. There was no suggestion whatsoever that the government was not informed. She clearly said that she misspoke, and she apologized for misspeaking.

To go back and regurgitate old news is sometimes of interest, but the fact is that, just as the unnamed source in *The Globe and Mail* said that General Hillier telephoned the Prime Minister, it never happened.

When these erroneous stories appear in the various newspapers and media across the country citing unnamed sources, we should not respond. Unless someone is prepared to speak up, I do not think we owe an answer to an unnamed source, who might not even exist or who may not even have any knowledge about what the government is doing.

We are very proud of our forces in Afghanistan. They are doing a tremendous job in a very difficult situation in Kandahar. We are crucial to the operation in Afghanistan. Kandahar, as the honourable senator knows, since it was his government that put us there, is one of the most difficult, if not the most difficult, theatres in Afghanistan.

In regard to Taliban prisoners and the situation that the military creates on the ground, being an ex-military leader himself I am sure that the honourable senator would understand that decisions made in the field are the responsibility, and should be the responsibility, of the commanders in the field.

Senator Dallaire: Of course, and I am sure that generals do not shirk that responsibility. I do not think we should respond to any information that is not substantiated. However, I have the words of Ms. Buckler here. I do not remember her excusing herself or indicating any contriteness in having given the overt impression that the military were functioning without keeping the chain of command well informed on such a significant subject. The military are quite sensitive to this since Somalia.

Somalia was precisely a problem of prisoners. Somalia cost us three chiefs of the defence staff. We fired and court-martialled people left, right and centre. That wound is still there. We spent years reforming the leadership of the Canadian officer corps to ensure that it would not go down that route again. Then suddenly we are left with the impression from the Prime Minister's Office that they are doing it again, and then there is a response saying no, that it is a mistake. However, there has not been a clarification that, no, the military is not doing that; we have been fully informed of what is going on and are fully cognizant with the contents of that file. Is that exactly what the honourable senator thinks that Ms. Buckler or the Prime Minister said?

• (1400)

Senator LeBreton: I thank the honourable senator for his question. In fact, I believe Sandra Buckler did something very honourable. She came forth immediately and said she misspoke. That is the end of the story as far as she is concerned.

The Prime Minister and Minister of Defence have made it clear that they respect the military's efforts in Afghanistan. They are in the field, they make the decisions. The government is informed. I can assure the honourable senator that we will not be repeating the practices of the past government in Somalia, which resulted, unfortunately, in the disbanding of the airborne regiment.

Senator Dallaire: That is very true, and we hope we do not have to see an unprecedented gesture of a regiment being disbanded in peacetime — unheard of in the Commonwealth — for such a catastrophic scenario.

That is the reason for my question. Is the minister ensuring that Ms. Buckler has not left the impression that the military may still be functioning outside of the control of the Prime Minister or of the government? She is the Prime Minister's spokesman. Her gut reaction was, "The military are doing their own thing," on such an incredibly significant matter, yet the retraction never said, "No, the military are not operating independently. We are, in fact, in control. We are in line with that policy and we knew about it."

Senator LeBreton: It is pretty clear, thanks to the strong leadership of the Prime Minister and both the former Minister of National Defence, Minister O'Connor, and the present one, Minister MacKay, that the government sets the policy for our international efforts in Afghanistan. The military makes the decisions in the theatre on the ground, and there is no lack of understanding or support. The government fully supports General Hillier and the military leaders in the Canadian Forces, so there is no conflict, despite the unnamed sources in *The Globe and Mail* who keep trying to say there is a conflict and the people who seem not to be able to accept Sandra Buckler's immediate response that she misspoke. She did an honourable thing, and that is rather refreshing in politics. Too often in the past people have said, "Blame someone else." She took the blame herself, and good for her.

PUBLIC SAFETY

BORDER SERVICES AGENCY—2010 WINTER OLYMPICS—TRAFFICKING IN PERSONS

Hon. Gerard A. Phalen: Honourable senators, my question is to the Leader of the Government in the Senate. In November, I attended a conference in Vancouver on the subject of trafficking in persons. At that conference the attendees were told by both Professor Benjamin Perrin of the University of British Columbia and by the renowned author Victor Malarek that the 2010 Olympic Games in Vancouver will be a sex slave destination unless Canada Border Services Agency increases its vigilance now and the government sends a strong message to organized criminals that trafficking in women will not be tolerated.

The attendees of that conference wrote to the minister responsible for the Vancouver-Whistler Olympics expressing their concerns. I have received a copy of the minister's letter in response and was pleased to read that, according to the minister, the government will ensure that initiatives to combat trafficking in persons are included in the security measures and overall planning efforts for the 2010 games.

Will the Leader of the Government in the Senate provide this chamber with details of these initiatives?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for his thoughtful question on a serious issue. I applaud him for his efforts on this serious matter. The issue of human trafficking will be highlighted when the Olympics are held in Vancouver.

• (1405)

Joy Smith, a member of Parliament from Manitoba, has worked tirelessly with women's groups and the police on behalf of our caucus on the matter of human trafficking. She has done outstanding work. Ms. Smith was a member of the Manitoba government before she ran federally.

I will be happy to obtain the exact procedures from the Minister of Public Safety and provide them to the honourable senator.

Senator Phalen: Honourable senators, according to the Ministry of Public Safety, there was a 95 per cent increase in the number of human trafficking victims in 2004. In other words, the number of human trafficking victims almost doubled in the year of the Athens Olympics. Learning from the Athens Olympics experience, for the 2006 World Cup, Germany campaigned intensely internationally to raise awareness on the issues of the potential increase in the demand for sexual services. In part due to this campaign, there was no such increase in victims of human trafficking at the 2006 World Cup.

What measures will the government be taking to deter traffickers and users through public awareness campaigns before and during the 2010 Olympics?

Senator LeBreton: Honourable senators, Joy Smith, the MP from Manitoba, brought to the attention of our caucus the very good results from those measures.

I will take Senator Phalen's question as notice. However, I want to assure him that this issue is of great concern, not only to the government but also to us all, particularly the government of British Columbia, Mayor Sam Sullivan and the people of Vancouver.

[*Translation*]

HERITAGE

CANADIAN TELEVISION FUND

Hon. Maria Chaput: Honourable senators, my question is for the Leader of the Government in the Senate and it concerns the Canadian Television Fund, which has a mandate to encourage diversity in Canadian television productions.

This fund supports English- and French-language Canadian productions and Aboriginal productions. You will agree that these local productions have a great impact on minority communities.

With the future of this fund at stake, French-language production in minority communities, among others, hangs in the balance. The CRTC is currently holding hearings on the future of this fund. Two cable television distributors want the fund to focus on productions that are likely to bring in strong ratings and we know what that means for minority community productions. I presume the CRTC will make its recommendations to the Minister of Canadian Heritage.

Could you tell the Minister of Canadian Heritage that this fund must continue to support diversity in Canadian productions, including those made by and for all minorities, French-language minority communities and Aboriginals?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, as Senator Chaput mentioned, the issue of the Canadian Television Fund is before the CRTC. I would be happy to pass Senator Chaput's comments on to Minister Verner. Minister Verner has been working very hard on the heritage file, particularly with regard to Canada's cultural organizations and official languages. There is no question that she is a very good minister who totally understands the importance of these issues, not only to minority language groups but also to the country at large.

I will be happy to pass on the honourable senator's comments. I need not urge the minister to take action because I know that she is in the process of doing so.

FINANCE

LOSSES IN BANKING COMMUNITY—AID

Hon. Jerahmiel S. Grafstein: My question for the Leader of the Government in the Senate arises out of her responses yesterday to questions about the current crises in the chartered banks of Canada.

• (1410)

Yesterday I raised the concern with respect to chartered banks and current equity meltdown due to the questionable value of derivatives in similar financial institutes. The Leader of the Government in the Senate yesterday said that this was a global issue. Really, this is a made-in-Canada bank investment problem. Yesterday we learned that the rescue package negotiated under the auspices of the Ministry of Finance has run into difficulties as at least one chartered bank has refused to join.

Does this concern the Minister of Finance as it is now apparently a matter of some urgency?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I will take the question as notice.

Senator Grafstein: Honourable senators, the problem has been compounded by the delay. Today we learn from the press that the rescue package has run into troublesome consequences because apparently chartered accountants cannot sign off on financial statements, and the consequence of that is they cannot confirm the status of our chartered banks.

This then makes the question of value with respect to bank stocks a deep concern and raises even deeper concerns from investors and the marketplace, and you will see in the papers today the headline, "Accounting Firms Left in Limbo."

Is the minister now addressing this unprecedented problem with some essence of emergency?

Senator LeBreton: Honourable senators, I have not seen the article. The honourable senator says this is a very serious situation. I do not doubt those concerns. I will refer the honourable senator's question to the Minister of Finance for an appropriate answer.

Senator Grafstein: Having in mind the circumstances, is the government currently giving urgent consideration to legislation that would extend the power of oversight by the Office of the Superintendent of Financial Institutions responsible for banks to assure us that the problem does not recur and to reassure investors here and abroad about the security of their investments held by chartered banks?

Senator LeBreton: My answer is the same. These are all very technical questions. I have made it clear in the past that I am not a financial analyst or expert, as the honourable senator may be. I try to keep on top of some of these issues, but these are complex and specific matters, so I would be happy to take the question as notice and seek an answer from the minister.

Senator Grafstein: I will conclude by this comment: This is not a complex matter.

Senator Angus: It is very complex.

Senator Grafstein: It is not a complex matter. Canadian banks and Canadian pension funds have invested in these questionable derivatives, and now they have trouble valuing them. This has been going on for six months. This is not complicated. The solutions are complicated but the problem is not. Will the government sit on its shelf as opposed to addressing this question more directly? This matter goes to the question of security and confidence that Canadians have in our marketplace.

Senator LeBreton: I will not get into a debate with the honourable senator on the definition of "complexity." I will simply take the question as notice.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD—
FIRING OF VICE PRESIDENT OF COMMUNICATION

Hon. Terry M. Mercer: Honourable senators, my question is for the Leader of the Government in the Senate. She has voiced concern several times today in her answers about unnamed sources in *The Globe and Mail* or people who are not willing to

put their name out there. It is rather evident that if you are associated with this government and put your name out there and are critical of them, you get fired. That is what happens.

In discussion with the Minister of Agriculture last night, I went as far as to say that the government introduced a number of pieces of legislation which on the surface are commendable, for example, the legislation with regard to whistle-blowing and the Federal Accountability Act. While these acts may look good on paper, you people seem to be able to talk the talk but not walk the walk.

Will the Leader of the Government in the Senate indicate who in the government instructed the acting president of the Canadian Wheat Board to fire Deanna Allen, the vice-president of communications?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, there is a very simple answer: No one was instructed to do so.

• (1415)

Senator Mercer: I would appreciate it if the Leader of the Government in the Senate would take this question seriously. Canadians are becoming very concerned that no one who works for the public service or an agency of the government can be critical of this government without being fired. Letters are being sent to public servants across this country saying: You can call your member of Parliament but do not speak out against this government because you will not be welcome back at the job site the next day.

Who in the government gave instructions to the acting president of the Canadian Wheat Board to fire this young lady?

Senator LeBreton: The honourable senator is flat wrong about the government firing public servants. As a matter of fact, there have been many public servants — and many women, as I pointed out before — promoted within the public service. We value the public service.

With regard to the Canadian Wheat Board, any decision that was made by them has absolutely nothing to do with the government. What part of "no" does the senator not understand?

As I pointed out in answers before, the senator claims Ms. Gélinas was fired by the government. She worked for the Auditor General. The government had nothing to do with it.

In his letter, Dr. Cardy said he retired; somehow that became "fired."

The fact is, when organizations of government are rearranged, unfortunately some people will leave.

With regard to the Wheat Board, no one gave instructions at all. The honourable senator knows that. I believe the minister made that very clear to him last night in the committee. The senator talks about people being fired and abused by government. As I pointed out last week, has anyone in his party heard of François Beaudoin?

Senator Mercer: The interesting thing, honourable senators, is the Leader of the Government in the Senate can distance herself perhaps from the firing of Deanna Allen, but we know that a directive came from the government to the Wheat Board to remove the former president and CEO and replace him. These things happen by association and with a wink and a nod.

When will the government start taking responsibility for some of its actions? They say they are in favour of accountability. They say they are in favour of whistle-blowing, but they do not walk the walk.

[*Translation*]

ORDERS OF THE DAY

SETTLEMENT OF INTERNATIONAL INVESTMENT DISPUTES BILL

SECOND READING—DEBATE ADJOURNED

Hon. Pierre Claude Nolin moved the second reading of Bill C-9, An Act to implement the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

He said: Honourable senators, I am pleased to speak today in support of Bill C-9, An Act to implement the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which I will refer to as "the convention" so as not to have to repeat its full title every time.

The convention was sponsored by the World Bank to facilitate and increase the flow of international investment. It establishes rules to settle disputes between states and nationals of other states through conciliation and arbitration.

• (1420)

It also created the International Centre for the Settlement of Investment Disputes, better known by its acronym, ICSID.

Bill C-9 implements the ICSID Convention for Canada. It deals with enforcement of ICSID awards for or against the federal government and foreign governments, including the constituent subdivisions designated by foreign governments.

The convention deals with what is commonly called the resolution of investor-state disputes. Such disputes arise in a variety of situations. For example, they can arise when a state where a foreign investor has invested passes legislation affecting the activities of the investor in a discriminatory manner or in cases of nationalization.

International arbitration is a proven method for resolving disputes. It provides a way of resolving disputes without resorting to the judicial process.

It has long been recognized that parties to a dispute may have recourse to arbitration and that the result of the arbitration process must be recognized by the courts. Thus, for example, the

awards resulting from commercial arbitration, in other words from arbitration between business enterprises, are recognized and enforced by the courts.

The parties decide whether they wish to have recourse to arbitration or to the courts. This flexibility is welcomed in many situations. In the case of the convention we are discussing today, one of the big advantages of arbitration is that it "denationalizes" the process. Let me explain what this means.

When a dispute arises between a foreign investor and the host country, one of the options is for the investor to pursue the case before the courts of that host country. In most cases, as would be the case in Canada, the foreign investor would benefit from a fair and equitable process; the national court would not prejudge the matter and would render a decision in conformity with the law.

However, in some situations this might not happen. The court might lean in favour of its government to the detriment of the foreign investor.

Another advantage of the arbitration process, it might add, is that the parties choose the arbiters. When the matters in dispute are highly specialized, for example, petroleum development or marine issues, choosing arbiters who are experts in the field can make the process more effective and result in better decisions.

The arbitration process in the ICSID convention is one of the processes that are most often used for settling disputes between investors and states. The convention has been ratified by 143 states and is thus one of the international instruments to which the largest number of states adhere.

What really distinguishes the ICSID convention to be implemented by this bill is the mechanism for enforcing arbitration awards. It is a very effective mechanism, and that will help to protect investors. This is a key advantage of the ICSID convention.

Unlike a court ruling, an arbitration award must be recognized and enforced. Basically, the award given by a properly constituted arbitral tribunal is presented in court, and the court is asked to recognize it. This recognition gives parties access to enforcement mechanisms, such as payments seized by officers of the court.

In the great majority of cases, the losing party in arbitration will pay the damages awarded by an arbitral tribunal without the need for the successful party to take any enforcement proceedings. The same is true for investor state arbitration.

Arbitral awards, including investor state arbitral awards, are currently enforced pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The New York convention permits a limited review by domestic courts. It allows a court to refuse to enforce an award if to do so would be contrary to public policy. In addition, it permits a state to exclude certain subjects from the application of the convention and, thus, from enforcement.

The ICSID provides a better enforcement mechanism. It does not permit a state to exclude from dispute settlement any matter which the state has consented to submit to arbitration. ICSID awards are enforceable as if they were final decisions of a national court. This efficient mechanism guarantees better protection for Canadian investors abroad.

Also under clause 8, any superior court in Canada may recognize and enforce awards coming under the act. The superior courts include the Federal Court. The Federal Court will have the necessary jurisdiction to hear requests for recognition of awards involving the Government of Canada and awards involving foreign governments and their political subdivisions.

The ICSID convention also provides explicitly that awards are binding on the parties and cannot be subject to any judicial appeal or remedy.

Thus, a foreign tribunal cannot hear a request to the effect that an ICSID arbitral tribunal has gone beyond its jurisdiction or was not properly constituted. These cases, when undertaken for awards other than those of the ICSID, delay resolution of the dispute and payment of damages. The ICSID does not allow such dilatory remedies.

Clause 7 of the bill provides that an award under the ICSID convention is not subject to any remedy such as appeal, review or annulment in a Canadian court of justice. The decision to seek arbitration is entirely voluntary, but once the parties have agreed to it they cannot seek remedy from any other body, such as a court of justice.

The only remedies allowed in erroneous decisions are those laid down in the convention. Requests for review, interpretation or annulment of an award are heard, should the case arise, by the Secretary-General of ICSID.

Therefore, questions of error concerning awards cannot be submitted to national tribunals, but there remains a guarantee that erroneous awards will be remedied.

Honourable senators, there are numerous reasons to support Canada's adherence to the convention. It would provide additional protection for Canadian investors abroad by allowing them to have recourse to ICSID arbitration in their contracts with foreign states.

It would also allow Canadian investors and foreign investors in Canada to bring investment claims under the ICSID arbitral rules where such clauses are contained in our foreign investment protection agreements and free trade agreements.

To date, 143 states have ratified the ICSID convention. The majority of our trading partners are parties to it. Ratifying the convention would bring Canadian policy into line with that of our OECD partners.

• (1430)

In a survey conducted by the ICSID in 2004, 79 per cent of respondents said that the convention played a vital role in their country's legal framework and 61 per cent said that ICSID membership had contributed to a positive investment climate.

We know, anecdotally, that Canadian investors are trying to find ways to benefit from the ICSID, even though Canada has not ratified it. Firms have, for example, arranged investments through a third country that is a party to the ICSID. However, such convoluted financing is not possible for all investments by Canadian investors.

International investment arbitration is growing in importance. The stock of Canadian direct investment abroad in 2005 increased to a record $469 billion. As a result of the globalization of investment, the number of investment disputes has greatly increased in the last five years. Similarly, ICSID arbitration has soared: only 110 ICSID arbitrations have been completed over the past 40 years but 105 proceedings are currently underway. The NAFTA parties alone have faced over 40 investor state arbitration claims since NAFTA entered into force on January 1, 1994.

The tremendous growth in investment and investor state disputes has made Canada's failure to ratify ICSID the focus of attention by Canadian business, the Canadian legal community and our trading partners.

The ICSID regime provides several major advantages, and compared to other arbitration mechanisms, the ICSID regime provides better guarantees regarding enforcement of awards and more limited local court intervention. Any arbitral award rendered under the auspices of ICSID is binding and any resulting pecuniary obligation must be enforced as if the award were a final domestic court judgment.

Moreover, all ICSID contracting states, whether or not parties to the dispute, are required by the convention to recognize and enforce ICSID arbitral awards. Investors often prefer to rely on such arbitration rather than on local courts of the country whose measures are in dispute to ensure an independent resolution of the dispute.

ICSID's relationship to the World Bank assists investors in obtaining compliance with ICSID awards and its roster of arbitrators gives investors access to well-qualified arbitrators at ICSID controlled rates, with extensive experience in international investment arbitration.

ICSID provides administrative support to litigants. The convention is a well-known tool for the settlement of investment disputes. Therefore, the interpretation of the convention and its usefulness are predictable.

Canada already has numerous links with ICSID. Provisions consenting to ICSID arbitration are commonly found in contracts between governments of other countries and Canadian investors. Chapter 11 of NAFTA, the Canada-Chile free trade agreement, and most of our bilateral foreign investment protection agreements provide for ICSID as a dispute settlement option that can be chosen by an investor if both the state of the investor and the host state of the investment are parties to the ICSID. Canada and Canadian investors cannot choose this option if Canada does not ratify this convention.

Honourable senators, I propose that we pass Bill C-9 at second reading stage to turn this convention into law.

[*English*]

Hon. Yoine Goldstein: Will the honourable senator take a question?

Senator Nolin: Yes.

Senator Goldstein: I thank the honourable senator for a splendid and detailed explanation of the bill. Although the bill is technical in nature, the honourable senator was able to explain it to us in a very non-technical way. I know I speak for all honourable senators when I say we appreciate the manner and expertise with which he presented his explanation.

Has anyone in the investment community raised any concerns about this bill and specifically this convention?

Senator Nolin: I am not aware of any concerns from the investment community, but I know that concerns have been raised over the years. One point that was not in my notes, and I think my colleagues will appreciate this, is that the convention has been in existence since 1965. Over the years, many Canadian investors have claimed that Canada should be part of it.

When the convention was signed, it was not the norm to enshrine such a treaty in what we refer to today as the "federal section" where a state has the ability to sign for its constituents. Canada and all governments of Canada decided to embark on long negotiations that involved a lot of push and pull. It is only recently that all the Canadian partners accepted the ratification of such an instrument.

Definitely, yes, many Canadian investors have asked the government — any government — to be part of that convention. I do now know, however, about the bill per se. We will have the opportunity to ask that question of the various experts that will come before us in committee.

Senator Goldstein: Thank you, Senator Nolin.

Hon. Jerahmiel S. Grafstein: Honourable senators, I also wish to commend Senator Nolin. I think that was an excellent explanation, and his response to the last question was even better.

Does the honourable senator know the number of countries required to approve this in order for it to be enforceable? This is a long overdue advance of commercial private law in the international field.

Senator Nolin: Senator Grafstein, the short answer is that the convention is in force. I believe that the usual number of countries required to bring a convention into force is 50. This convention has been in force for many years. However, as I explained, there was no federal clause in the convention, and the Canadian government decided to take the long route to securing the support of all the provinces before moving on it. More than 43 years later, we now have this ratification instrument in front of us.

On motion of Senator Goldstein, debate adjourned.

• (1440)

NUNAVIK INUIT LAND CLAIMS AGREEMENT BILL

REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Fraser, seconded by the Honourable Senator Milne, for the adoption of the seventh report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-11, An Act to give effect to the Nunavik Inuit Land Claims Agreement and to make a consequential amendment to another Act, with an amendment and observations), presented in the Senate on January 31, 2008.

Hon. Charlie Watt: Honourable senators, Bill C-11 is a reprint of Bill C-51 that was tabled in March 2007. I made comments at that time and I raised serious concerns.

We were prepared to study this bill but the government decided then to prorogue the session. The Second Session of the Thirty-ninth Parliament began its activities last fall, and Bill C-11 was tabled and adopted by the House of Commons.

The bill was rapidly referred to the Standing Senate Committee on Legal and Constitutional Affairs, and we now have the report proposing one amendment. I thank my colleagues who have supported this amendment, which is a minimum, from my point of view. Proposing an amendment is not a "perfection" trip, one that could be described by some as the enemy of the good. This is more serious.

Honourable senators, the reality has inspired the amendment. You all know the difficulties endured by Canada's first inhabitants. Many reports explain in detail the problems and the issues that they faced and the problematic process of reconciliation. For instance, last year the Standing Senate Committee on Aboriginal Peoples conducted a special study on the Federal Pacific Claims Process. The report convinced the government to improve legislation for this important process.

In late October, the Auditor General tabled a report on the implementation of the Inuvialuit Final Agreement and, here again, many changes have been recommended. Having in mind many examples in the recent reports, the current amendment will be a useful and helpful tool for the implementation of the Nunavik Inuit Land Claims Agreement.

The amendment provides that, in the first period of 10 years, Makivik will be able to raise a flag and to report about implementation. The Nunavik Inuit will not have to wait 10 years or more to report. Also, the report would not be necessarily negative. It could be a positive report, with a view to sharing some success.

The minister will report on the implementation of the agreement. In my view, that is a good thing; an efficient and a transparent process. I am sure that honourable senators will agree with me on this matter.

Hon. Hugh Segal: Would the Honourable Senator Watt take a question?

Senator Watt: Yes, I will.

Senator Segal: I very much appreciate the honourable senator's immense connection with this issue in a way that is more intimate than the rest of us could possibly understand, and I respect that.

However, in view of the long process that he has just mentioned in his speech and the delay that this amendment will cause, while perhaps not intentional from the point of view of the committee in its substantive concern, and given the fact that, in the voting that took place in support of this agreement — there was a massive majority, almost unanimity, in support of the agreement — could the honourable senator share with the chamber any concerns that he has about the impact on his own community and his own First Nation relative to the delay that this amendment may in fact cause? I ask this because once the bill goes back to the other place we really have no way of knowing how quickly it will come back to this place, or be acquiesced to one way or the other.

Senator Watt: Honourable senators, I appreciate the concern. My concern is the reverse; namely, what impact this will have on the people who must live with this legislation for the rest of their lives.

If the honourable senator is asking me if I have any concerns about what negative impact there would be if the legislation is delayed for some reason, I do not think we should consider this as something that takes away from what has already been done. I see only the positive because we do have a great number of problems with the other sets of agreements that have gone through already. Maybe the government will learn from this and perhaps decide in the future to adopt something similar for the follow-up on the implementation.

Senator Segal: In view of the fact that, through the negotiations which involved Her Majesty the Queen in right of the province of Quebec, Her Majesty the Queen in right of the Government of Canada, the First Nations in the community themselves, and the underlying premise, which was that there were circumstances of abject poverty and deep financial difficulty that these funds would help alleviate, I want to be clear that the senator is saying to this chamber that putting off the flow of those funds is a better option than moving ahead with the agreement now, minus a commitment to review it on a statutory basis in a fixed amount of time.

Senator Watt: Honourable senators, I am not sure whether I am actually suggesting anything to delay this process. I believe the committee has already made a decision to deal with the one amendment that I have put forward. With this amendment, we hope to receive a positive message from the House of Commons and adopt this bill as quickly as possible.

With regard to the other subject areas that the honourable senator claims, due to the fact that the money seems to be an issue and that someone whom I might not know about is waiting for the money, I am sorry to say that the money that will be going into the area, as I mentioned in my previous speech, when you look at it over the span of 10 years, only represents $500 a person. Therefore, I do not think we should be overly concerned about possible delay. However, I am not proposing any delay. I am expecting that the House of Commons will act rapidly and approve this amendment and return the bill to us, so that we then can have Royal Assent.

Senator Segal: I have a final supplementary question of my honourable colleague.

Am I to conclude, then, that a part of the reason, while not wanting a delay, you would not be concerned about a brief delay is because, in essence, you believe that the agreement negotiated by all the parties is insufficient, does not provide enough funds for the First Nations communities and is, in that sense, a failure, and that you would prefer that it did not proceed?

Senator Watt: Is the honourable senator saying that there are insufficient funds and, for that reason, I should not mind if there is a delay?

Senator Segal: No. If I may, the purport of my question was as follows: When I had the great privilege of being involved with the progression of this bill the first time around, before prorogation, I accepted as given that an agreement reached among the First Nations, the province and the federal government in good faith reflected a common will to move ahead with amounts of money which were deemed appropriate by First Nations leadership themselves.

I heard Senator Watt say a few moments ago that $500 per head is not all that impressive, that it may not make that much of a difference, and therefore, if there is a brief delay, that it is not the end of the world. I just wanted to make sure I did not misunderstand.

Senator Watt: I think the honourable senator said it correctly.

Senator Segal: Thank you.

• (1450)

Hon. Willie Adams: Honourable senators, I agree with parts of Senator Watt's amendment. I am a member of the Standing Senate Committee on Legal and Constitutional Affairs and I understand that, about 20 years ago, we began to ensure that all the land claims agreements went through the Standing Senate Committee on Aboriginal Peoples. It is, therefore, difficult to support the Standing Senate Committee on Legal and Constitutional Affairs dealing with this agreement. I have difficulty with that because we set up the committee here in the Senate to ensure that all of our land claims agreements were dealt with by the Standing Senate Committee on Aboriginal Peoples.

Negotiations leading to the Nunavik Inuit Land Claims Agreement and Bill C-11 began in 1993 between the NTI, the Nunavut Tunngavik Inc., and the Makivik Corporation. We know that that land claims agreement has nothing to do with the land. It is only about the set-up between the Nunavut Wildlife Management Board and the Makivik Corporation.

Prior to that, the James Bay and Northern Quebec Agreement also involved the government of the Northwest Territories in negotiations. At that time, the Quebec ministers dealt with the N.W.T. government before the Department of Indian Affairs and Northern Development became involved in northern Quebec. Part of the issue dealt with Arctic sovereignty. Today, there are three other common agreements between Nunavut, Nunavik, the Labrador Inuit and the Cree.

I will have been here in the Senate approximately 31 years in April. We used to negotiate with every person concerned about these bills. They would come to the committee to give their suggestions about what needed to be changed. If they did not represent organizations, possibly the government of the day would not accept them. We always negotiated everything, including every mammal we catch; that is Inuit culture. Today, however, that is changing. In 1867, the government recognized that the Eskimos were living off the land. Today, we negotiate for land, hunting rights, oil and gas, mining — everything. We want a better life in the future. That is why I have concerns about Senator Banks' question yesterday.

With everything we do now, according to the land claim agreement between the Inuit and the Department of Indian Affairs and Northern Development, we have to give up something and we lose our rights. Before the territorial government of Nunavut settled the land claim, we had rights to our culture and everything. Now, we have only the right to welfare and medical services in Nunavut. With housing or other things, we get no more support from Indian Affairs.

In the beginning, Indian Affairs would come to hear my speeches about the houses we called "match boxes" in the North. They were one-room houses with no running water or anything. There was just a 45 gallon plastic drum and you had to carry water to fill it. Today, we have water delivery and a local municipality; we have hunting and trapping associations that control how we deal with our animals; we have people coming from the south to control, for example, quotas on polar bears in Nunavik and Nunavut. We have guides who bring in big game hunters from the United States, Europe, Germany and Spain to earn more money. One person will pay $30,000 to come up north to hunt polar bear. Now, the Americans are trying to stop that.

I want to express my concern to Senator Segal about what will happen. We were supposed to pass this bill last June. This month, Nunavik and Nunavut have begun to negotiate quotas on polar bears and beluga whales, according to the agreement here with Bill C-51 and Bill C-11. Now, we have water rights in Nunavut right up to Hudson Strait and Hudson Bay. Nunavut and Nunavik share the quota system on turbot and shrimp.

Without the passage of this bill, Nunavik has about 10 or 15 per cent of the quota from DFO. If this bill passes, we get over 20 per cent more to share with Nunavik and the Makivik Corporation to fish in our waters.

• (1500)

It is the same for the royalties. I put a question to an official from DFO about why Nunavik had only 10 per cent or 15 per cent of the quotas. At that time, I checked the royalty share between the Qikiqtaaluk Corporation and the Makivik Corporation. Nunavik got 15 per cent and Nunavut got 65 per cent, and shares equal to the royalties. Clearwater gave out $6 million and Nunavik and Nunavut each received $3 million. Today we work together on these quotas under our land claims agreements.

If this bill is not passed, I do not think Nunavik will receive the extra quota for the beluga whales. They might lose the quota they have now because the bill should have been passed last year. Perhaps the government will say that there is a fight today between the Nunavik and Cree Indians, and between Labrador and Nunavut.

We have the protection of section 35. If we make a mistake, we will have to come back to the government and change it. If we amend the bill today, we will kill it. I have heard that many times from ministers after 30-some years here in the Senate. If an amendment passes here today, they will have to wait 10 years to review the act.

The Hon. the Speaker *pro tempore*: Are honourable senators ready for the question?

Some Hon. Senators: Question!

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

Motion agreed to and report adopted, on division.

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

Hon. Joseph A. Day: Honourable senators, I move that the bill be read the third time at the next sitting of the Senate.

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*: I believe I heard some "no" answers.

All those honourable senators in favour of the motion for third reading at the next sitting will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: All those honourable senators opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

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

On motion of Senator Day, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

PROTECTION OF VICTIMS OF HUMAN TRAFFICKING BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Phalen, seconded by the Honourable Senator Day, for the second reading of Bill S-218, to amend the Immigration and Refugee Protection Act and to enact certain other measures, in order to provide assistance and protection to victims of human trafficking.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk: Honourable senators, I wish to rise today to indicate that I intend to speak to this item. I am waiting for more information and I want to be sure that this does not fall off the Order Paper. I intend to speak to it expeditiously.

On motion of Senator Andreychuk, debate adjourned.

STATE IMMUNITY ACT CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. David Tkachuk moved second reading of Bill S-225, An Act to amend the State Immunity Act and the Criminal Code (deterring terrorism by providing a civil right of action against perpetrators and sponsors of terrorism).—(*Honourable Senator Tkachuk*)

He said: Honourable senators, I wish to speak today to Bill S-225. This bill is intended to help deter terrorism by amending the State Immunity Act and the Criminal Code and, by so doing, provide victims a civil right of action against perpetrators and sponsors of terrorism.

Honourable senators will recognize that this bill is the successor to my private bill, Bill S-218, from the last session, and that in turn was the successor to Bill S-35, which I presented in May 2005. With each pause this bill has been improved but the motivation and the rationale remains the same.

Terrorism is a modern-day scourge that not only targets the innocent but also seeks to destroy the democratic principles we hold dear. It strikes at the heart of modern societies and, indeed, civilization. Terrorism is a weapon wielded by evil people who seek to destroy the way we live. It is a phenomenon that we need to fight with every resource available to us in our democratic society, and sometimes that means creating new resources.

Honourable senators, this bill is a sincere effort to create another resource to put at the disposal of those who have been most closely affected by terrorist attacks — the victims of terror and their families. The intent of this bill is to make the sponsors of terror think twice before supporting or sponsoring these acts.

Honourable senators will be familiar with the main elements of the bill, which remain the same as they were in Bill S-218 and Bill S-35. I will not go into great detail since I have spoken to it twice already. I would ask honourable senators who would like to refresh their memory to refer to the *Debates of the Senate* from June 7, 2005, for Bill S-35; and June 22, 2006, for Bill S-218.

In short, the bill aims to amend the State Immunity Act so that foreign states that knowingly and recklessly sponsor listed terrorist entities can no longer claim immunity for their actions. This bill also makes amendments to the Criminal Code to allow

civil claims against local and state sponsors of terrorism. These claims can be brought by people who have suffered loss or damage as a result of conduct that is contrary to the existing anti-terrorism provisions of the Criminal Code.

Honourable senators will note that I use the words "knowingly and recklessly." These words have been added to the bill to protect against frivolous lawsuits. The sponsors of terrorism will have to have been aware or conscious of the fact that they were providing material support to a listed entity and proceeded anyway. The term "material support" has been added as a further protection in this regard to subsection 2.1(1) of the State Immunity Act. The definition of "material support" is found in subsection 2.1(2).

In addition, the plaintiff in a lawsuit is encouraged to provide the foreign state with the opportunity to arbitrate before the plaintiff can pursue the matter in court if the terrorist act causing harm to the plaintiff occurred in the foreign state.

• (1510)

Another protection added to the bill is that foreign states are precluded from making use of the civil remedy as plaintiffs. This, again, is designed to avoid mischief and is accomplished with very specific language in proposed section 83.34(2), as follows:

> Any person, other than a foreign state, who has suffered loss or damage on or after January 1, 1985 . . . may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct an amount equal to the loss or damage proved to have been suffered by the person, together with any additional amount that the court may allow.

In order to protect our democratic friends and allies who abide by the rule of law, as we interpret it, proposed section 83.34(7) of the Criminal Code directs the court to refuse to hear a claim against a foreign state with which Canada has entered into a bilateral extradition treaty, or that has been designated an extradition partner in the schedule to the extradition treaty. This is to prevent frivolous lawsuits against innocent foreign states that, as I said, abide by the rule of law.

Finally, proposed section 83.34(9) has been added to confirm explicitly that the legislation does not create a universal jurisdiction. This means that plaintiffs in a lawsuit must have a demonstrated connection to Canada.

Honourable senators, these are the most substantial improvements that have been made to the bill, and now it is time to get this legislation passed in the Senate. Four years have gone by since Canadian victims of terror launched their effort in support of this bill. They formed the Canadian Coalition Against Terror to try to prevent what happened to them from happening to other Canadians. They have personally felt the tragedy and loss that few others have felt and that all of us would like to avoid. They are the victims of Air India, 9/11 and other terrorist attacks.

In the four years we have been working to see this bill passed, the high standard of evidence required for a criminal conviction has meant that no one in Canada has been criminally convicted of financing terrorism. Not one person has been convicted in spite of the fact that FINTRAC has located hundreds of millions of terror-related dollars in this country.

Bill S-225 will ensure that those sponsors of terror that escape the clutches of the criminal justice system could still be successfully pursued through civil suits. This legislation will surely have a deterrent effect on those who think they can sponsor terror with impunity.

It is time, honourable senators — and I ask this on behalf of myself and Senator Grafstein, who has agreed to second this motion — to pass this bill at second reading and to send it to committee so that we can move another step closer to putting this tool in place for the victims of terror.

On motion of Senator Tardif, debate adjourned.

[*Translation*]

THE SENATE

MOTION TO URGE GOVERNMENT TO NEGOTIATE FREE TRADE AGREEMENT WITH EUROPEAN UNION—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Segal, seconded by the Honourable Senator Keon:
>
> That the Senate call upon the Government of Canada to engage in negotiations with the European Union towards a free trade agreement, in order to encourage investment, free movement of people and capital.—(*Honourable Senator Comeau*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I kept this motion in my name so that all senators who wished to speak to the motion could do so. However, I am prepared for the motion to be agreed to at this time.

Order stands.

[*English*]

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Joyce Fairbairn, pursuant to notice of February 5, 2008, moved:

> That, pursuant to rule 95(3)(a), the Standing Senate Committee on Agriculture and Forestry be authorized to sit between Monday, February 18, 2008 and Thursday, February 21, 2008, inclusive, even though the Senate may then be adjourned for a period exceeding one week.

She said: Honourable senators, as you know, for a long period of time in our Standing Senate Committee on Agriculture and Forestry we have been studying the very broad issue of rural poverty. We have come toward the end of this quite incredible set of visits across the country and hearings here in Ottawa.

As a part of this ongoing study on rural poverty, the Standing Senate Committee on Agriculture and Forestry has one more trip to make. We will be travelling to the territories to hold public hearings in Whitehorse, Yellowknife and Iqaluit, on February 18, 19 and 21, if agreed to by the Senate. As the Senate will then be adjourned for a period of more than one week, the committee is seeking permission to sit during that week.

Hon. David Tkachuk: Perhaps the honourable senator can inform the Senate what kind of agriculture and forestry business goes on in the Northwest Territories?

Senator Fairbairn: In terms of our travel, honourable senators, this will be the last part of our mandate to hold hearings in every part of rural Canada.

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question!

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

Motion agreed to.

• (1520)

THE SENATE

MOTION URGING GOVERNMENT TO BLOCK SALE OF CANADARM AND RADARSAT

On Motion No. 78 by Senator Harb:

> That the Senate take note of the proposed sale of the Canadarm, RADARSAT satellite business to American arms-maker Alliant Techsystems for $1.325 billion;
>
> That the Senate note that this nationally significant technology was funded by Canadian taxpayers through grants and other technology subsidies for civilian and commercial purposes;
>
> That the Senate note that this sale threatens to put Canada in breach of the 1997 international landmines treaty it was instrumental in writing;
>
> That the Senate acknowledge that although Industry Canada will do a mandatory review of the trade issues relating to the sale there are many vital social, political, moral and technological issues that need to be examined;
>
> That the Senate of Canada urge the Government of Canada to block the proposed sale of the nationally significant Canadarm, RADARSAT satellite business to American arms-maker Alliant Techsystems; and
>
> That a message be sent to the House of Commons to acquaint that House with the above.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I wish to take the opportunity to speak to this most important motion on the sale of RADARSAT satellite business to the American arms-maker, Alliant Techsystems, for $1.325 billion. That is a huge sum of money. Even I cannot count the number of zeros at the end of that figure.

Senator Harb wants the Senate to acknowledge that Industry Canada has to do a mandatory review of the trade issues relating to the sale of the RADARSAT satellite system. Honourable senators should consider this issue quite important. I know that Senator Tkachuk has a great deal of interest in this. As honourable senators can tell, I am trying to prolong the debate on this item. I am not the best at rising and speaking to such important issues without preparation. The sale of RADARSAT will impact the taxpayers of Canada, who invested money in the system some years ago, and so they should note how this matter proceeds.

POINT OF ORDER

Hon. Eymard G. Corbin: Honourable senators, I rise on a point of order. I do not believe that this motion has been moved, so it cannot be in order for Senator Comeau to engage in debate on it. That is my point of order.

The Hon. the Speaker: On the point of order, Senator Comeau.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, this is indeed an extremely important point of order. I appreciate the honourable senator raising the point of order because points of order in the Senate are the lifeblood of the Senate. I welcome all interventions of this kind from the floor.

It might be interesting to find out more and to send this kind of question back to the Standing Committee on Rules, Procedures and the Rights of Parliament to know what happens when one rises on debate but the motion has not been moved by the sponsor.

Honourable senators, I am afraid that I might not have the unanimous consent of the house if I were to suggest a short recess to await the bill from the other place so I will continue to wing it. I do note in passing that we are quite close to wrapping up the process in the other place. I hope to have the documents in this chamber soon.

In the meantime, the question is serious: Does a sponsor lose sponsorship of a motion if the motion has not been moved? I would suggest it might be a good topic for the Standing Committee on Rules, Procedures and the Rights of Parliament to consider. If someone else takes that sponsorship, what happens to the original sponsor? Your Honour might want to deliberate at length on this.

[*Translation*]

Please give me a moment to find that section, under the heading, "Procedure in unprovided cases." If ever there were an unprovided case, it is this one, because if we end our sitting now

without the permission of the Senate, we might lose a day of study on a very important bill. Subsection 1.(1) of the *Rules of the Senate* states:

> In all cases not provided for in these rules. . .

This is very important.

[*English*]

Senator Cools is so much better at this than I am.

I am speaking to cases not provided for in the rules, and we are on this topic right now.

[*Translation*]

> . . . the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

[*English*]

If something unforeseen happens on the floor of the Senate, we can go to the procedures of the other place for a solution. However, I remember serving in the other place for a number of years. I do not recall waiting on a bill to come over from the Senate because we were afraid we might not get the required permission. This rule seems to apply in this case but, if we had known that it was unforeseen, we would have provided for it.

[*Translation*]

A second rule that might be useful concerns grammatical gender, as discussed in subsection 1.(3) of the *Rules of the Senate*.

[*English*]

Would the gender provision help us here?

[*Translation*]

I quote from section 1.(3) of the *Rules of the Senate*:

> In the French version, the masculine gender is used throughout, without any intent to discriminate. . .

We have the feminine on the left and the masculine on the right.

> . . . but solely to make the text easier to read. The distinction in French should not be between "masculine" and "feminine" genders . . .

We are not talking about anyone taking a shower; that is improper and unacceptable.

[*English*]

This is important.

[*Translation*]

> . . .but between "marked" and "unmarked" genders; the so-called masculine gender is an unmarked gender and can therefore represent, by itself, elements of both genders.

• (1530)

We must read these things. It is very important.

I shall finish my quotation:

> The feminine gender is marked and therefore cannot be used to refer to elements of both genders.

This is discrimination. In English it is not inappropriate.

[*English*]

In the French version, the masculine gender is used throughout. If I were of the feminine persuasion, I would be very disappointed with that.

Senator Rompkey: But you are not, are you?

Senator Comeau: It reads "but." That is where Senator Mercer comes in. He is good at the "buts." It goes on to read, ". . .without any intent to discriminate, but solely to make the text easier to read."

Senator Segal: That is where discrimination starts.

Senator Rompkey: It is a slippery slope after that.

Senator Comeau: The distinction in French should not be between masculine and female genders but between marked and unmarked. The Rules Committee should be more precise on this.

Senator Segal: That is where bigotry starts.

Senator Comeau: That is absolutely correct. That is where bigotry starts.

The distinction in French should not be between masculine and feminine genders but between marked and unmarked genders. The so-called masculine gender is an unmarked gender.

Senator Mercer: The so-called masculine gender?

Senator Comeau: Yes, the so-called.

Senator Mercer: I take a little offence to this.

Senator Comeau: Actually, everyone should read this section.

Senator Tkachuk: Why not just read it for us?

Hon. Anne C. Cools: Would the honourable senator take a question?

Senator Comeau: Absolutely.

Some Hon. Senators: Hear, hear!

Senator Cools: Honourable senators, I have been listening with some interest to the honourable senator's intervention. I understand he is speaking on the point of order. I want to indicate to the house that, following the completion of his remarks, I would like to be the next speaker on the point of order. I thought it was a very valid and important point of order that Senator Corbin raised. I would certainly like to support it.

My question to the honourable senator is more particular to the issues that he raises in respect to the masculine and the feminine gender. I hope I do not perplex him too much, but I wonder if he could attempt to give to this house a definition of the masculine gender and then a definition of the feminine gender.

The Hon. the Speaker: Honourable senators, the Speaker has heard enough on this point of order.

Some Hon. Senators: Thank you, Your Honour.

The Hon. the Speaker: The Speaker is prepared to rule. I rule that Senator Corbin is absolutely correct. No motion was made. Therefore, no debate can occur if there is no motion on the floor of the house. That is my ruling.

IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act.

Bill read first time.

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): At the risk of provoking my colleagues further, I move that, with leave, this bill be taken into consideration at the next sitting of the Senate.

Hon. Joseph A. Day: Explanation, please.

The Hon. the Speaker: Senator Day requires an explanation.

Senator Comeau: This bill deals with the security certificates on which we had a one year time frame within which the Supreme Court of Canada requested that we respond to the requirements that there be changes to the security certificates. The absolutely final date for having Parliament respond — and this is the bill that has just come in — is February 23.

Senator Prud'homme: Tough luck.

Senator Comeau: We would propose that second reading be moved tomorrow to provide us the time, if we so wish as a chamber and as a Senate, to deal with this bill prior to February 23. Doing so would simply move things along so that we can still reach the deadline and have this matter completed by the date on which it would need to be done. That is why we wished to proceed with this matter as soon as possible.

I think the honourable senator did note that I did not move to have consideration of the bill later this afternoon. I did not in order that we could have some time to digest the bill, and tomorrow, it is to be hoped, we can deal with it in this chamber.

Hon. Terry M. Mercer: Honourable senators, could Senator Comeau give a further explanation? It is now February 6, and he says the deadline is February 23. It would seem to me that again we have the other place sending something here with a deadline that will put us in a situation where we cannot do the due diligence that we always do and give proper attention to this bill.

Would it not be better if Senator Comeau, through Senator LeBreton, perhaps, approached the leadership of the government and asked them to direct the Department of Justice to appear before the Supreme Court of Canada and ask for leave to extend that date from February 23 to some other date that would be more reasonable? Senator McCoy outlined for us yesterday the whole process of this bill arriving here. There was no speed down the hall, but they expect great speed in here.

Of course, your colleagues in the other place will be the first ones to say that we are dragging our feet and that, politically, we are obstructing passage. We are not interested in obstructing this bill, or any other piece of legislation. We are interested in doing our job and taking the time necessary to examine it.

I understand a great number of witnesses appeared before the committee in the other place during examination of this bill. It would seem to me that our committee should be given the same latitude and opportunity to examine as many witnesses as it feels necessary. I do not know how many they would like to hear from on this matter, but given the February 23 deadline, I think Senator Comeau and his colleagues — and Senator LeBreton and her colleagues in cabinet — should consider asking the Supreme Court for an extension so that we can do the good job that we always want to do.

Senator Comeau: Far be it from me to say what the government would do if this chamber were to decide that it does not have enough time to deal with this matter. Basically, the Supreme Court indicated that the Parliament of Canada had one year to come back with a document on this matter. As far as I know — and you can correct me if I am wrong — if we do not arrive at some kind of conclusion by February 23, the whole structure based on this review will no longer be the law of the land.

• (1540)

In other words, there will be no security certificates. We have tried to protect Canadians through this act, which I think was supported by both sides, in this place and the other place. It is meant to protect Canadians from terrorism, but it would no longer be the law of the land.

Senator Mercer will have to do some soul searching if he wishes to go there, or he can try over the next few days to look at the proposal from the House of Commons and see if we can accept it. I do not want to talk about trying to return to the Supreme Court to ask for an extension. That is not something I want to become involved with other than to say, at this point, if we do not pass this bill by February 23, the protection of Canadians is no longer the law of the land. That is all I can say.

I suggest that the honourable senator consider that very seriously.

Senator Mercer: Honourable senators, I do take this matter very seriously. That is why I suggested the prudent thing to do. I understand from advice that I have received that it is not unusual to go back to the court to ask for an extension.

If an extension were granted by the Supreme Court, that law would stay in effect until the new date that the court dictates to protect Canadians. If everyone wants Canadians protected against terrorism as defined in this bill and for some reason we were bogged down in debate and examination of it, and the date of February 23 came and went, then we would have an extension.

Hon. Marcel Prud'homme: Honourable senators, as a senator, I am very upset at the manner in which we are dealing with this bill. However, in no way, shape or form should this be perceived as an attack on Senator Comeau, the Deputy Leader of the Government in the Senate.

I strongly object to having a gun put to our heads by the other place, which has no respect for the Senate, by giving us this type of deadline. We all know that if this bill is not disposed of by the Senate by February 23, it will become obsolete.

I may not choose this important bill to teach a lesson to the other place, but the day will come when both sides of the Senate should take a stand. This has nothing to do with the leadership of this chamber.

The other side knew that waiting until the very last minute to bring forward this bill puts us in a difficult position to study the matter, as we will do because colleagues have a great interest in this topic, from Senator LeBreton to Senator Comeau to Senator Tardif. The leadership of both parties in the Senate have a great interest in giving the bill due process of law, and they want to take the time necessary to see how important this bill will be in the future.

I object to how the other place has waited so long. We knew the deadline was February 23, and if nothing is done, the bill will become obsolete. I think some day, and some day soon, some senators — it does not have to be many — will block action of this kind.

However, the Senate will have to affirm itself. As long as the Senate exists, it is an institution within Canada and, as such, should be respected. The other place seems to take it lightly. I do not take it lightly. I hope that the leadership, if they are listening now, will convey to members that if they have other pieces of legislation that are important to Canadians and to the security or social affairs of Canada, they must not wait so long to bring the bills forward in order that we do not have to see our poor friend, Senator Comeau, having to deal with questions while we are waiting for the other place to send them here for completion before February 23.

Of course, I do not object. I will participate next week in debate, or at committee, but I wanted to place on the record that this is not the way the Senate should be treated. The other place should be made aware of our wishes.

Hon. Marilyn Trenholme Counsell: Honourable senators, I too am very alarmed by this, as someone, like all honourable senators, who believes in guarding our democratic procedures and practices in this great democracy of Canada.

In effect, we have four days to deal with this bill. That is what it amounts to, tomorrow and three days next week, unless there is a change in the hours of the Senate as a result of this.

In order that we have some understanding of what went on in the other place — although some of us have an idea — I wonder if the Honourable Deputy Leader of the Government in the Senate could give us an idea of the time table and what happened in the other place in terms of dealing with this, as well as the amount of time spent in committee and the number of hearings so we can have some perspective as to why we are proceeding in this manner.

Senator Comeau: That is an excellent question. I would be more than pleased to get back to the honourable senator with a response.

For some reason, the impression has been left that the government came up with this bill a few days ago and suddenly rushed it through. This bill has been in the works for months.

Senator Fraser: That is the point.

Senator Comeau: The government has not been holding it up. Trust me. The government wanted to deal with this bill the day it was tabled. This has been held up for months, not by the government but by the opposition and the second opposition. There are three or four opposition parties in the House of Commons, as I understand it. Again, this matter has not been held up by the government. Trust me on that fact.

I think there is frustration coming from another angle on this, in that the other place rarely takes into consideration — and I am talking about all parties now — that we need to do our work as well. Whether it is the government side or the opposition side, they rarely consider the work and the due diligence that this chamber wishes to place on bills.

However, honourable senators should not blame the government. As I said a few minutes ago, the government wanted this passed months ago. That is the situation as it stands today.

However, I would be more than pleased to get back to the honourable senator and try to determine the number of hours the committee worked and the amendments that were moved to the bill. In fact, there are a number of Liberal amendments to this bill.

The Hon. the Speaker: Order.

Honourable senators, it is important that I make it perfectly clear that the question before the house is the following: Is leave granted that this bill be taken into consideration at the next sitting of the Senate rather than two days hence?

Senator Prud'homme: That is right.

The Hon. the Speaker: Honourable senators asked the Deputy Leader of the Government for an explanation as to why he wants that leave. We often gather information this way.

I do not want this to turn into a debate. It is providing information about why the Deputy Leader has asked for leave. Leave will either be granted or it will not be granted. I turn to the Deputy Leader of the Opposition.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I also regret the lateness with which bills come into the Senate Chamber. We do, however, recognize the importance and seriousness of this bill. Having spoken with the Chair of the Anti-terrorism Committee, we agree that it is an important bill that should be moving forward. Therefore, we would certainly give leave that this move forward in one day.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Agreed.

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

Motion agreed to and bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

The Senate adjourned until Thursday, February 7, 2008, at 1:30 p.m.

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