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**OFFICIAL REPORT  
(HANSARD)**

**Thursday, December 13, 2001**

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**THE HONOURABLE DAN HAYS  
SPEAKER**

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## THE SENATE

Thursday, December 13, 2001

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

Prayers.

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before proceeding to Senators' Statements, I remind honourable senators that there will be filming or videotaping taking place in the chamber today, pursuant to the order of this house, which I will read:

That the Senate authorize the videotaping of segments of its proceedings, including Royal Assent, before the Senate rises for its forthcoming Christmas adjournment, for the purpose of making an educational video.

### SENATORS' STATEMENTS

#### WORLD DAY OF PEACE MESSAGE OF POPE JOHN PAUL II

**Hon. Douglas Roche:** Honourable senators, I wish respectfully to call to your attention the Annual World Day of Peace Message of Pope John Paul II for January 1, 2002. The Holy Father's message is especially important this year because it springs from the terrorist attacks of September 11, 2001.

The World Day of Peace this year, says the Pope, offers all humanity, and particularly the leaders of nations, the opportunity to reflect upon the demands of justice and the call to forgiveness in the face of the grave problems that continue to afflict the world, not the least of which is the new level of violence introduced by organized terrorism.

I cannot do justice to the richness of his thinking in this short statement. I will just quote one short passage.

The various Christian confessions, as well as the world's great religions, need to work together to eliminate the social and cultural causes of terrorism. They can do this by teaching the greatness and dignity of the human person, and by spreading a *clearer sense of the oneness of the human family*. This is a specific area of ecumenical and inter-religious dialogue and cooperation, a pressing service which religion can offer to world peace.

In particular, I am convinced that Jewish, Christian and Islamic religious leaders must now take the lead in publicly condemning terrorism and in denying terrorists any form of religious or moral legitimacy.

To this end, the Pope has invited representatives of the world's religions to come to Assisi, Italy, the town of St. Francis, on January 24, 2002, to pray for peace.

The Pope's message is entitled "No Peace Without Justice, No Justice Without Forgiveness." Terrorism stems from hatred. The Pope is telling us we must take political steps to overcome hatred.

[Translation]

### THE HONOURABLE MARISA FERRETTI BARTH

CONGRATULATIONS ON RECEIVING HONOURARY DISTINCTION  
OF COMMANDER OF ORDER OF MERIT OF REPUBLIC OF ITALY

**Hon. Lise Bacon:** Honourable senators, on Monday, Marisa Ferretti Barth will be receiving the honorary distinction of Commander of the Order of Merit of the Republic of Italy.

I first met Senator Ferretti Barth in the early 1970s when she was canvassing MPs' offices for funding for her seniors' group. She has been responsible for setting up 75 Italian-speaking seniors' clubs. She was also one of the founders of the first Chinese-speaking seniors' club in Montreal; and has been involved in organizing Russian, Lebanese-Syrian, Afghani and multi-ethnic clubs.

She has held different positions in Canada. In 1974, she founded the Regional Council of Italian-Canadian Seniors, of which she has been Director General since 1975. This organization has over 14,000 members.

As well, she has served on the board of the National Congress of Italian Canadians for the Quebec Region. I could scarcely list all the honorary titles and certificates of merit that have been awarded to her.

Bravo to Senator Ferretti Barth, who brings honour to the Senate of Canada as one of its members, and to the entire Italian community of the Montreal area, for her praiseworthy work with seniors and her constant concern for the disadvantaged in the Montreal area.

[English]

### COAST GUARD

NAV CANADA—DISCONTINUANCE OF  
AVIATION WEATHER REPORTS

**Hon. Pat Carney:** Honourable senators, I wish to inform you that the Coast Guard has delivered a very grim Christmas present to British Columbians who fly the coast, either as pilots or passengers.

The B.C. aviation community is alarmed over the announcement by NAV CANADA that effective tomorrow — just tomorrow — current aviation weather reports produced by B.C.'s lightkeepers will be discontinued. Cancelling this service on such short notice will put B.C.'s coastal aviators serving the central and north coast in winter, and their passengers, at risk. The question is: What steps can we take to ensure that NAV CANADA's life-threatening order is rescinded?

Aviation weather reports given by trained lightkeepers give pilots important information such as temperature, wind speed, direction and character, visibility, sea state and local conditions; for instance, if there is lightning in the area, extensive cloud, or fog. One can turn a corner on the B.C. coast and be into different conditions.

NAV CANADA says aviators will receive only marine weather reports; that is, information such as "partly cloudy — overcast," which is not sufficient to fly safely on the world's worst coast. We must take steps to ensure that this service is restored before lives are lost.

In its own gracious way, the order to the lights that went out just two days ago, December 12, simply says:

Effective 14 Dec 2001...you are to discontinue reporting the metar style weather reports. Specifically, do not report on cloud height and type, atmospheric pressure, altimeter readings, or give out the dew point after 0000 UTC 14 Dec 2001.

If you have direct requests for aviation weather information after 0000 UTC 14 Dec 2001, you must not provide any metar style aviation weather observations as you are not authorized to do so. Strict compliance with this policy must be adhered to. You may continue to give local marine weather reports upon request. Scheduled local marine weather reports will continue to be provided as usual. If you have any questions regarding this notice please call me.

• (1340)

It is signed by Terry Weber of the Coast Guard.

This order not to give aviation weather to pilots in an area where there are very few human settlements, no roads in many cases and no other source of aviation weather, will apply to Cape Mudge, on Quadra Island; Dryad Point; Nootka lightstation, on the far side of western Vancouver Island, where there is no other permanent lightstation; Addenbrooke Island where there is no other source of information; Egg Island lightstation; Cape Scott, on the north end of Vancouver Island; Chatham Point —

**The Hon. the Speaker:** I regret to advise Senator Carney that her three minutes have expired.

**Senator Carney:** May I finish the list?

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

**Senator Robichaud:** No.

[ Senator Carney ]

**Senator Carney:** In the spirit of Christmas, thank you.

## ÉMILIE OBONSAWIN

CONGRATULATIONS ON PERFORMANCE AT  
OTTAWA CONGRESS CENTRE

**Hon. Marie-P. Poulin:** Honourable senators, it is with great pride that I rise today to pay tribute to a little girl from Greater Sudbury, Ontario, who last night thrilled thousands of people with her rendition of our national anthem at the Christmas party chaired by the Prime Minister and Madam Chrétien.

Seven-year-old Émilie Obonsawin's performance of *O Canada!* was the highlight of the event. I am sure that she and her family will look back on the occasion with fond memories. For those of you who were privileged to hear Émilie, I am sure you will agree that her splendid performance augurs well for a bright future as a singer.

Testimony to this grade two student's vocal talents was evidenced by the standing ovation that she received from the huge audience. For a seven-year-old from Sudbury, that must have been quite an astonishing night. I am sure that her parents were as proud as any parents can be of their daughter.

[Translation]

Honourable senators, on behalf of the 3,000 people who heard her rendition of *O Canada!* in both official languages, I thank Émilie Obonsawin. I also thank her parents, Carole and Pierre Obonsawin, who were kind enough to bring her to us. Émilie has reminded us that our greatest resources in Canada are our human resources, very often the ones out in the regions.

[English]

## BUDGET 2001

NEGATIVE RESPONSES REGARDING ALLOCATION  
FOR NATIONAL DEFENCE

**Hon. J. Michael Forrestall:** Honourable senators, the other day, the Leader of the Government in the Senate suggested that I was perhaps the only one who did not like the budget. I suppose if you are a Liberal candidate, with the exception of Minister Tobin, it was probably not a bad budget. However, if you are in need of tax relief or health care, or if you are in the military or must some day depend upon the military for defence, it was absolutely terrible. The grinch who stole Christmas is not a mythical creature at all; he is embodied in the Liberal Party of Canada.

Let us hear what Canadians had to say about the defence portion this first so-called budget in two years.

Mr. David Rudd, Executive Director of the Canadian Institute for Strategic Studies wrote:

As far as the Canadian forces is concerned it is a big disappointment.

Colonel Lee Myrhaugen, Coordinator of the Friends of Maritime Aviation said:

Almost an insult.

Professor Allen Sens, from the University of British Columbia said:

It's not going to solve the problems. It's not going to reduce capability commitment problems.

General Bob Morton, the former deputy commander of NORAD wrote:

The military has had to juggle equipment modernization and renewal programs, operations and maintenance budget, and personnel numbers in order to sustain the defence capability that still exists...the Trade offs that have worked thus far are exhausted.

Brigadier General Jim Hanson, Associate Director of the Canadian Institute of Strategic Studies said:

With everything considered, it's not very much money, but I guess it's better than a frozen boot in the butt.

In reference to the problem, Professor Peter Haydon, Senior Research Fellow from the Centre for Foreign Policy Studies at Dalhousie University said:

With all due respect, I don't think it's going to touch it. It's not enough.

Colonel Brian MacDonald, President of the North Atlantic Council of Canada said:

Whatever they get it won't be enough.

The editorial board of the *Winnipeg Free Press* wrote:

Defenceless Canada.

A cartoon caption in the *Chronicle Herald* in Halifax read:

Please Do Not Feed the Soldiers.

A *National Post* headline read:

Armed Forces shortchanged by security budget.

Dr. Dan Middlemiss from Dalhousie University, wrote:

A drop in the bucket an embarrassment.

Honourable senators, it seems that not everyone is happy with the budget, save Liberal leadership contenders and the unilateral disarmament lobby for Canada 21, forever entrenched in the Liberal Party of Canada.

## ROUTINE PROCEEDINGS

### PRIVACY COMMISSIONER

#### ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the report of the Privacy Commissioner for the fiscal year ended March 31, 2001, pursuant to the Privacy Act, Revised Statutes, 1985 Chapter P21, section 41, including the report for the period from January 1, to November 30, 2001, pursuant to the Personal Information Protection and Electronic Documents Act, Statutes of Canada, 2000, chapter 5 subsection 25(1).

[Translation]

### AERONAUTICS ACT

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Lise Bacon,** Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Thursday, December 13, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

#### ELEVENTH REPORT

Your Committee, to which was referred Bill C-44, An Act to amend the Aeronautics Act, has, in obedience to the Order of Reference of Monday, December 10, 2001, examined the said Bill and now reports the same without amendment, but with observations which are appended to this report.

Respectfully submitted,

LISE BACON  
Chair

(For text of observations, see page 1133 of today's Journals of the Senate.)

**The Hon. the Speaker:** When shall this bill be read the third time?

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, later today.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to draw attention to the cooperation of this side of the chamber, given the season. We are fully in agreement.

On motion of Senator Robichaud, report placed on the Orders of the Day for consideration later today.

[English]

## STUDY ON CANADA'S HUMAN RIGHTS OBLIGATIONS

### REPORT OF HUMAN RIGHTS COMMITTEE TABLED

**Hon. A. Raynell Andreychuk:** Honourable senators, I have the honour to table the second report of the Standing Senate Committee on Human Rights, entitled "Promises to Keep: Implementing Canada's Human Rights Obligations."

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

• (1350)

[Translation]

## NATIONAL ACADIAN DAY BILL

### FIRST READING

**Hon. Gerald J. Comeau** presented Bill S-37, respecting a National Acadian Day.

Bill read first time.

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

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

[English]

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to sit at 3:30 p.m. on Thursday, December 13, 2001, to hear witnesses for its study on Bill C-39, an act to replace the Yukon Act in order to modernize it and implement certain provisions of Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts, and that rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

Motion agreed to.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### WAR AGAINST TERRORISM—POLICY ON WIDENING FRONT TO INCLUDE OTHER NATIONS—RESPONSIBILITY OF NAVAL VESSELS IN ARABIAN SEA

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Reports in the media indicate that the United States has commenced updating its target list for Iraq. They have also moved their Third Army headquarters to Kuwait. Senior officials of the United States have also made it clear in public statements that Afghanistan is just the start of its anti-terrorist campaign. What is the Government of Canada's position on widening the war to include attacks on Iraq, Sudan, Somalia, Yemen and other states that harbour, to our knowledge, terrorists?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. The Prime Minister has been very clear on this issue from the beginning. We supported the efforts of the Americans in Afghanistan because there was proof that al-Qaeda and Osama bin Laden had had a direct impact on the events that occurred on September 11. We are not prepared to further broaden our approach in other nations unless such a direct connection can also be made.

**Senator Forrestall:** Honourable senators, could the Leader of the Government indicate to us what would constitute, in the minds of the government, adequate information on which to base such a decision?

**Senator Carstairs:** Honourable senators, leading up to the Canadian and British involvement and participation in Afghanistan, the American government shared with governments that were willing to participate should proof be there, the proof that they had at their disposal. That proof was convincing enough to countries like Australia, the United Kingdom and Canada that they decided to participate in the efforts in Afghanistan. No such proof has been presented yet with respect to other nations.

**Senator Forrestall:** Honourable senators, obviously there is a consultative process that must come into play. What is that process within the coalition of those that have declared war on terrorism following the United States' lead, or is there some other mechanism? It is the mechanism that I am trying to identify.

Could the minister also indicate whether Canadian vessels in the Arabian Sea are taking part in the stopping and boarding of shipping vessels in that area?

**Senator Carstairs:** Honourable senators, with respect to the honourable senator's first question, clearly the mechanism would be proof positive of specific activities related to September 11. No such proof has yet been provided. It is fair to say that we are now quite aware that terrorists exist in a great many countries, probably including our own, and that the war in terrorism has to be very broad. However, when we talk about taking specific military action against a specific country, we must have serious proof of activity that would lead to action of that sort.

In terms of the vessels in the Arabian Sea, it is not my understanding that the Canadian vessels are participating in such activity.

WAR AGAINST TERRORISM—RESPONSIBILITY OF NAVAL VESSELS  
IN ARABIAN SEA —RULES OF ENGAGEMENT

**Hon. J. Michael Forrestall:** I appreciate the minister's responses. I am assuming that she has no information to suggest that Canadians are taking part in the process that is now going on in the quest to board ships that may be carrying terrorists away from that part of the world. Can the minister indicate whether or not there are rules of engagement in place that would determine the conduct of Canadian vessels at sea in the hypothetical event that such an action might be required of the Canadian Forces? Are the rules of engagement clear and are they in place? Could the minister tell us what they are?

**Hon. Sharon Carstairs (Leader of the Government):** There is a very clear command structure. If a hypothetical situation became a realistic situation, the command structure would go into place. The rules of engagement would be determined by those in command at the particular location.

• (1400)

**Senator Forrestall:** Would there be an opportunity to debate those rules of engagement in the other place or in this chamber?

**Senator Carstairs:** The honourable senator knows that there have already been discussions and debate within both chambers with respect to the activities. I thought that he was referring to an on-site specific situation. That might not necessitate a debate. An action may have to be taken, quite frankly, before such a debate could ensue.

As to whether there will be broader engagements, the government has always indicated its willingness that if Canada takes on a broader mandate, then there should be debate.

## TRANSPORT

### AIR TRAVELLERS SECURITY CHARGE

**Hon. David Tkachuk:** Honourable senators, after Tuesday's Question Period in the other place, the Minister of Transport, in response to a reporter's question about whether there would be a review of the airport tax, said: "In fact, I talked to the Minister of

Finance before Question Period, and he acknowledged the fact that there absolutely will be a review."

Honourable senators, this tax is supposed to pay for airport security, and you can only buy so much equipment and hire so many more people before you can no longer justify a fee of \$12 every time you board a plane. Could the government leader advise the Senate who is setting policy with respect to airport security and with respect to how much spending will be needed to upgrade that security? Is it the Minister of Transport, who is responsible for airports and for setting airline policy, or is it the Minister of Finance, who has just found a new way to raise \$450 million per year, plus GST, year after year, no matter how much is actually spent on airports?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as I indicated yesterday, it is the hope of the Minister of Transport that this fee will come down. I think that is what is being noted this afternoon. If all the equipment is purchased, if all the secure systems are in place and the cost of those has been paid, it may well be possible to reduce the fee. Cabinet sets the policy, and the person who will carry out that policy will be the Minister of Transport.

**Senator Tkachuk:** Honourable senators, the air travellers security charge, which is what this \$12 fee is called, is a ways and means motion. Nowhere in the motion does the government spell out the purpose of that tax. The motion describes who is to pay the tax and how much the tax will be, but it says nothing about how the money is to be spent. The motion notes only "That it is expedient to introduce an Act to implement an Air Travellers Security Charge..."

Honourable senators, could the government leader advise the Senate as to what safeguards the government intends to put in the enabling legislation for this tax to ensure that it is only used to pay for airport security and does not become another version of a dedicated tax, such as the one related to the Employment Insurance fund, where premiums far exceed program costs?

**Senator Carstairs:** Budget 2001 gave very clear directional signals as to exactly how this money is to be spent. It stated that they would allocate further resources to make air travel even more secure. The amount of \$2.2 billion is to be spent over the next five years, including \$1 billion for the deployment of an advanced explosive detection system, \$128 million for enhanced pre-boarding screening and \$35 million to assist airlines to enhance the safety of their aircraft.

**Senator Tkachuk:** Therefore, after four years, we will have no need of the tax.

**Senator Carstairs:** Honourable senators, the \$2.2 billion will be spent over the next five years. One anticipates that at the rate technology is increasing, there may be even better technologies five years from now in which the government may wish to invest to ensure that our security screening is, as has been requested in this chamber, the very best in the world.

**Senator Tkachuk:** We may have some skepticism on this side because I remember that the Minister of Finance, before he was the Minister of Finance and in the opposition, talked about the EI premium and that it was not a tax. The minister said at that time that a payroll tax was not a general tax. Now that payroll tax is used for everything. As a matter of fact, he alone claims that is one of the reasons that the government has been able to balance the budget.

I am wondering whether this particular tax is really a tax for airport security or just another tax on Canadians, which will exceed the five-year limit when they only need four years worth of money, as far as I can tell, at \$450 million a year. It appears that this tax will continue ad infinitum.

**Senator Carstairs:** As the honourable senator knows, the EI fund was a separate fund. The Auditor General, in a number of reports, indicated that it should not be an independent fund, that it should be put into general revenues. Under his administration, that is exactly what was done.

## TREASURY BOARD

### AUDITOR GENERAL'S REPORT—YEAR-END SPENDING

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government. The past and current Auditor General have both questioned the government's tendency to use various foundations to get rid of year-end cash. Indeed, in the introductory comments to her report released last week, Ms Fraser told us:

— the year-end spending spree by individual departments has been replaced by a similar practice at the aggregate level.

We see the government announcing large amounts of new spending close to the year-end. In these circumstances, we need to ask whether decisions to spend are based on when to record expenditures rather than on how to best use taxpayers' dollars.

She goes on to write:

Since 1997, the government has created a number of new organizations to support, for example, research and development, students in post-secondary education, and Aboriginal healing.

— I am concerned that a prime motivator for funding them in advance is the accounting impact on the government's bottom line: showing larger expenditures today and smaller ones tomorrow reduces the size of the current surpluses. I am also concerned that Parliament has only limited means of holding the government to account for the public policy functions performed by these foundations.

Not only is the government ignoring the Auditor General, but also it is taking its fancy accounting to a new level. Whether the Infrastructure Foundation and the Africa Fund get their promised money this year and how much they get will depend upon how much money is left over at the end of the fiscal year.

Will the government leader confirm the impression left by the budget that the exact amount of money to be handed over to the Infrastructure Foundation this fiscal year will be unknown until the day the books are closed next August?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is very clear a maximum amount of money will be given. The decision has been made that rather than pay down the debt for the fiscal year 2002-03, monies will be used for the Africa Fund and the Infrastructure Foundation. Frankly, I think that students across this country are living proof that foundations such as the Millennium Foundation, which guarantees scholarships in perpetuity, no matter the government of the day, is an outstanding success. I would disagree with the Auditor General that this is not the way to go. It is a very positive way to go.

**Senator Bolduc:** Honourable senators, could the government leader advise the Senate as to what discussions, if any, were held with the Auditor General regarding the budget announcement that the government would create two new foundations to spend money in future years, with the exact amount of funding to be charged to this fiscal year to be unknown until the day the books are closed for the fiscal year?

**Senator Carstairs:** Honourable senators, it would be entirely inappropriate for the Government of Canada to run its budget by the Auditor General.

## ANTI-TERRORISM BILL

### BROADENING OF SUNSET CLAUSE WITHIN LEGISLATION

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to point out to the Leader of the Government in the Senate the fact that the United States terrorism legislation has a built-in sunset clause because Congress may intervene at any time due to their constitutional system. The French have concluded their legislation with a full sunset clause, the effect of which will be that their bill will lapse in 2003. The House of Lords, our counterpart, has now voted down the British legislation, indicating that it wishes a sunset clause as part of that legislation.

In light of the fact that the House of Lords has indicated so strongly that the sunset clause is necessary, taking into account that we patterned the definitional sections of terrorist activity and bearing in mind that a unanimous report of this Senate recommended a sunset clause, would the government reflect and consider changing its position?



• (1410)

appreciative of the stance that he expressed and the independence that he displayed.

**Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, the government has made its position clear. The government believes the two most important sections of the bill that need a sunset clause have been given a sunset clause. Interestingly enough, in my reading of the House of Lords legislation, it is those two same areas for which the members of the House of Lords also wish to have a sunset clause.

## GOVERNOR GENERAL

COMMENTS OF JOHN RALSTON SAUL IN RECENT  
BOOK—GOVERNMENT RESPONSE

**Hon. Gerry St. Germain:** Honourable senators, my question is for the Leader of the Government in the Senate. It relates to something that is quite sensitive in the country with the recent release of a book by the viceregal spouse. Given that the Governor General is the Commander in Chief of our military forces, I believe, and that the viceregal spouse has taken an active role, does the government have a reaction to the author's position that was expressed in his book in respect of our American allies?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Governor General, like each and every one of us for the most part, has a spouse. We do not control the thoughts, the speeches and the publications of our spouses. I certainly do not control my husband's use of the English language and his expression of same, and I do not think my marriage would last very long should I try to impose such a restriction.

**Senator St. Germain:** Honourable senators, I believe title has been granted to Mr. Saul, and his expressions concern me because our military forces are in action. To be fair, I have not read the book. However, this is a sensitive issue and the book could be deemed a demoralizing factor. Will the government have a reaction to the opinion expressed in the book?

**Senator Carstairs:** Honourable senators, I, too, have not read the book, but I will protect the right of Mr. Saul's freedom of speech to the greatest extent possible.

**Hon. Marcel Prud'homme:** Honourable senators, I should like, without a shadow of a doubt, to completely dissociate myself from my good friend and neighbour on this issue. I, for one, would ask the Leader of the Government to offer my most sincere appreciation to this author. If we are to begin censoring authors in this country, there will be no end to it. If we are to begin removing from the shelves the books that Canadians should not read, Canada will become an extremely poor country.

I have read Mr. Saul's book, published by Penguin Books Ltd., and it certainly contains issues for debate. However, I am highly

## FINANCE

THE BUDGET—FORECAST FOR UNEMPLOYMENT RATE

**Hon. Terry Stratton:** Honourable senators, in past years, budgets and economic statements have all provided forecasts of employment growth and the unemployment rate. Such numbers are essential to an understanding of the economic climate faced by a government. Indeed, they are essential to understanding the demands that are likely to be made upon the treasury and upon determining the potential tax base. For example, last May's economic update told us the private sector economists expected the number of jobs to grow by 1.3 per cent this year and by 1.6 per cent next year. It also told us that those same economists expected the unemployment rate to be 6.9 per cent next year. This was all before the economy began its meltdown this spring and summer and in light of September 11.

The budget gives us forecasts for economic growth on interest rates for next year, but unlike in past years, there is no forecast for the unemployment rate or for job creation. Could the Leader of the Government in the Senate advise the Senate as to why the budget failed to include a forecast in respect of the unemployment rate?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Minister of Finance was clear in his statements in the budget to say that we are in a time of some flux. All Canadians recognize that we are dependent on what happens south of the border. Thus far, we have been extremely successful in keeping our unemployment figure at a much more favourable rate than their rate. The U.S. rate of unemployment has risen almost three times what our rate has risen, and I think the Honourable Minister of Finance was trying to do his best not to sell any false hopes or false expectations.

**Senator Stratton:** Honourable senators, I should like an answer to one simple, fundamental question. Does the government have any idea what the unemployment rate will be next year? If so, could the Leader of the Government in the Senate please advise the Senate on that forecast? Is the government afraid to give Canadians that figure?

We have been through this before when looking at budget forecasts one, two, three and five years down the road. Other countries give budgetary forecasts in the future. Minister Martin has always given us anticipated unemployment rates. Of course, that was during the good times. Now that we are in bad times, those numbers mysteriously disappear off the page. Could the Leader of the Government please tell us when the government will inform Canadians of the expected unemployment rate for next year?

**Senator Carstairs:** Honourable senators, the minister is not God and he cannot do that.

The honourable senator across the way will remember well when, in 1988, in the province of Manitoba, we went from one Liberal member in the chamber to 20 Liberal members. I took those new members to Brandon, Manitoba, to experience a mock question period. I pretended to be all the ministers of the Crown. They asked their questions and, of course, I did not answer any of them. Their complaint was exactly the same as that of the honourable senator. It is a perfect example of how Question Period works in this country at provincial legislatures and at the federal legislature. The opposition asks its question and I get the chance to answer them as I see fit.

**Senator Stratton:** Honourable senators, that is obfuscation in the highest form. The honourable senator is deliberately avoiding answering the question. That is exactly what is occurring. Why does the Leader of the Government not just tell this chamber that this is indeed what is happening? We will accept that.

**Senator Carstairs:** Honourable senators, it certainly has not stopped the honourable senator from asking questions. As of today, there have been approximately 439 questions asked in the chamber since September. Keep on asking and I will keep on answering.

## FOREIGN AFFAIRS

### UNITED STATES—WITHDRAWAL FROM ANTI-BALLISTIC MISSILE DEFENCE TREATY—GOVERNMENT RESPONSE

**Hon. Douglas Roche:** Honourable senators, my question is to the Leader of the Government in the Senate. Today, President Bush announced that the United States will withdraw from the anti-ballistic missile treaty so that testing for a national missile defence system can proceed. This action has already drawn comments from around the world. The honourable senator will recall that the United States sent a delegation to Ottawa last May to discuss this issue, at which time the government representatives expressed their concern about any breakout or abrogation from the anti-ballistic missile treaty, which has been a fundamental policy of Canada for almost 30 years. I ask the minister if the Canadian government has a response to the action today, and will a statement be made?

• (1420)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank Senator Roche for his question. It is clear that the American government has taken action, which is part of its right under the treaty. The treaty has a six-month clause which allows either Russia or the United States — and we must remember that it is a bilateral treaty between those two nations — to exercise this withdrawal. The United States has announced their intention to do that today. We take note of it, and we are concerned because we believe that the treaty has been the foundation of confidence and predictability on which multilateral

arms control systems and nuclear disarmament rest. We hope that its replacements will do likewise, and we urge both the United States and Russia to use the six-month withdrawal period to develop a new framework offering the same level of global confidence and predictability provided by the treaty.

## THE SENATE

### POSSIBILITY OF REFERRING SUBJECT MATTER OF INQUIRY ON UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM TO COMMITTEE

**Hon. Douglas Roche:** Honourable senators, I thank the minister for that statement. I have had on the floor of the Senate for some time a motion dealing with the very subject of the anti-ballistic missile treaty and the missile defence system.

The motion was amended by Senator Finestone so that the subject matter of the motion, and, I emphasize again, not my view of the matter, but the subject matter per se of the issue of national missile defence, would be referred to the Standing Senate Committee on National Security and Defence for study.

I should like to ask, especially in light of these latest developments and the urgency of the question, whether the minister gives her support to the amendment to this motion, mainly, to the amendment that the subject matter proceed to committee.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is not up to the Leader of the Government in the Senate to make that decision. It is up to the Senate itself.

## HERITAGE

### NATIONAL LIBRARY—DESTRUCTION OF ARCHIVED MATERIAL DUE TO INADEQUATE FACILITIES

**Hon. Eymard G. Corbin:** Honourable senators, my question is directed to the government leader. I wonder if she would be so kind as to put me down on the government's list of delayed answers for the following item. There have been over 90 incidents of leaking pipes, leaking roofs, and other such incidents at the National Library over recent years, with the net result of the loss of over 25,000 archived items. The situation seems to be going from bad to worse. I would like to know when the government intends to put in place remedial action on an urgent basis to correct that situation.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank Senator Corbin for that question. His question is an important one. It has been under active discussion as to when the National Library will get the upgrades it so desperately needs. As you know, the Library of Parliament is presently undergoing repairs for exactly the same reasons, but there are other government structures, including this whole building, that need serious upgrading.

I will ask the question on behalf of the honourable senator as to specifically what plans are in place for the National Library, and get back to him as soon as possible.

[Translation]

### DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a response to the oral question raised in the Senate on November 29, 2001, by Senator Sparrow regarding strychnine.

### AGRICULTURE AND AGRI-FOOD

#### RE-ESTABLISHMENT OF BANNED CONCENTRATED STRYCHNINE TO CONTROL GOPHERS

*(Response to question raised by Hon. Herbert O. Sparrow on November 29, 2001)*

The action to ban liquid strychnine concentrate was taken by Agriculture Canada in 1992 to ensure that the safer, ready-to-use baits were used instead of the potentially hazardous liquid strychnine. The Government studied this matter in cooperation with the western provinces most affected by the gopher problem. Prior to the withdrawal of liquid strychnine concentrate, discussions were held with Alberta, British Columbia, Manitoba and Saskatchewan. This consultation involved the Western Forum and the Canadian Association of Pest Control Officials.

No formal economic studies were requested or reviewed during this consultation period because there was every expectation that the ready-to-use baits (containing 0.35-0.4 per cent strychnine) would be as effective as the baits which were mixed by farmers/ranchers using the liquid strychnine concentrate (approximately 0.3 per cent strychnine or less). It was only in the years subsequent to the discontinuation of the liquid strychnine concentrate that complaints about the performance of ready-to-use baits were received. Although these baits have been shown to be effective (achieving approximately 60-66 per cent control as demonstrated in recent research trials), they are less effective than baits made fresh with concentrate (i.e. 90 per cent control). It is now understood that freshness of bait affects performance.

In 1992 when this action was taken, strychnine was implicated in a number of intentional and unintentional poisonings of non-target animals, including dogs and wildlife. There were also some suspected human suicides linked to strychnine. No specific scientific studies on poisonings were reviewed prior to making the decision. Representations were made over a number of years by concerned stakeholders (e.g. local police departments,

R.C.M.P., Canadian Veterinary Medical Association, Humane Societies, Canadian Fur Bearers Association) and numerous media reports. This information, together with information from agencies collecting poisoning incident information (e.g. Western College of Veterinary Medicine) led Agriculture Canada to remove the liquid concentrate while retaining the strychnine bait.

In 2001, the Pest Management Regulatory Agency (PMRA) granted Emergency Registrations to the provinces of Saskatchewan and Alberta in 2001 to allow them to use the liquid strychnine concentrate for on-farm formulation of 0.4 per cent strychnine bait in controlled-access programs. The PMRA also met with Alberta and Saskatchewan pesticide regulatory officials, growers, and other stakeholders on November 16, 2001, to assess this program. Stakeholders were informed as to possible options for availability next year and over the long term and encouraged to research the efficacy of alternative products for ground squirrel control.

Canada is not alone in having taken action on strychnine. All above-ground uses of strychnine have been prohibited in the U.S. since 1988. It is illegal to use strychnine for pest control in most European countries.

There are alternative products registered in Canada.

[English]

### DISTINGUISHED VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in our gallery of our former colleague the Honourable Bill Kelly.

**Hon. Senators:** Hear, hear!

[Translation]

### ORDERS OF THE DAY

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, as regards Government Business, we would like to begin with Item No. 1 under Orders of the Day, followed by Item No. 6, second reading of Bill C-45, before reverting to the Orders of the Day as proposed in the Notice Paper, while adding Item No. 11, third reading of Bill C-44, which was reported earlier today without amendments.

[English]

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING

**Hon. Sharon Carstairs (Leader of the Government)** moved the third reading of Bill C-46, to amend the Criminal Code (alcohol ignition interlock device programs).

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read the third time and passed.

## APPROPRIATION BILL NO. 3, 2001-02

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Finnerty, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank you for the opportunity to address the question raised by my honourable colleague, Senator Lynch-Staunton, in connection with the \$100 million in grants included in Supplementary Estimates (A) for the Sustainable Development Technology Fund.

In doing so, I would like to assure the Senate that it has now been confirmed by both the Auditor General in her report and the ruling of the Speaker in the other place that the creation and funding of this initiative respects parliamentary authorities and practices. To answer the specific question put by my honourable colleague about how the government intends to address the particular concerns raised by him, let me explain.

The Speaker in the other place ruled on November 22, 2001, that he did not have an issue with the grant items in this Supplementary Estimate. He said that these were valid items and that Supplementary Estimates (A) for 2001-02 could proceed. This leaves the outstanding issue of seeking parliamentary authority to confirm the original \$50 million advanced to not-for-profit private corporations under the interim authority that exists in Treasury Board vote 5.

As the Leader of the Opposition noted in his comments, the Speaker in the other place ruled that this issue can be addressed in the Supplementary Estimates. Indeed, let me assure

honourable senators that to address this issue and fully respect the terms of the ruling, pending consideration and passage of final Supplementary Estimates, the government will not use the current appropriation to reimburse Treasury Board vote 5 for the interim \$50 million advanced to the original not-for-profit corporation. Consistent with the usual practice concerning the use of the interim authority provided in Treasury Board vote 5, the government will seek Parliament's approval of a \$1 item in the final Supplementary Estimates for this fiscal year to authorize a \$50-million grant to the not-for-profit private corporation corresponding to the funds advanced from Treasury Board vote 5. In so doing, Parliament's approval will also be sought to utilize \$50 million of \$100 million to cover the costs associated with the \$1 item, specifically, the \$50-million advance from Treasury Board vote 5.

This will have the effect of leaving the total appropriated for this purpose, for this fiscal year, at the \$100 million originally announced in the budget. I can assure honourable senators that I have assured the other place that if this is not crystal clear in the Estimates that will be presented to us before we rise closest to the date of March 31, there will be considerable unease in this chamber and, indeed, reaction.

• (1430)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, it is not crystal clear to me at all how the President of the Treasury Board can say that the \$50 million that the Speaker of the House of Commons challenged as to the propriety of being included in Supplementary Estimates (A) will be found in Supplementary Estimates (B). Yet, they are still in Supplementary Estimates (A) and also in the appropriation bill that is before us. We just want to get through this \$1 stuff, and the \$100 million stuff, and the "I will get back to you in the spring, if we do the wrong thing" stuff. We want an explanation as to how you can have the same amount, which has not been properly supported in the Supplementary Estimates, appear in the appropriation bill before us, while at the same time the President of the Treasury Board has said that she will take care of the matter in Supplementary Estimates (B).

Honourable senators, this is a simple question to which there should be a simple answer. How can the same amount appear twice in two separate Supplementary Estimates and then in two separate appropriation bills?

**Senator Carstairs:** The honourable senator has clearly identified the problem. The government has said that it will clear up that problem before the end of the fiscal year. As the Speaker in the other place said, they clearly have the time to do that. In his view, it was not necessary to amend the bill for the purposes of being in compliance since we had another estimate procedure prior to the end of the year. If we do not get what we require in that estimate procedure, then I would anticipate amendments would be coming from the other side in order to clarify the situation.

**Senator Lynch-Staunton:** Why is there not an amendment now to simply remove the \$50 million from the supply bill? When government comes back with the next appropriation bill, preceded by the Supplementary Estimates, we can take care of the matter then. If we pass the bill as it is now, we will approve an expenditure that the Speaker of the House of Commons has said was not properly before the House of Commons and — as the President of the Treasury Board has agreed — could not be taken care of except at another stage. In the current stage, however, we are told we can take care of it anyway. I absolutely disagree. The same item cannot be approved twice. It can only be approved once, and this is not the time to do it.

**Senator Carstairs:** Honourable senators, with the greatest respect, the Speaker of the other place did not rule as the honourable senator indicates that he did. He said that it must be cleared up by the end of this fiscal year and that the bill presently before us, which was at that point before the House of Commons, was in order.

**Senator Lynch-Staunton:** Honourable senators, contrary to what the leader said earlier, the Speaker in the other place said, “No authority has ever been sought from Parliament for grants totalling \$50 million.” He then went on to say, as the minister has just told us, “However, as there remains ample time for the government to take corrective action by making the appropriate request of Parliament through the Supplementary Estimates process, the chair need not comment further at this time.”

The President of the Treasury Board agreed with him and said, “I will take care of it in Supplementary Estimates (B),” which usually come out before the end of the fiscal year. There may then be a Supplementary Estimates (C). Now, however, we are asked, despite what the President of the Treasury Board has said and despite the warning of Speaker Milliken that it was inappropriate to include them in Supplementary Estimates (A), to confirm them in Supplementary Estimates (A). It does not stand up.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, given that we are dealing with a supply bill, the way out of this situation would be for an amendment to be made to the supply bill. We on this side would give consent that all stages be dealt with so that a message could be sent forthwith to the House of Commons, which we understand is sitting until tomorrow at least, so that there would be no blocking of the supply bill. That would be proper. The government leader has the full cooperation of this side of the house to clean up this mess.

**Senator Carstairs:** Honourable senators, the government does not take that position. They do not believe this matter needs to be cleared up now. They believe it needs to be cleared up before the end of the fiscal year, and they have given that undertaking.

**Senator Lynch-Staunton:** The undertaking is to clear it up, but what about the undertaking to Parliament, which used to have a direct supervision over the proper spending preceded by proper authorization of that spending. What has happened to that? All we are told is, “We messed it up. Do not worry about a thing. We

will come back in a few weeks, and if we mess it up then, we will raise a signal at that time.” Well, we are raising the red flag now. The \$50 million should not be in this bill. It should not be there. The President of the Treasury Board herself told us that it would be taken care of at another time.

Why does the government not just own up to the fact that they made a mistake and prepare an amendment to reduce the total appropriations by \$50 million? As a matter of fact, to help the government, I prepared an amendment along those lines. It is very simple. One just takes the totals and the departments and reduces them by \$25 million in the case of department, totalling \$50 million. It is all there. I would be happy to forward this to the Leader of the Government in the Senate and she can move the motion and take credit for it. The House of Commons is obviously not doing its job as the guardian of the purse. It has the responsibility to do what we are doing. Let us show that we are more responsible than they are and do the right thing.

**Hon. Pierre Claude Nolin:** I was referred to you, Madam Minister, when I asked a question of the sponsor of the bill concerning a request from the Canada Customs and Revenue Agency and the lack of proper detail offered by the officials from Treasury Board before our committee. What is behind a request of \$288 million to address operational workload pressures and to pursue revenue generation initiatives?

**Senator Carstairs:** Honourable senators, I do not have that information for the honourable senator, but I will try to obtain it for him.

On motion of Senator Lynch-Staunton, debate adjourned.

## ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE SUSPENDED

On the Order:

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

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

*“Expiration*

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition “United Nations operation” in subsection 2(2) and in the definition “terrorist activity” in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4.”.

**Hon. Gérard-A. Beaudoin:** Honourable senators, I wish to support the amendment proposed by the Leader of the Opposition, that is, a sunset clause in Bill C-36.

In the domain of antiterrorism, two solutions were possible for the government after the events of September 11. The first one was to proclaim a declaration of emergency under the Emergencies Act of 1988. That act has repealed the War Measures Act. The new regime is much more adapted to our era. It covers several emergencies, it delegates strong power to the federal executive and, as an emergency measure, it is transitory.

The second solution was to adopt a permanent law on terrorism. The government made its choice — a permanent statute. I am glad this permanent statute has no “notwithstanding clause.”

A majority of experts and associations have suggested that a sunset clause be enshrined in Bill C-36. Even the government, after our pre-study in the Senate, accepted the idea of a sunset clause. Since in Bill C-36 some new crimes are created and additional powers are given to the police, it is mandatory, in my view, to realize an equilibrium between those new powers and the Canadian Charter of Rights and Freedoms. The sunset clause proposed by the Honourable Senator John Lynch-Staunton would do that.

Honourable senators, we should remain inspired by our pre-study, which was unanimously accepted by the Senate. We do not sunset the Criminal Code. We sunset one measure, Bill C-36, which is a measure of criminal law. That is quite different. That sunset clause is for five years. Some suggested one year; the Canadian Bar Association suggested a three-year sunset clause; and in our pre-study, we suggested five years.

• (1440)

The proposed sunset clause is not all-encompassing. There are four exceptions with respect to the proposed sunset clause: hate activities in the Criminal Code; mischief against religious property, again in the Criminal Code; hate propaganda over the Internet, the Canadian Human Rights Act; and all our international obligations concerning the conventions signed by Canada and referred to in the definition of “United Nations operation” and the definition of “terrorist activity.”

Since this bill is permanent, the actual jurisprudence on the Canadian Charter of Rights and Freedoms does apply. That jurisprudence is considerable — more than 400 cases. The interpretation of many cases may vary in emergency times and in ordinary times. In other words, because this bill is permanent, the attitude of the court may be more severe. The debate has reached its last hours.

[Translation]

The sunset clause was accepted by the government regarding two situations: arrest and preventive arrest, and forced interrogation. This is not changed, but we must go further. We propose that the scope of the sunset clause be all-inclusive, except for the four areas that I mentioned earlier.

We must take into consideration what the Canadian Bar Association proposed before the special committee and in a letter dated November 27, 2001, addressed to the Honourable Minister of Justice. According to the CBA, the sunset clause should apply to other provisions of the bill, including:

The provisions that allow the creation of lists of entities and persons whose goods would *ipso facto* be seized and confiscated, since this would have a deterrent effect on their trading partners;

The provisions empowering the Minister, as opposed to a judge, to issue warrants for electronic surveillance;

The additional power given to the Minister to block application of the Access to Information Act and the Privacy Act;

And all the provisions that allow authorities to make decisions on people’s rights and freedoms and on their eligibility as trading partners, based on evidence that these people are not allowed to examine.

In 2001, the Supreme Court stated, in the *Mentuck* case, that Canada is not a police state. This is true. We are a democracy. I agree with the amendment moved by Senator Lynch-Staunton. As the Canadian Bar Association explained in its November 2001 brief, on pages 13, 14 and 15 —

Debate suspended.

• (1500)

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, it being 2:45 p.m., pursuant to order passed by the Senate on Wednesday, December 12, 2001, I must interrupt our proceedings on Bill C-36.

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

[English]

## YOUTH CRIMINAL JUSTICE BILL

THIRD READING—MOTION IN AMENDMENT ADOPTED—  
DEBATE CONTINUED

On the Order:

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

And on the motion in amendment of the Honourable Senator Moore, seconded by the Honourable Senator Watt, that the Bill be not now read a third time but that it be amended,

(a) in clause 38, on page 38,

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

“for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons; and

(e) subject to paragraph (c), the sentence”, and

(ii) by renumbering all references to paragraph 38(2)(d) as references to paragraph 38(2)(e); and

(b) in clause 50, on page 57, by replacing line 23 with the following:

“except for paragraph 718.2(e) (sentencing principle for aboriginal offenders), sections 722 (victim impact state—

Motion in amendment adopted on the following division:

#### YEAS THE HONOURABLE SENATORS

Adams	Joyal
Andreychuk	Kelleher
Angus	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Bolduc	Lynch-Staunton
Buchanan	Meighen
Carney	Moore
Cochrane	Murray
Comeau	Nolin
Cools	Prud'homme
Di Nino	Rivest
Doody	Roche
Eyton	Sparrow
Finestone	Spivak
Forrestall	St. Germain
Gill	Stratton
Grafstein	Tkachuk
Gustafson	Watt
Hervieux-Payette	Wilson—41
Johnson	

#### NAYS THE HONOURABLE SENATORS

Austin	Jaffer
Bryden	Kirby
Callbeck	Kroft
Carstairs	LaPierre
Chalifoux	Léger
Christensen	Losier-Cool
Cook	Maheu
Corbin	Milne
Cordy	Morin
Day	Pearson
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gauthier	Taylor
Graham	Tunney
Hubley	Wiebe—40

#### ABSTENTIONS THE HONOURABLE SENATORS

Banks—1

#### ANTI-TERRORISM BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

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

And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Forrestall, that the Bill be not now read a third time but that it be amended on page 183, by adding after line 28 the following:

“*Expiration*

147. (1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

(2) Subsection (1) does not apply to section 320.1 of the *Criminal Code*, as enacted by section 10, to subsection 430(4.1) of the *Criminal Code*, as enacted by section 12, to subsection 13(2) of the *Canadian Human Rights Act*, as enacted by section 88, or to the provisions of this Act that enable Canada to fulfill its commitments under the conventions referred to in the definition “United Nations

operation” in subsection 2(2) and in the definition “terrorist activity” in subsection 83.01(1) of the *Criminal Code*, as enacted by section 4.”

**The Hon. the Speaker:** Could I please ask for order? It is quite noisy in the chamber. It makes it very difficult to hear the Honourable Senator Beaudoin, who has the floor.

• (1510)

**Hon. Gérald-A. Beaudoin:** Honourable senators, before the vote, I was about to quote the Canadian Bar Association:

This Bill creates extraordinary powers, several of them beyond the realm of what would have been acceptable just a few months ago. It is difficult to predict how law enforcement agencies will use these new powers or how effective those powers will be in eradicating the current threat of terrorism.

When governments seek to impose extraordinary restraints on fundamental rights and freedoms, these restraints must be limited in duration. This principle is recognized by both domestic and international law.

As the bar has suggested:

At the end of the three-year period, Parliament could decide that Canada can comply with our international obligations in a less extraordinary and intrusive manner. Under international law, a country is always free to change the way it implements international treaties. A sunset clause ensures that Parliament will explore this opportunity in a meaningful way, without being bound to the original, hasty passage.

Honourable senators, we defend our values on the international scene. I am very proud of my country. My wish is that we continue to defend these values at home.

As Thomas Jefferson said in 1824, “Nothing then is unchangeable but the inherent and unalienable rights of man,” and woman, of course. The Canadian Charter of Rights and Freedoms is a great heritage. It is possible, in my opinion, to reconcile additional powers with rights and freedoms. It is a question of equilibrium, and our country may do that.

**Hon. Mobina S.B. Jaffer:** Honourable senators, I rise to oppose the amendment.

The September 11 terror attacks were a blow that struck all humanity.

On Tuesday, I was honoured to meet with Algeria’s new ambassador to Canada, His Excellency Youcef Yousfi, who, as the representative of a Muslim nation, most eloquently expressed how people throughout the world view the terrorist attacks.

[Translation]

He said:

Blind, cruel terrorism, which had been striking at various targets throughout the world, attacked the world’s most powerful nation in a spectacular and dramatic fashion.

There are no terms strong enough to describe the horror of this attack, and the world was not wrong to denounce it unanimously.

Far be it from us to claim to have learned anything from these events, which showed just how precious and fragile security is, and that we must all work together to preserve and safeguard it. They also showed that the fate of humanity is most certainly one and indivisible and that what can happen in one country can very well happen in another. I also believe that no longer can anyone remain indifferent to the suffering of others.

Naturally, Algeria has condemned these terrorist attacks in the strongest terms and conveys its sympathy to the American people.

[English]

On a recent visit to New York City, I saw for myself the horrors of Ground Zero. It was like the United States with its heart ripped out. I heard the sound of the wrecking ball banging again and again and again against the steel beams of what was once the World Trade Center. Two storeys of wreckage stand defiantly. One is left with a vivid impression that the wreckage is staring back at you, refusing to disappear. The clinical images we have all seen on television cannot begin to describe the reality of the silently weeping people. The indescribable smell of that place is still lingering in my nostrils as I speak to honourable senators today.

Many of us have personal stories of friends and family affected by the tragedy of September 11. Therefore, I stand to oppose the amendment.

My most precious niece, Azra Nanji, an American citizen, was at the World Trade Center when the terrorists smashed the plane they had hijacked into the shimmering glass wall. The last words I heard from her over the telephone were these: “Auntie, I have to go. We are being evacuated. I can’t talk anymore.”

The remainder of the day passed very slowly. After many futile attempts to call New York City, we finally heard from her again. We wept tears of joy, but also of sadness, as she is still looking for many of her friends and for many others.

For people like my niece, I stand to oppose the amendment because I believe there has to be certainty.

From this tragedy in the U.S. came the birth of Bill C-36. This is a bill that could change forever our landscape, a bill that could lead a gentle nation of people who trust one another to become a suspicious nation where we spy on our neighbours.

On September 11, honourable senators, we lost our tenderness and our innocence.

Events like those of September 11 cause great paranoia, fear and anger to grow within us. When these mingle with misunderstanding, ignorance and intolerance, even the most peaceful communities of our great country can be shocked by crimes of hate. Terms like “backlash” and “revenge attacks” do not apply in these cases, as they suggest that the victims have done something to deserve the discrimination to which they are subjected.



As all honourable senators are aware, the overwhelming majority of Canadians in these communities have a deep love of our country. They desire no more than the peaceful and prosperous life that this great nation offers them. These are crimes of hate, pure and simple, and Bill C-36 contains new protections for minorities discriminated against in this way.

If this chamber passes the bill before us, a new crime relating to attacks on religious structures will be created. This provision will add to existing laws against hate crimes and further protect communities from attack on their spiritual core, such as those we saw in Hamilton and in my own province of British Columbia.

Canada's churches, temples, mosques, synagogues and cemeteries will be protected by this bill. Those who would attack them may very well be deterred. Those who have attacked them will be punished severely.

Bill C-36 will also assist in mitigating the spread of the hate that gives birth to so many attacks, allowing a judge to order the removal of hate propaganda from the Internet. No longer will purveyors of these messages find an open forum to spread their lies. No longer will Canadians and their children be exposed to messages of hate.

This chamber, through the Special Senate Committee on Bill C-36, has devoted a great deal of time and energy to scrutinizing the bill that is now before us. Much of this was done even before the bill was passed to us from the other place, in the pre-study. This pre-study produced a report that made numerous recommendations for the improvement of the bill. Some of these have resulted in significant improvements to the current version of Bill C-36 over earlier drafts. There is now more room for oversight through the sunset clauses in the areas of preventive arrests and investigative hearings. There is more judicial authority over the Attorney General's issuance of certificates as well as the provision for annual reports by not only the Minister of Justice and the Solicitor General but also their provincial counterparts.

• (1520)

Since receiving the bill from the other place, we have had an opportunity to hear many of the witnesses who testified during the pre-study as well as from many new voices. The issue that I have concerned myself with since we were first presented with the task of examining Bill C-36 is that of racial profiling. It is a concern of many in my own community, and others, that they may be singled out for persecution under sections of this bill.

One witness before the special committee, Mr. Mia, a member of the Muslim Lawyers Association and the Coalition of Muslim Organizations, speaking of the plight of Muslims since the events of September 11, noted that the fear they feel has doubled. They not only fear terrorism, as most Canadians do, but also fear that they will be targeted unfairly by the police.

Canada's police, however, are among the best in the world when it comes to sensitivity to minority groups. I am confident that that tradition will continue. I have received numerous assurances that the police forces are committed to continuing sensitivity training. I am also assured that funding is in place to ensure that, as officers are trained to implement Bill C-36, funding will be given to ensure that they are made aware of other

cultures' need for fair and considerate treatment. When I posed the question of racial profiles to RCMP Commissioner Zaccardelli, he told us:

We do not do race profiling. We investigate criminal act or acts that we believe are criminal in nature. We investigate those and try to prosecute those as best we can. We do not look at a person, the gender, the colour or religion of the person. We simply investigate criminal acts.

I believe and trust the assurances that Commissioner Zaccardelli has given us. When I posed a similar question to the Director of CSIS, Ward Elcock, he explained:

We do in fact do some profiling. The profiling that we do is essentially to provide Immigration with an essential set of things to look out for in respect of particular groups or organizations. That is not a racially-profiled list.

I believe and trust the assurances that Director Elcock has given us.

When I asked the Solicitor General what was being done to ensure that those enforcing laws such as those contained in Bill C-36 are sensitive to cultural differences, Minister MacAulay said:

Any training that needs to be done, it has been indicated quite clearly that it will be done.

He has gone on the record several times in the other place with this promise. I trust and believe the assurance that Solicitor General MacAulay has given us.

Most of all, honourable senators, I stand here in front of you as a refugee that no one else wanted — except Canada. I have faith that a country that has given me refugee status and has now appointed me to be a senator in this great chamber will not let the people that I represent down.

On Monday, in his budget, the Minister of Finance said:

If ignored, intolerance can threaten the fabric of our nation and we must answer it. It can divide our communities and we must stop it. That is why the Government will provide new funding, aimed at fostering respect and promoting our values which have allowed us to welcome so many to Canada, so many who have enriched us so much.

I believe and trust Canada's government.

[Translation]

I believe and have confidence in our government.

[English]

There are many who speak of the need for oversight provisions in this bill. It does contain significant room for oversight, including the annual reports, judicial oversight, the five-year sunset clause and the thorough review that will be undertaken by Parliament three years after this bill comes into force. That is why I respectfully submit that there is no need for an expiration date and oppose this amendment.

We also have the capabilities of other oversight bodies including the Privacy Commissioner, the Information Commissioner, the Canadian Human Rights Commission, the RCMP Public Complaints Commission, the Security Intelligence Review Committee, the commissioner with respect to the Communications Security Establishment, and the complaint and review mechanisms that apply to police forces under provincial jurisdiction to exercise their respective mandates over areas of this bill.

We as Canadians will be vigilant. We will keep a close watch on our rights and freedoms. Nothing in this bill or any other piece of legislation can take away or reduce our basic human rights that are an irrevocable and essential part of our beloved Canada. I myself vow to be vigilant in the scrutiny of the enforcement of this bill and in safeguarding the safety and liberty of all Canadians.

We are a nation of people that has always worked hard to be a harmonious nation and a nation that has a strong multicultural policy to ensure all people feel included in the life of our nation. We place great value on the harmony of our nation. What do I understand as harmony? Let me explain.

We have a great piano player amongst us — Senator Banks. He will tell us that on a piano we can get some kind of harmony if we play just on the white keys and some kind of harmony if we just play on the black keys, but to have real harmony we have to play both on the black and white keys. We are a nation that believes we must have all people included to have real harmony.

I oppose this amendment because I believe that we have to stand with our neighbours, because on September 11 the heart of America was suddenly and brutally ripped out. It is now up to us to start the healing.

**Hon. Senators:** Hear, hear!

**Hon. Wilbert J. Keon:** Honourable senators, I wish to offer a few brief remarks on Bill C-36. We all acknowledge that we are experiencing a very unusual time in our history; we all acknowledge that unusual circumstances require unusual actions on the part of our government. Hence, an unusual piece of legislation, Bill C-36, has appeared on the Canadian landscape.

I must admit that my comments are motivated in large part from my interface over the years with the Arab world. I have had the privilege of training and helping to educate many gifted young Arab doctors. I have visited them back home and helped them to get established. A number of them remain with us at various stages of their training. Some have become Canadian citizens and practice here in Canada.

The horrible events of September 11 left Muslims in general tarred with the same brush as the terrorists. Now comes Bill C-36. I ask you, honourable senators, if you were a Muslim or an associated minority, would you feel apprehensive, threatened or even paranoid, especially since privacy is an area where Canada's domestic human rights protections already fall short of international standards?

• (1530)

Testimony has been heard from experts in criminal law, human rights, security, policing, and the finance sector, as well as from information and privacy commissioners and many others. We have all received correspondence from concerned Canadians. I appreciate the enormous time and effort that everyone engaged in the debate has given to study this bill in such a careful fashion.

Despite the plethora of discussions, I reiterate that the recommendations of the pre-study report of the Special Senate Committee on Bill C-36 are designed to achieve the balance that Canadians are afraid of losing with the passing of the bill as it stands.

Bill C-36, with the unanimously supported pre-study recommendations, would provide Canada's first legislation directed at protecting Canadians from terrorist attacks, well in advance of any attacks being carried out.

From a broad perspective, when the dust settles, this bill may not affect the vast majority of people but may produce anxiety for special groups. We must educate and reassure them that the rights and freedoms of Canadians will remain.

There is little doubt that there will be mistakes made along the way in the application and implementation of the proposed law, and some hardships will occur.

Senator Carstairs mentioned, and I appreciate her intervention, that checks, balances and safeguards are in place to ensure that the powers prescribed by this bill are not abused. Overall, it would be a monumental mistake to exclude the all-encompassing sunset clause to this bill and the proposed appointment of an officer of Parliament to oversee the application of Bill C-36.

As the Honourable Senator Meighen stated the other day, in the context of human rights, we are struggling to find the right balance between the preservation and promotion of human rights while, at the same time, drafting laws that will enable our government, our police forces and other agencies to mount an effective fight against terrorism.

Honourable senators, let me now turn to speak directly to the amendment proposed by Senator John Lynch-Staunton. This amendment would terminate the applicability of the provisions of Bill C-36 five years after it receives Royal Assent. Only four clauses would survive. They deal with Canada's obligations under international covenants, the provision of hate propaganda, desecration of religious property and hatred spread over the Internet. Because of its nature, this is a true sunset clause because the bill would completely terminate on the appointed date. This would give a measure of relief to those who I believe will be targeted under this bill. It is also preferable to the so-called sunset clause introduced by the government in relation to the provisions of preventive arrest and investigative hearings. That sunset clause just barely dips on the western horizon and reappears almost automatically shining in the east.

The provision of a real sunset clause is also consistent with a great deal of the testimony heard by the Special Senate Committee on Bill C-36. While many witnesses advocated this, I would like to refer specifically to the brief presented by the Canadian Bar Association.

The witnesses from the Canadian Bar Association described Bill C-36 as “wide-ranging,” containing complex and interrelated provisions. They stated that “when governments seek to impose extraordinary restraints on fundamental rights and freedoms, these restraints must be limited in duration.” This is a principle recognized in our Emergencies Act and also in the International Covenant on Civil and Political Rights. Public emergencies and the extraordinary measures needed to cope with them are time limited.

While the bar does not concede that the powers contained in Bill C-36 are necessary, they do say the following:

“...sunset clause will ensure that they apply only as long as needed. Canada should revert to the laws and rights we know unless circumstances then dictate that the extraordinary regime foreseen by Bill C-36 be prolonged.”

In fact, the two most vociferous witnesses who spoke against the imposition of a sunset clause were the police forces and the Minister of Justice herself. The minister stated that the threat of terrorism may not disappear. I am afraid that on this she may well be right, but surely with a five-year sunset clause the terrorists will know that we are serious in our resolve to fight terrorism. At the same time, those who may be concerned about the misapplication of these draconian provisions will be assured that with a certain time limit there will be a return to our normal regime where civil rights are given their greatest protection.

The minister claimed that those who supported a sunset clause did so because this might add to the constitutional legitimacy of the bill. This is like setting up a straw man in order to knock it down. Few, if any, constitutional scholars subscribe to this view, as virtually all realize the provisions of this bill will rise and fall on their own merits regardless of a sunset clause.

Finally, the minister expressed concern that such a clause might adversely affect ongoing court cases and public investigations. This will not be the case if the government acts to justify and reintroduce the bill. Ongoing prosecutions will continue even if the law expires because the conduct on trial would be considered to be a crime when it occurred, regardless of what happens to Bill C-36.

It is for these reasons that I support the provisions of the Senate pre-study committee report and the amendment introduced by Senator Lynch-Staunton. I will close by reminding senators of what the report said concerning the need for a sunset clause. It states:

The Committee realizes that now is a time of heightened anxiety, fear and confusion and that it is important that departures from our legal norms be reconsidered at a time

that will allow for sober reflection and a full evaluation of the effect of these new measures. The most appropriate manner to address this issue was the subject of intense discussion during Committee hearings.

The Committee recommends applying a five-year expiration clause — a “sunset clause” — to Bill C-36. In this way, the government would be required to return to Parliament to justify the continuance of the powers granted, assuring Canadians that the tools are sufficient, yet not exorbitant, and that they continue to be justifiable and necessary in the battle against terrorism.

I mentioned at the outset that Bill C-36 is an unusual law for an unusual time. We are obliged to support our police forces and law enforcement agencies to deal effectively with terrorist activity, but we are even more obliged to do everything in our power to get through these unusual times and get back to usual times.

Allow me to quote the British philosopher Karl Popper from his book entitled *The Open Society and Its Enemies*. In it, he writes as follows:

We must plan for freedom, and not only for security, if for no other reason than that only freedom can make security secure.

• (1540)

**Hon. Lois M. Wilson:** Honourable senators, I support this amendment largely because of my observations concerning the processes of this Senate at its committees. I have always thought the committees of the Senate are its Crown jewels, and when that splendid all-party special committee was established to do the pre-study of Bill C-36, I relaxed, confident that such an excellent committee would pick up many of the problems the public had spotted with the bill and so it did, carefully, and probably with blood, sweat and tears.

The Minister of Justice did make some changes so we have a better bill than we had originally, but many sectors of the public continue to press for further amendments, and many of us received phone calls and are still receiving phone calls from nervous citizens indicating that the Senate was their last hope for modifying the bill further and they thought that was our function. They hoped that the Senate would stand firm in backing its special all-party committee and its recommendations, but the Senate all-party consensus recommendations, when push came to shove, were abandoned. I think that the Senate has lost a great deal of credibility with the public because of that result.

Somewhat the same process took place with Bill C-7. When reversal of a Senate committee's near consensus judgments or total consensus happens, I find it extremely problematic for the democratic process. I am not interested in knowing all the details of the political trade-offs. I am more interested in the impact these bills will have on the public, and the question that such a process poses to the integrity of the processes of the Senate.

Honourable senators, I am a member of only one committee, since that is a rule laid down only for independent senators. I used to chafe under that but I am now more content than ever to be a full member of only one committee. My point is, of course, this chamber is free to not accept its committee's recommendations if it likes. Why then spend time and energy struggling to craft amendments that will improve a bill when it is evident that this chamber has twice now not supported its own committee process, even when there was consensus and near consensus on these bills?

Currently the jewels of the Senate, which are its committees, have lost much of their lustre for me. For this reason, and for others, I hope honourable senators will support this important amendment.

**Senator Kinsella:** Bravo!

**Hon. Consiglio Di Nino:** Honourable senators, I wish to add a few comments to those already expressed on this issue.

First, I must say I was particularly impressed by Senator Lynch-Staunton's excellent presentation yesterday. Senator Kelleher, as well, had some particularly pertinent things to say concerning his experiences while Solicitor General of Canada. I think the remarks of both should give us all cause to reflect more deeply on the bill before us. I would also like to align myself with the comments made by both Senator Keon and Senator Wilson a few moments ago. They, too, should give us cause for thought.

Honourable senators, I suspect in our hearts most of us, to some degree at least, are uncomfortable with the consequences of this bill. Yesterday, Senator Grafstein told us he believes that any blatant and systematic abuse of powers contained in the bill will quickly lead to a response from a variety of sources, including Parliament, and in particular, the Senate. I happen to agree with him. As he well knows, as do others in this chamber and those who have suffered under some of the conditions that have been imposed on us in the past, in a democracy abuses and misuses are not generally blatant or openly public. We must always rely on oversight agencies, public complaints commissions and others as our source of information. However, as Senator Kelleher said yesterday, this information is often difficult to obtain because those who perpetrate the abuses usually are not forthcoming — at least without some official complaint or request.

Yesterday, I expressed my own fears on this issue in this chamber, fears borne of personal experiences half a century ago when I first came to this country. Since then, honourable senators, Canadian society has changed in many ways. Our laws are stronger. Discrimination is tolerated far less than it once was. Those in authority, thank God, reflect our diversity to a greater degree. However, is it perfect? Have we been able to eliminate racism?

I suggest to you, honourable senators, that only dreamers among us could answer that question positively. There are good cops and there are bad ones, professional intelligence officers and unprofessional ones. No one really is beyond reproach and mistakes happen. Rules are sometimes bent or broken in the heat

of the moment, or by calculated design. Given these extraordinary times and the extraordinary powers we are contemplating in this bill, mistakes are bound to happen and abuses, I suggest, will no doubt occur.

Honourable senators, this bill has profound implications for our country. In the name of national security and the so-called fight against terrorism, the government intends to infringe upon some of our most fundamental civil rights. Among the civil liberties affected by this legislation, this bill will strip away many of the rights to privacy we have grown accustomed to believing were inviolable. It will severely curtail our access to information of what the government and police are up to in the name of terrorism and national security. The consequences of this quite formidable bill are as yet unforeseeable. The devil, as always, is in the details and in this case, in their application.

In some respects at least, the threat posed to our civil democratic society by Bill C-36 may perhaps be more real than that posed by terrorism. I believe, however, that under the present circumstances we have to, albeit reluctantly, subject Canadians to the conditions Bill C-36 will impose on all of us, but only — and let me be clear — with appropriate supervision and a strict time limitation. Without the latter it is my fear that, like the War Measures Act and the Income Tax Act, both intended as temporary legislation, Bill C-36 will be with us for a long time.

Honourable senators, Canadians should understand that the defeat of the Taliban in Afghanistan will not bring an end to terrorism. Neither will the capture or death of Osama bin Laden or his disciples. Terrorism will only end when its root causes are addressed. Until there is no poverty, no discrimination, no people struggling anywhere to free themselves from oppression and occupation, there will always be terrorism somewhere. If history has taught us anything, it is that these causes will never be totally eradicated.

In fact, I fear that eliminating bin Laden and his cohorts may well have just the opposite effect — creating martyrs and inflaming passions. Violence, as we have sadly seen over the years, begets violence. However the threat of terrorism, the possibility of terrorist activities in Canada, in my opinion, is not serious enough to justify the types of measures being proposed in this bill to be instituted on a permanent basis. This bill is intended to respond to the particular set of circumstances that came about because of the events of September 11 of this year. How long would it take to deal with the fallout of those tragic events is anyone's guess. It could be months or it could be years. In both cases, I think it is imperative that proper supervision and a set time limit on the powers of this bill be set out so that we in Parliament can have the opportunity to revisit it once the emotion and rush of present events have passed.

Honourable senators, since September 11, the government has done what can only be described as a lamentable job in educating the public on this issue. Within the context of the issue here before us, it has failed, beyond vague generalities, to explain to Canadians why the extraordinary measures contained in this bill are needed. That is why we have such loud and harsh criticism of this bill.

Many have questioned why this bill, with its wide-ranging implications for our civil society, is being pushed through at such a fast pace. We in the Senate once again are succumbing to pressure from the other place.

• (1550)

Honourable senators, if this bill passes as it is, the federal government and our various police and security forces will have far greater rein to intercept our communications, pry into our private lives and detain citizens on suspicion rather than proof. Many Canadians have expressed the fear that the ugly practice of racial and cultural profiling will become more common.

Governments, police and security forces will be free to engage in each of these activities with little or no independent supervision. The government tells us we can trust them and the police to look after our nation's best interests unimpeded by public debate and accountability. Unfortunately, past experience has shown otherwise.

I realize that terrorists do not play by any rules, at least, not the rules of decent civilized society. They maim and kill the innocent with scant thought for human life or the dignity of others.

I reluctantly accept the notion that governments, police forces and security agencies sometimes need extraordinary powers to combat those who would murder our friends and fellow citizens and those whose hatred and madness blind them to usual human decency. However, these powers must be carefully circumscribed, controlled and checked. There must be some form of countervailing power or some method to ensure that the extraordinary does not become the common, the accepted and the status quo. Our civil liberties are the bedrock of our democratic society. They should be tinkered with only if proper safeguards are in place to eliminate abuse and misuse.

Canada has decided to join an international effort to hunt down and punish the people and organizations that planned and executed the attacks of September 11, and, indeed, other terrorist acts. In order to achieve this goal, we, unfortunately, must take off our civilized gloves and engage in some rude, bare-knuckled confrontations. These confrontations require different rules than those we habitually use, and these rules, in turn, require extra powers. I, for one, am prepared to grant them, although with reluctance and caution. However — and this is a big “however” — the powers we are granting to authorities in this bill cannot be given forever and cannot be given without appropriate vigilance. These powers cannot, as I said a moment ago, become the unchecked status quo.

To this end, I believe two amendments must be made to Bill C-36. The first one deals with oversight. The extraordinary powers this legislation gives the government, police and certain other agencies and departments need to be supervised. The temptations are simply too great to cut corners, to take unnecessary liberties and to hide unpleasant facts from public view.

If we will allow people to exercise powers like those contained in this bill, we need ways to police the police, so to speak. The way to accomplish this, as Senator Grafstein suggested in committee, is to appoint an officer of Parliament who will be independent from political interference or pressure from police and security agencies and the like, and who would be given the appropriate powers and authority to act as a public watchdog over the actions of those engaged in the activities authorized under this bill.

The second provision that must be added to this bill is a full sunset clause. At the end of a specified period — some honourable senators have suggested five years — the government of the day would have to come back to Parliament to explain once again, why, if indeed it were to be the case, it felt the act needed to be renewed. That would allow everyone, particularly parliamentarians, to debate the issue fully and publicly to see if indeed the government still needed the authority. The provisions of a sunset clause as proposed by Senator Lynch-Staunton would also be a warning to those who would abuse the system.

Without those two important fundamental amendments, honourable senators, I cannot in all good conscience vote for this bill.

**Hon. Laurier L. LaPierre:** I have now come to a crossroads that I did not know I would ever have to face. I have spent the greatest part of my life attempting to expand the margin of freedom for myself and for others. Yet I find myself, now 72 years old, confronted with the necessity of having to restrict that margin of freedom for myself and for others.

**Senator Kinsella:** Do not do it.

[Translation]

**Senator LaPierre:** Please do not put words into anyone's mouth. This is a very tragic time for everyone. It is not a simple question of politics. It is a profoundly moral issue and, for once in your life, be serious.

[English]

Honourable senators, I wish this bill were not here. I find it tragic, difficult and, above all, dangerous.

I am not one of those who think that September 11 is a new moment in the history of the world, because it is not. I do not think that the events of September 11 are more tragic than the millions of people who die everyday under terrorism. No one goes to guard them and kiss them. In the final analysis, countless people on this planet suffer terror. Americans are not suffering more; Canadians are not suffering more.

On the other hand, I am struck by a simple fact: Geography has imposed upon me a dimension of reality that few other people on the planet have. The dimension of reality is that my security, the security of my country and the prosperity of my country are, to a large degree, determined by what we will do over the next few months.

I do not agree to be caught into the vortex of hysteria, paranoia and the astonishing claims that have been made by virtually everyone from President Bush down, that this is the greatest evil we have ever faced. Millions of Jews died not so long ago within our memory, and that was a greater calamity than the one I face now. However, I am stuck at where to find balance in this astonishing thirst and hunger for the widest possible margin of freedom and the security that my grandchildren must have in order to grow to my advanced age.

I have looked at this bill, and I would have preferred that the first report of Senator Fairbairn's committee had been accepted. I must face the fact that it was not and that at the end of the day, I will have to accept this bill, even if I vote against it, even if I accept the 10 or 12 amendments proposed and so ably defended by the people who have already spoken, who will in the future, and whom I respect. I will still have to face living with the bill.

I ask myself this: How can I, after the bill has been passed, make it even better? Vigilance is the price of liberty, but taking risks is the price of democracy, and in the name of democracy I shall take a risk. I do not think that Mr. Chrétien, any more than Mr. Clark or Mr. Day or any other political leader, is an evil person. I do not think they have anything to gain by this bill. I can only trust. I know that they are doing what needs to be done in the light of the dimension of the reality in which they feel their responsibility binds the Canadian people. I accept that. I will take the risk to trust them.

However, I should like, honourable senators, for us to take very seriously that there is no ombudsman and that the sunset clause will be here only for two of the most important stipulations in that bill.

• (1600)

I do not feel totally satisfied by the reports that are to be given to us, prepared by the people mostly concerned by them. I am not overwhelmed by the advisory committee that has been suggested by the Fairbairn committee, nor am I satisfied that the money will be there to teach the police how to educate themselves. There should be penalties in the bill for those who abuse their power in the exercise of the stipulations of the bill.

What I want us to do — honourable senators will forgive me; I am your youngest son — is to act as ombudsmen. Let us not forget that we will not only change this at the end of the day. We may satisfy ourselves in our intellect and our sense of emotion and democracy. I do not disabuse myself on the value and the purposes of these amendments. Why can the Senate not become the ombudsman of what will be after this bill is passed?

People say to me that the Senate is irrelevant. In the thousands of e-mails that I have received, they say, "What are you old men doing? You are irrelevant. Why do you not go home?"

Honourable senators, I want us to be relevant now in the process of becoming the guardians of the liberties of the Canadian people. I want us to admit, rather solemnly, that the

Senate shall be the ombudsman of this bill, that we in this chamber will not be satisfied with self-serving reports. Although I do not understand the rules well enough to know how to do this, I should like us to form a committee or do whatever is necessary to become the instrument that holds in the light of the day the conscience of those who govern Canadians.

We have the power to do that, honourable senators. We have the power to alter significantly the life of this bill. We have the power to protect my friend here and her people who have been abused — I have seen it — since September 11. We have the right and the power to supervise the application of this bill. We are the guardians of the liberty and the freedom of the Canadian people. We can maintain the balance that exists between security and freedom.

**Hon. Marcel Prud'homme:** Honourable senators, I have a question for the Honourable Senator LaPierre. I find it extraordinary that we find ourselves with such opposite views, and yet we expect the same end result.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Prud'homme, I am sorry, but are you asking a question?

**Senator Prud'homme:** Yes.

The Honourable Senator LaPierre has said in his speech that we must be guardians; we must be relevant. That is exactly what Senator Wilson has said.

[*Translation*]

I ask Senator LaPierre to believe me when I say that the best way of being guardians, the best way of being relevant, in fact, is sometimes, in very important cases, to not be afraid to take a stand that is contrary to that of the House of Commons.

Honourable senators, Senator LaPierre is full of good intentions and possesses many virtues, even his great desire to become this guardian, but he will find himself unable to do so if he does not have the leadership of the government behind him. We can become the guardians and intervene, but we cannot do so without the backing of the government. I would like to hear Senator LaPierre's comments on this point.

[*English*]

**Senator LaPierre:** Honourable senators, I admire what the Honourable Senator Prud'homme has done. I admire the great courage that he has had all of his life in advocating causes that are not very popular. However, I find myself today not needing a crutch of any kind.

No doubt he is right in saying that I will not get anywhere as a guardian unless the government is on my side. However, I hear everyone in this house saying that we must not be prisoners of the government or of the House of Commons. Consequently, this is what I am trying to say: stop being a prisoner of them and act. Stop taking refuge behind the cloaks of the government or the House of Commons. Do what you must do.

[ Senator LaPierre ]

I am not talking about relevance here, honourable senators. I am talking about the willingness and the determination to protect the rights of the Canadian people, on our own, without the crutch of the government, without the crutch of the Leader of the Government or that of the Deputy Leader of the Government or that of the Leader of the Opposition. Act on your own dignity and your own power. That is what I am talking about.

**Senator Stratton:** I want to see how you vote tomorrow.

**Senator LaPierre:** Honourable senators, with all due respect, I find that highly immoral. We vote by conscience here, sir. I will vote for this bill because I have thought about it for a long time. The Honourable Senator Stratton ought to keep his mouth shut. Thank you very much.

**Hon. Terry Stratton:** Honourable senators, I have let the Honourable Senator LaPierre get away, today, with swearing in this chamber again. I want that swearing on the record and I want his apology for that swearing now.

**Senator LaPierre:** Honourable senators, if I swore, I apologize.

**Hon. Douglas Roche:** Honourable senators, the representations I have received opposing Bill C-36 concern me greatly. A friend wrote to me to say that his long experience has instilled in him "a deep suspicion of security measures to safeguard liberty and democracy."

Larry R. Shaben, President of the Muslim Research Foundation in my home city of Edmonton, wrote to complain that the powers being given to the government under Bill C-36 "...are clearly being enacted to initially target Muslims." He added, "Next the target could be Jews or Asians or Aborigines."

The Sisters of Charity in Calgary urged me to try to stop the bill because they claim there is no provision for an overseeing agency to have the authority to overrule the security forces. The Ukrainian-Canadian Congress said the bill is "...an affront to all Canadians who are proud of our way of life and cherish our civil liberties," adding that the Senate "...is being intimidated into passing this terrorist bill quickly."

These are just a sampling of the comments that I have received. Clearly there is great concern in the public. The question I have asked myself is: Is this opposition to Bill C-36 justified? Should the bill be stopped?

• (1610)

I followed the testimony before the Senate committee as best I could. Frankly, I have tried to reach a conscientious answer in the resolution of the great conflict between assuring security from terrorism and not violating civil rights and liberties.

I am conscious of the admonition of the UN High Commissioner for Human Rights, Mary Robinson, who said that governments must refrain from any excessive steps that would violate fundamental freedoms and undermine legitimate dissent.

I believe that history will record that what happened on September 11, 2001, was a watershed moment for humanity. On that day, we learned that the global security agenda became a human security agenda, and that no one, anywhere, was inviolate against terrorists in their own community, turning everyday means of transportation into weapons of mass destruction. On that day, it was driven home that terrorism has developed into a sophisticated network of political, economic and technical collusion which goes beyond national borders to embrace the whole world.

In fact, September 11 brought the world into a new paradigm. That was the word used by law Professor Errol P. Mendes of the University of Ottawa when he appeared before the Senate committee. I think the word is apt. I agree with him when he says that we have to use our wisdom to meet this new paradigm, "without allowing it to overwhelm our fundamental values of human rights, equality and multiculturalism."

Some of the responses to the new paradigm, such as the relentless bombing of Afghanistan, are wrong. I have said so many times in this chamber. My heart continues to go out to the countless innocent civilians in Afghanistan who have been killed, maimed or displaced by the bombing campaign. Canada has a responsibility to work to bring terrorists to justice without inflicting a parade of death and destruction on the innocent.

Other responses to the new paradigm, such as the roundup of many Muslims in the United States and the creation by presidential order of military tribunals to try and execute non-citizens in secret by majority vote, are also wrong.

Canada must not follow the U.S. response in which the rights of freedom are denied in order to attack terrorism. However, the part of the Canadian response to the new paradigm found in Bill C-36 is of another order. Though it may not be palatable, it is necessary. When terrorist organizations use their own followers as weapons to be launched against defenceless and unsuspecting people, it becomes necessary to build into society a right to defend oneself against terrorism. Terrorist activities in our country must be able to be identified before violence takes place.

Anyone who doubts this has not read UN Security Council Resolution 1373, adopted unanimously on September 28, 2001. This is a remarkably tough resolution, which makes strong demands on all states. The resolution orders states to prevent and suppress the financing of terrorist acts and freeze all funding thereto; deny safe haven to terrorists and prevent their movement by effective border controls; take appropriate measures in conformity with national and international law before granting refugee status; and strengthen coordination to stop transnational organized crime and the illegal movement of nuclear, chemical, biological and other potentially deadly materials and other measures. Under Resolution 1373 states are to report to the UN by December 28, 2001, on the steps they have taken to implement these measures. Resolution 1373 is the parent of Bill C-36.

Does Bill C-36 exceed the demands of Resolution 1373? That may be a judgment call. However, it cannot be denied that the Government of Canada responded to widespread apprehensions, including from the special Senate committee, that it had gone too far in the original bill, and it made important amendments. It is the amended bill that was passed in the House of Commons and which is now before the Senate. However, much of the criticism I am receiving is directed against the original bill and does not take account of the changes that have been made.

The definition of terrorist activity has been tightened to ensure that the focus is on the intended terrorist evil rather than the lawfulness or unlawfulness of the act that underpins it. Work stoppages, even if illegal, will not now be considered terrorism.

Preventive arrests and investigative hearings, two potential invasions of civil rights, have now been circumscribed. Before a police officer can arrest a person on suspicion of terrorist activity, the written consent of the Attorney General must be obtained. The detention after arrest must be subject to judicial review within 24 hours. Also, investigative hearings cannot be held without the prior consent of the Attorney General. Moreover, the Attorney General would be required to table annual reports in Parliament detailing how powers like the preventive arrest ones are being exercised. Both the preventive arrests and investigative hearings provisions now include, albeit weak, five-year sunset clauses, after which time they would have to come again before the House and the Senate.

It is important to note that a non-discriminatory provision has been included to ensure that political, ideological or religious expression cannot, by itself, be considered terrorist activity. Thus, visible minorities should not be singled out for differential discriminatory treatment. On this point, the Liberal majority in the Senate committee made an important observation in urging the government to enable minority groups to share in ongoing training to make security officers sensitive to the ethnic diversity of Canadian communities.

In their contribution to the observations of the committee, Progressive Conservative senators have continued to call for the application of a sunset clause to virtually all parts of the bill. I support Senator Lynch-Staunton's amendment.

Progressive Conservative senators are also calling for the appointment of an officer of Parliament to monitor the exercise of powers under this bill. The government does not want such an officer. However, the oversight mechanisms and review processes built into Bill C-36 are substantive; and, as Senator Carstairs said two days ago, it would be logical for the Standing Senate Committee on Human Rights to take on the responsibility of also reviewing the implementation of this important bill.

Finally, honourable senators, there remain two short points to make. First, Bill C-36 does not operate outside the Charter of Rights and Freedoms that is a hallmark of Canada's dedication to preserving civil liberties. Comparing Bill C-36 to the War Measures Act, when there was no Charter, is not valid. We must continue to put our faith in the judicial enforcement of the

Charter of Rights and Freedoms. It is a near certainty that Bill C-36 will end up in the Supreme Court of Canada — and that is yet another safeguard.

Second, and here I return to the new paradigm, Canada is a vast geographical area adjacent to the United States, the most powerful country in the world, which has already suffered the massive attacks of terrorism. Canada cannot afford to become, or be seen to become, a staging ground for future terrorism directed at the U.S., let alone ourselves. Our economy, our trade, our way of life, depends on ready access to the U.S., and Canada must give assurance to the U.S. that future terrorists will not be spawned inside Canada.

Moreover, the UN Security Council commands us to take stringent steps.

- (1620)

Bill C-36 takes these steps without undue undermining of civil rights and liberties. Canada's ability to respond to the new paradigm with the building of a stronger body of international law requires us to ensure that Canada itself is secure.

**Hon. Joan Fraser:** Honourable senators, I had prepared some more general remarks about this bill. However, I should like to address first Senator Lynch-Staunton's amendment and, second, the proposal from Senator Di Nino.

I speak as a member of the Special Senate Committee on Bill C-36 whose pre-study report recommended a general sunset clause. It is true that the committee recommended that in its report. However, I must tell honourable senators that I did not believe then in a general sunset clause, and I still do not. In fact, I believe in it even less now.

Sunset clauses are not part of our parliamentary tradition. They are an import from the United States. They probably make some sense in the United States where Congress is such — I am trying to think of a more complimentary word than “undisciplined” — a freethinking body that it is difficult to focus its attention on any one topic unless there is an emergency, such as the actual expiration of legislation. Hence, sunset clauses may be useful in the U.S. context. I do not think that is the case in our system.

I think that sunset clauses have the serious potential to be pernicious in their effect, and here is why. It was summed up, although this was not his intention, by an honourable colleague who said this several times during our deliberations, “I do not care what you do with the bill. I do not care what the bill says as long as it has a sunset clause.” That is about as dangerous an approach as it is possible to have.

If you have a general sunset clause there is a natural tendency to say, “I will think about what may be right or wrong with this legislation five years down the road. We are all busy. We have other things to do. We will think about it when the sunset day arrives, so we will let it go until then.” However, in the five-year interim period, heaven knows what abuses may be committed in the name of heaven knows what principles.



I thought it was more important to build into every portion of this bill as many safeguards as possible: safeguards in terms of the actual phrasing of the law, safeguards in terms of the processes that were set down, safeguards in terms of guaranteeing due process at law, safeguards in terms of guaranteeing adequate information to the public. In my view, all of those safeguards will be far better safeguards of Canadians' liberties than any sunset clause could ever be. They are all now in the bill.

Senator Roche has just reminded us of the degree to which this version of the bill differs from the one that was before us at pre-study. I have just mentioned the safeguards. We have better definitions of "terrorism" and "facilitation." We have guarantees that the minister's certificates will expire and, before that, we will know they exist because they will be published in the *Canada Gazette*. The roles of the Privacy and Information Commissioners have been restored. Appeals have been built in; due process has been built in. The ability for Canadians to have access to the courts at every stage of every part of this bill has been built in.

If I did not think we needed a sunset clause at the pre-study stage, I certainly do not think we need one now. However, we do have a sunset clause affecting the bill's two most dramatic departures from what are traditional practices in this country; that is, the clauses affecting the establishment of investigative hearings and preventive detention.

**Senator Kinsella:** Did you vote for the report?

**Senator Fraser:** I did not vote for it in committee, honourable senators, and I was absent from the Senate at the moment the report was voted on.

**Senator Kinsella:** But you will be voting against these two sunset clauses in the bill?

**Senator Fraser:** No. I was about to say that I can understand why those sunset clauses might be useful and why they might give some reassurance to Canadians. I do not think they will do any harm because of the safeguards that have been built into the process.

However, I think a generalized sunset clause would be a very bad idea. I shall vote against Senator Lynch-Staunton's amendment not just because I sit as a Liberal but also because I believe that it would be the wrong way to go.

I wish to address Senator Di Nino's suggestion that we need a parliamentary officer. This was part of the pre-study committee's report and I did vote for that recommendation. At the time I thought that it sounded like a very interesting and perhaps useful idea. However, when we came to study the bill, testimony presented to the committee has persuaded me that I was wrong — for two reasons.

The first and less important reason is that, as the Privacy Commissioner pointed out to us, you would be likely to get turf squabbling among existing federal officers of Parliament. That would undoubtedly occur and would not be particularly helpful to the greater cause of the public interest. That in itself was not enough to persuade me that it was not the way to go; rather, it was the federal-provincial argument that persuaded me that an officer of Parliament was not the appropriate way to go at this time.

A great portion of this bill will depend on the provinces for its implementation. The provinces are constitutionally responsible for the administration of justice, and our largest provinces have their own police forces that will be charged with the implementation of much of this bill. Provincial governments do not take lightly, as we have learned, the matter of the Senate establishing oversight mechanisms that will intrude in their jurisdiction.

Even that might not be enough reason to vote against establishing an officer of Parliament, should an amendment proposing one be put in front of us, if there were still no other way of finding out what the provinces will be up to under this bill. However, we will be told what they will be up to. The Minister of Justice has won federal-provincial agreement so that all provinces will provide a wealth of information about their activities under the investigative hearing and preventive detention provisions, the ones that rightly have concerned so many of us a great deal.

Discussions are continuing with the provinces now about ways to provide information that goes beyond bare data to provide qualitative analyses of the work that will be done as this bill takes effect. The desire is to include input from Canada's minorities so that, as the qualitative work goes forward, it will tell us how our minorities are living with this legislation in place and what has been happening to them, which we all agree is something about which we will need to be very watchful.

Ensuring that there is cooperation is far better than launching into a traditional federal-provincial battle over jurisdiction. While federal-provincial battles over jurisdiction are entertaining for lawyers and great fun for people who like political fights, they do nothing to help the Canadians whose interests we are here to protect. Therefore, I will vote against establishing an officer of Parliament, should such an amendment be proposed.

• (1630)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a comment. Senator Fraser has repeated what we have heard elsewhere, which is that a sunset clause is not in the parliamentary tradition. She said that if we were to adopt a sunset clause, it would be an import from a totally different system of government where its uses may be found necessary, whereas in our case, because we have the British parliamentary system, it is not found to be part of that tradition.

I should like to remind Senator Fraser and others who share in that canard there was an equivalent bill to this bill in the debates of the House of Lords called the Anti-terrorism Crime and Security Bill. The House of Lords made 70 amendments to the bill, and the House of Commons agreed to 20 of those amendments. One of the amendments was to introduce a sunset clause. I will not read it, but I would be glad to send Senator Fraser the appropriate documentation. It was a sunset clause with various deadlines, depending on the clauses. In some cases it was only one year, in other cases it was five years and in other cases it was two years. The House of Lords felt it appropriate that, depending on the clauses, the sunset clauses would have various expiry dates.

If the British House of Lords finds that in its tradition a sunset clause is perfectly proper, I think that we who base our system on the British system should be quite comfortable in introducing one here also.

**Senator Fraser:** I thank Senator Lynch-Staunton for his comment. It is my understanding that the British bill, which has been given such trouble in the House of Lords, went much further and was far more stringent and alarming from the point of view of civil liberties than our bill. An expert who appeared before us at pre-study said that even in the pre-study version of the bill, what we were considering was closer to what Britain already had and that Britain was going much further down the road with its new legislation than we wanted to go.

Perhaps the recalcitrance of the House of Lords becomes more understandable. I would remind honourable senators that we have a Charter of Rights to which every word in our bill is subject, and the British, of course, have no Charter of Rights.

**Senator Lynch-Staunton:** Honourable senators, I am sorry, but the British have had the European Bill of Rights for some time, which I would urge the honourable senator to read.

[Translation]

**Hon. Pierre Claude Nolin:** My question is for Senator Fraser. If I understood her correctly, her first argument is that a clause resembling the one found in Senator Lynch-Staunton's amendment would have an adverse effect, in that the sunset clause could lead people to forget the notion of protecting fundamental rights, given the clause's preemptory time limit.

In the body of the first paragraph of the motion in amendment, there is specific reference to the fact that the provisions would cease to be in effect after five years or any earlier date fixed. I will read the first paragraph of Senator Lynch-Staunton's motion in amendment, as found on page 3 of today's Order Paper:

147.1(1) The provisions of this Act, except those referred to in subsection (2), cease to be in force five years after the day on which this Act receives royal assent or on any earlier day fixed by order of the Governor in Council.

[ Senator Lynch-Staunton ]

This means that the government can decide by order that after six months, certain clauses, or the entire act, would cease to be in effect. Does Senator Fraser see it the same way?

**Senator Fraser:** My comments on the sunset clause were more general. I am not in favour of them. When it comes to allowing the government to modify or abolish a clause when it sees fit, our parliamentary system already gives the government the power to do so at any time. We do not need a sunset clause to do this.

**Senator Nolin:** If an act sets out a time period in which the act is valid and does not authorize the Governor in Council to terminate it before that time period has expired, even if the government wishes to do so, it will have to come before Parliament in order to obtain such authorization. I hope that the honourable senator agrees with me on this.

The government has many powers, but it certainly does not have the power to exceed a power that it has not been given. Does Senator Fraser agree with me?

**Senator Fraser:** Obviously, but I do not believe that that is what I said.

**Senator Nolin:** Senator Fraser said that the government can abolish a part of the act because it has the power to do so. It does not have this power unless the act grants it this power.

**Senator Fraser:** Senator Nolin will have to excuse me, but I was referring to the normal context in which a majority government, with good reason, can convince a majority of Parliament to vote along these lines.

**Senator Nolin:** Fine, I understand.

[English]

**Hon. David Tkachuk:** Honourable senators, I have a question for the Honourable Senator Fraser.

**The Hon. the Speaker:** I am advised that Senator Fraser's time has expired.

**Hon. A. Raynell Andreychuk:** Honourable senators, I move the adjournment of the debate.

**The Hon. the Speaker:** Honourable senators, it is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, that further —

**Hon. Sharon Carstairs (Leader of the Government):** No.

**The Hon. the Speaker:** I received a motion from Senator Andreychuk that debate be adjourned. It is not a debatable motion, but it is a votable motion. I have started to put the question and I am obliged to finish.

It is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, that further debate be adjourned to the next sitting of the Senate.

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.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Accordingly, there will be a standing vote. Please call in the senators. There will be a one-hour bell, unless there is agreement for another period.

**Hon. Bill Rompkey:** Honourable senators, I suggest a half-hour bell.

**Senator Stratton:** No agreement. One hour.

**The Hon. the Speaker:** There is no agreement. Call in the senators.

• (1740)

Motion negated on the following division:

#### YEAS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Bolduc	Murray
Buchanan	Nolin
Carney	Prud'homme
Comeau	Rivest
Di Nino	Roche
Gustafson	Spivak
Johnson	Stratton
Kelleher	Tkachuk—23
Keon	

#### NAYS THE HONOURABLE SENATORS

Austin	Hubley
Bacon	Jaffer
Banks	Kirby
Bryden	Kroft
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Mahovlich
Cook	Milne
Corbin	Moore
Cordy	Morin
Day	Pearson
De Bané	Pépin
Fairbairn	Phalen
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Robichaud
Fitzpatrick	Rompkey
Fraser	Setlakwe
Furey	Sibbeston
Gauthier	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Wiebe—48

#### ABSTENTIONS THE HONOURABLE SENATORS

Joyal  
Watt—2

**The Hon. the Speaker:** Honourable senators, we will now resume debate on Bill C-36 and the amendment of Senator Lynch-Staunton. I last recognized a senator on the side of the opposition. My practice, although I do not always follow it strictly, is to alternate between the two sides. I now look to the government side.

**Senator Prud'homme:** Honourable senators, before His Honour proceeds, could he please advise those of us at the very end of the chamber. We do not challenge his fairness, but, if I remember well, I think the senator who asks for the adjournment of the debate, even though the adjournment is refused, should be given priority if she or he wishes to speak. I am in His Honour's hands.

**Some Hon. Senators:** No!

**Senator Prud'homme:** Oh, honourable senators, stop shouting. Learn the rules. For those who do not know them, His Honour will explain. Stop shouting or I will be shouting a lot during this long night tonight.

Honourable senators, I always abide by His Honour's rulings, by his intelligence and his “savoir faire.” How far out am I in my interpretation of the rules?

**The Hon. the Speaker:** Honourable senators, Senator Andreychuk had an opportunity to speak and moved adjournment of the debate. I take it she does not wish to speak now. I have risen and indicated to the chamber where we are on the Order Paper. The next thing for me to do is to ask if the house is ready for the question.

**Some Hon. Senators:** Question.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** On a point of order, I think we are almost all there. The practice of debate going back and forth to which His Honour has alluded is one with which this side finds great sufficiency. If there is no speaker on the other side, then I am sure the Honourable Senator Andreychuk will be pleased to participate in the debate. We agree with His Honour that this is the tradition. The indication from the government leader is that the other side has no one to speak.

**Senator Andreychuk:** Honourable senators, to clarify, I would yield to another senator.

**Senator Carstairs:** We wish to hear from the Honourable Senator Andreychuk.

**Senator Andreychuk:** Honourable senators, I rise to speak to Senator Lynch-Staunton's amendment to Bill C-36. I wish to support the comments of Senator Lynch-Staunton, Senator Kinsella and the deputy chair of the special committee on anti-terrorism, Senator Kelleher, in support of the amendment.

In order to shorten the time of my remarks, I would ask senators to take into account the comments I made in response to Senator Stratton's inquiry on Monday of this week, together with my questions and observations following Senator Carstairs' speech.

First, I should like to dispel some myths that cloud our understanding of Bill C-36 and the need for this amendment. In the Liberal senators' observations to Bill C-36, I think it is unfair and inaccurate to state that the government was forced to address the threat of terrorism in North America after September 11, 2001. In fact, the government knew about terrorism long before September 11 because the Special Senate Committee on Security and Intelligence in its report of January 1999 noted the type of terrorism espoused by bin Laden and al-Qaeda and the threat they posed to the North American continent.

In addition, bin Laden specifically was identified in the report and other terrorists were identified, both through the Senate report and from public statements made by CSIS. There is ample evidence for Canadians to be aware and to take some comfort from the fact that that was before September 11. Under the authorities provided in our present law with respect to national security, and a whole host of other legislation, people were being detained and are today being detained as national security risks, including those suspected of having some link to bin Laden.

I state again that what was lacking were sufficient resources and some coordination at the Privy Council Office or at the Prime Minister's Office with respect to national security. To say that this issue of terrorism affecting North America came after September 11 does not jive with government records. The government had been taking steps and the administration had been taking steps.

Since September 11, authorities have received more resources, particularly for border scrutiny and with the overreaching provisions of the Immigration Act, Bill C-11, and there has been action. Canadians should not be asked to believe that nothing is happening today.

A second myth in the observations of the Liberal senators is that security itself is a precondition to liberty. I would point out that senators' speeches made pursuant to Senator Stratton's human rights inquiry on Monday and other speeches made in this chamber will show clearly that the right to security and other individual rights and freedoms all must have weight. One does not wipe out the others.

Nations, in providing security for citizens, must balance other rights and freedoms. It is not a precondition case, but a question of proportionality as has been stated again and again. In fact, Professor Monahan has been quoted here several times. When he came before the committee, he started out indicating that security is a precondition to liberty.

• (1750)

In his testimony, Professor Monahan said that if you do not have good security, you do not have liberties. He went on to say that there comes a point when, if you have only security, you have no liberties, and that in every case it is a question of looking at the circumstances and the balance. That is how I understood his evidence.

In fairness to Professor Monahan, let me say that he clearly understood the proportionality. He gives great weight to security, as many of us do in these times of crisis, but he does not rule out the need to have the proportion of balance.

Honourable senators, I want to underscore again that immigrants who come to Canada, and many who form minorities — and often, today, visible minorities — overwhelmingly are people who are grateful for the opportunity to live in Canada and with great zeal go about the business of becoming responsible Canadian citizens who are proud of this country and the advantages it has given them. One needs only to go to any minority community, in its associations, in its churches, mosques and synagogues. Emotional praise is often given for the right to be on Canadian soil.

Honourable senators, make no mistake that the process of integration is difficult and sometimes fraught with misunderstanding, prejudice, discrimination and, sometimes, downright hostility. Blending one's own culture into the milieu of Canada is in itself an overwhelming but commendable task.

When terrorism or some other horrific act raises the need for more security for Canadians, it always seems to profile a segment, however small, of a minority community, and an entire minority suffers the fallout. While it may not be the intention of the government or the laws of the time to do so, history has shown us that the application of the laws and the sign of the times, in fact, do just that.

In a country like Canada, we must profit from our mistakes of the past. One senator in the committee indicated that we would never repeat the mistakes of the First and Second World War. I do not accept that. While we may not use the same methodology, Canadian history has pointed out repeatedly that when the country feels threatened, governments have not acted with a measured hand but a heavy hand. That is why Parliament is necessary as a levelling force. The tools of government increase, and often the tools of the individual diminish.

Honourable senators, to make my point, I wish to quote from a book entitled *Park Prisoners*. Professor Bill Waiser, at page 6, when speaking of internees who were technically prisoners of war in the First World War, stated the following about the situation:

The coming of the war compounded the men's plight and also caused their numbers to swell. Immigrants from Austria-Hungary — already scorned for their language, religion and habits — now faced the added stigma of being enemy aliens and were dismissed from their jobs in large numbers for patriotic reasons. Many had been in the country for only a few months. It was an ironic twist of fate that almost half the record of 400,000 immigrants who had entered Canada the year before the war were from central and southern Europe.

He goes on to say:

With the outbreak of the war, the Canadian public grew increasingly alarmed about the presence of these men in their midst. Any peacetime toleration of these immigrants was now overridden by concerns about their nationality and loyalty. And it is easy to see why they were feared. Since these migrant workers had no intention of remaining in Canada, most had not bothered to become naturalized and hence were still citizens of their home countries. Many were still classified as reservists in the Austro-Hungarian army. In their search for work, these men also travelled to and from the United States, an unfortunate pattern since it was widely believed at the beginning of the war that American-based subversives posed the greatest security threat to Canada. As a result, Austro-Hungarian workers became objects of suspicion and paranoia, and the federal government was inundated with demands to do something about them, along with other persons of enemy nationality. Close surveillance revealed, however, that Canadians had nothing to fear from these people. Colonel A.B. Perry, commissioner for the Royal Northwest Mounted Police, said as much when he

advised Ottawa in late February 1915 that he had discharged all but one of "our high-priced Secret Service Agents," including the man disguised as a barber in Edmonton, who had been hired by the force at the beginning of the war to infiltrate the immigrant community. "The closest investigation," Perry reported from Regina, "has not revealed the slightest trace of any organization or concerted movement amongst the alien enemies." As far as the commissioner was concerned, public fears about these people seemed to be groundless; his men had yet to discover a single case of sabotage. This assessment of the situation in western Canada was echoed in the House of Commons one year later by William Martin, a Saskatchewan MP and future premier of the province, who calmly observed in response to heated calls for increased vigilance, "I am...inclined to look upon these people...as being entitled to a certain amount of consideration."

Honourable senators, the actions that we took at the outbreak of the First World War were not isolated. We repeated, as Senator Lynch-Staunton has pointed out, the same mistakes in the Second World War and in the FLQ crisis. Has our memory faded as to the Communist threat and some of the excessive investigations there? While we were investigating Canadians for threats of Communism here, Stalin went unchecked by the Western media and the main Western governments.

What is the message here? We cannot, if we are to progress as a nation, continually jump to the conclusion that anyone who shares the same background, religion or political or ideological beliefs is a terrorist. The mere fact that Osama bin Laden professes a belief in a certain Islamic faith should not tar everyone who professes the same beliefs. Just because some of the terrorists who perpetrated the atrocity of September 11 came from Egypt, Afghanistan or Pakistan should not mean that all immigrants from those countries should fear being included in the same assessment, if we have learned from the past.

While we have changed our modalities and even refined our laws, the undercurrent of being less than measured against a minority in our search for security for the majority cannot continue because the price that the minority is paying for our security and theirs is more than the average Canadian will have to suffer. Therefore, we should be very measured and not create more tools than are necessary, or, if we create these tools, we should continuously have the proper oversight to ensure their proper implementation.

In our representative democracy, Parliament grants these tools, not the government. Parliament must be the double-check over the executive. The tendency to ask for more tools by police and government is constant through criminal law. The measured approach in granting them is the responsibility of Parliament.

In a time of crisis, we cannot say that we will give blanket trust to our government and that that is our only option. This Parliament must maintain its role.

Further, we must remind ourselves that when we take these actions the effect in minority groups lasts a very long time. It is of small comfort to Canadians of Ukrainian descent in 2001 that they are still asking for the recognition of improper internment, knowing full well that the apologies requested for such internments are small comfort for the decades of harmful effects they have felt as Canadians. People of Japanese heritage, Italian heritage and others will give you the same comments, not to mention the Chinese and the head tax.

• (1800)

Second, it is not just Bill C-36 in isolation.

**The Hon. the Speaker:** I am sorry to interrupt, but I must now draw the chamber's attention to the clock. It is six o'clock.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we would be agreeable to not seeing the clock so that all senators may have an opportunity to express their views on the items on the Order Paper.

[English]

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Senator Kinsella:** I do not know. What are we being asked to agree to?

**The Hon. the Speaker:** Senator Robichaud has asked if there is agreement that we not see the clock to give Senator Andreychuk an opportunity to complete her remarks.

**Senator Kinsella:** We will see the clock and come back at eight o'clock.

**The Hon. the Speaker:** There is no agreement, honourable senators. The rules are clear. I will read the specific rule if honourable senators wish, but I now must leave the chair. We will resume the sitting at eight o'clock.

The sitting of the Senate was suspended.

• (2000)

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

**The Hon. the Speaker:** Honourable senators, the sitting is resumed. Senator Andreychuk has the floor.

I am obliged to advise the Honourable Senator Andreychuk that her 15 minutes have virtually expired. The honourable senator has less than one minute remaining of her allotted time.

**Senator Andreychuk:** Honourable senators, I wish to make a second point. It is not just Bill C-36 in isolation, but Bill C-36 in combination with the effects of being an immigrant, with the

[ Senator Andreychuk ]

effects of being a minority, with the effects of the immigration law, the national security law and all the other pieces of legislation that make the broad sweeping powers in Bill C-36 so difficult. The added unnecessary definition of terrorist activity, including an element of political, ideological and religious connotation, together with broad sweeping powers, lack of access to full information and lack of the normal due process should make every Canadian want the government to be scrutinized and Parliament to assert its responsibilities.

**The Hon. the Speaker:** I regret to inform the Honourable Senator Andreychuk that her time has now expired.

Is leave granted for the honourable senator to continue?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I am sorry to inform the honourable senator, but leave has not been granted for her to continue.

**Senator Nolin:** Honourable senators, I move the adjournment of the debate.

**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.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators.

Is there an agreement as to the ringing of the bells?

**Senator Rompkey:** I propose a half-hour bell.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** If there is no agreement, it is a one-hour bell.

• (2100)

Motion negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	Keon
Atkins	Kinsella
Beaudoin	Lynch-Staunton
Bolduc	Murray
Buchanan	Nolin
Comeau	Rivest
Di Nino	Spivak
Gustafson	Stratton
Johnson	Tkachuk—19
Kelleher	

NAYS  
THE HONOURABLE SENATORS

Austin	Jaffer
Bacon	Kirby
Bryden	Kroft
Callbeck	LaPierre
Carstairs	Léger
Chalifoux	Losier-Cool
Christensen	Mahovlich
Cook	Milne
Corbin	Moore
Cordy	Morin
Day	Phalen
Fairbairn	Poulin
Ferretti Barth	Poy
Finestone	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe—44

ABSTENTIONS  
THE HONOURABLE SENATORS

Joyal  
Roche—2

[English]

Just to make sure that honourable senators can follow along properly, I will start a few paragraphs back.

Second, it is not just Bill C-36 in isolation, it is Bill C-36 in combination with the effects of being an immigrant, with the effects of being a minority, with the effects of the immigration law, the national security law, and all of those other pieces of legislation that make the broad sweeping powers in Bill C-36 so difficult.

The added unnecessary definition of terrorist activity, including an element of political, ideological and religious connotation together with broad sweeping powers, lack of access to information, and lack of the normal due process, should make every Canadian want the government to be scrutinized and Parliament to assert its responsibility.

A further issue that makes the amendment all the more important is the fact that the exercise of power and authority by police, CSIS or governments in new and broad ways should give every Canadian pause for concern.

Senator Andreychuk wanted to draw our attention to two witnesses who testified before the Standing Senate Committee on Legal and Constitutional Affairs on December 5, 2001, in the committee's investigation of Bill C-15A. In Bill C-15A, there is an amendment to section 690 of the Criminal Code, which concerns the miscarriage of justice.

Within that context, Mr. Melvyn Green, a board member of the Association in Defence of the Wrongly Convicted, and Ms Dianne Martin, Professor at Osgoode Law School, from the Innocence Project, testified as to certain cases. I believe them to be the foremost authorities in Canada on this issue about people who get the full benefit of the law and its rules but yet are innocent after going through the entire process.

• (2110)

Senator Andreychuk asked Ms Martin:

Tell me honestly....If you look at the reason for the wrongful conviction or miscarriage of justice, what is the proportion of bad faith from whoever in the system compared to a real error that led to miscarriage? I want an open answer.

Ms Martin responded:

I am mulling on "bad faith." Police misconduct is involved in literally all, but deliberate police misconduct, deliberate in the sense of, "I know I am breaking the rules?"

Ms Martin goes on:

"I am breaking the rules, and I know I am breaking the rules, but I am doing it for a good reason."

[Translation]

**Senator Nolin:** Honourable senators, I am pleased to speak to the amendment proposed by Senator Lynch-Staunton.

Honourable senators, in order to ensure continuity in the line of thought developed by colleagues on this side, I will continue my remarks in the language of Shakespeare, in the hopes of doing honour to the quality of the text prepared by Senator Andreychuk.

She is speaking about policemen.

“The technicalities are preventing the truth from being found and a guilty person from being convicted, and, thus, my focus over here or my failure to pursue that is all justified.”

I would say a very low percentage is true bad faith. It exists, but the occasion of someone saying, “I am going to frame an innocent person. Who cares who we convict? Just give me anybody, and I will get him convicted,” is very low. The occasion of turning a blind eye to something that you should not, the occasion of burying things in files or losing the exhibits, the occasion of putting pressure on a forensic scientist who is weak to improve their opinion, the occasions of saying to an eyewitness, “You’re sure, aren’t you? You don’t want to look stupid in the witness stand, do you? The defence will ask you tough questions, so let’s bolster you up,” is remarkably common.

Mr. Green answered:

If I may, I share that view. Ms Martin is speaking about what is called in the literature “noble cause corruption,” and it is common. It is a different kind of bad faith. It is good faith-bad faith, or good ends-bad faith, as opposed to fitting someone up or framing someone in the classic sense that you see on American television every night. Most of the causes of wrongful conviction have been covered by the mistaken eyewitness’s identification, material non-disclosure, recanting witnesses, jailhouse informants, junk science, that kind of thing.

When you couple those areas with prejudice, when you couple them with the particularly suspect nature of the accused in a case, in a case like Romeo Filion, for example, who was obviously not a pillar of the community at the time, when you couple them, very often, with the absolutely horrific nature of the crime that preys on the community and the desire on the part of the community to bring this process to closure and this is the only guy we have in front of us, the guillotine comes down, and it comes down on the wrong neck.

Senator Andreychuk said:

This has been very interesting. It is a long time since I have thought about some of these things from the old days of practice. You talk about noble cause corruption and how we get into these cases where we can go through the appeals and still end up with an innocent being wrongly dealt with in the end, in other words, not receiving justice but getting the full benefit of the system.

She invited the witnesses to speculate on Bill C-24 and Bill C-36. Quoting Mr. Green’s testimony:

As Ms Martin said, all of that is a recipe for the miscarriage of justice.

I did give some thought to Bill C-36 with Mr. Green’s responses.

As I looked through some of the provisions of that bill, and not having read it completely, I realized almost

immediately that there would be a tremendous risk of fresh wrongful convictions as a result of the licence that will be granted on the one hand to the police and as a result of what appears to be a relaxation of the accountability both at the pre-charge, investigator stages and, most important, perhaps, at the judicial stage. At that stage, there will be relaxed standards with respect to the admissibility and the quality of the evidence. There will be relaxed standards with respect to the scope of privileges that have been expanded in those fields and with respect to the limitations on the review of decisions made by judges. As Ms Martin said, all of that is a recipe for the miscarriage of justice. Particularly, given our times, if I can simply put it that way, it will take courageous players in our criminal justice system, or our terrorist justice system as it will come to be characterized, to stand strong against the temptation to go with the tide and to protect the concerns on which this nation was founded, concerns that have given us a sense of who we are as a democratic people who we live in a society with values that we cherish. I do not want to grow rhetorical here.

The simple answer is that I have not thought about it in depth but that, yes, I did think about it and I thought, “Oh, my God, more work for AIDWYC.”

That is the organization working with wrongfully convicted people.

Ms Martin said:

I absolutely agree. You will remember that the great scandal of the wrongful convictions in the U.K. was the uncovering of the mistaken conviction of the IRA pub bomber. It was a climate of anti-terrorism that led to those flawed investigations, with judges turning a blind eye to those errors. Some 20 people were wrongfully convicted in order to address the fear that terror engenders. That is a lesson that we seem to have forgotten as we rush to open, perhaps, the same door. It is not that we do not have enough history to guide us, but it is apparently not guiding us at the moment.

Honourable senators, as Senator Andreychuk said previously in her remarks, there are two avenues we could take and they are, one, not to grant the powers that the executive is requesting, or two, we can certainly take steps as a responsible, mature Parliament to put in place the appropriate oversight and review of this power.

Senator Lynch-Staunton’s amendment is the classic Canadian compromise. Take the powers and use them wisely and cautiously. We will review these powers, and if you, as a government, wish these powers in the future, you will simply need to bring forward legislation to that effect. There will have been the track record of necessity, and there will be an opportunity to adjust, to amend, to lessen, to increase powers that are absolutely necessary, but it will be a signal to those who may be affected that their fear can be eased and that we do not intend to repeat the mistakes of the past. We will be more thoughtful, more considerate and more responsive. It will mean that this is not a government that knows all but a government that takes steps to protect not only from terrorism but from excesses. A sunset clause is a noble answer.



• (2120)

[Translation]

Honourable senators, I am convinced that, upon reflection, you will come to the same conclusion that I did, namely, that the amendment proposed by Senator Lynch-Staunton is necessary.

Allow me to tell you about the report that this house unanimously adopted during the pre-examination of Bill C-36, particularly about the provisions concerning the sunset clause.

Bill C-36 gives powers which, if they were abused by the executive branch or by the services responsible for Canada's national security, could seriously endanger democratic rights in our country. Even if we assume that these powers will be properly exercised, Canadians may well feel otherwise, and this could be as harmful to democracy as an actual abuse of power.

The committee was unanimous on this issue. It is well aware that we are going through a period of deep anxiety, fear and confusion. It is important that the deviations from our legal standards, which we are prepared to accept for a temporary period because of the current situation, be reconsidered as soon as we can look at the situation and evaluate it objectively.

[English]

**The Hon. the Speaker:** I regret to advise Senator Nolin that his 15 minutes have expired.

**Senator Nolin:** Honourable senators, I would ask for leave to continue.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Leave is not granted.

**Senator Tkachuk:** Honourable senators, I move the adjournment of the debate.

**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.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Is there an agreement as to the ringing of the bells?

**Senator Rompkey:** I propose a one-hour bell.

**Senator Lynch-Staunton:** One hour.

**The Hon. the Speaker:** Call in the senators.

• (2220)

Motion negatived on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	Lynch-Staunton
Buchanan	Murray
Comeau	Nolin
Di Nino	Prud'homme
Gustafson	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—18.

NAYS  
THE HONOURABLE SENATORS

Bacon	Jaffer
Callbeck	Joyal
Carstairs	Kirby
Chalifoux	LaPierre
Christensen	Léger
Cook	Losier-Cool
Corbin	Mahovlich
Cordy	Milne
Day	Moore
De Bané	Morin
Fairbairn	Phalen
Ferretti Barth	Poulin
Finestone	Robichaud
Finnerty	Rompkey
Fitzpatrick	Setlakwe
Fraser	Sibbeston
Furey	Stollery
Gill	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wiebe—42.

ABSTENTIONS  
THE HONOURABLE SENATOR

Roche—1.

**The Hon. the Speaker:** Honourable senators, we will now resume debate on Bill C-36 and the amendment of Senator Lynch-Staunton.

**Senator Tkachuk:** Honourable senators, I rise today to support the amendment of Senator John Lynch-Staunton. I want to thank the whips for giving me that hour to compose myself after all those other speeches. As you know, I adjourned the debate so I would have time to prepare for tomorrow, but I had the hour and it was much appreciated.

The events of September 11 did change the world.

**Senator Robichaud:** This is a complete waste of time and the taxpayers' money.

**Senator Lynch-Staunton:** You should worry about that.

**Senator Nolin:** Could someone read him the Constitution, please.

**Senator Tkachuk:** I admit that now the Liberals think that democracy is a waste of time but we on this side of the house do not agree with that.

**Some Hon. Senators:** Hear, hear!

**Senator Tkachuk:** We have a right to be here and to speak and to say our piece and not be rushed. So I will take my time, honourable senators.

The events of September 11 did change the world.

**Senator Taylor:** How many times have you got that on that piece of paper?

**Senator Tkachuk:** Senator Taylor, if I was not being so rudely interrupted by the likes of yourself on the other side, I would not have such a difficult time at this hour of night keeping my train of thought.

The economists and I both agree that what happened on September 11 did change the world and that the terrorists made a horrible mistake. The attack on the North American continent galvanized the United States of America. Under the leadership of President George Bush, they promised to act and they did. They will do something about this scourge of the earth. They have already, in a period of only a few short months, toppled a fascist, barbaric government, freed a nation and they are at the forefront of feeding that nation as the cold winter months approach. They are also holding together deftly under the leadership of President Bush and the likes of Colin Powell and Condoleezza Rice and a worldwide coalition to rid the earth of terrorism.

Honourable senators, I am not suffering from any emotional turmoil over my position on Bill C-36. I get my clarity from what I believe. I grew up in the constituency of John Diefenbaker who brought this country the Bill of Rights.

**Some Hon. Senators:** Hear, hear!

**Senator Tkachuk:** I am supportive of the amendment brought by my leader, Senator Lynch-Staunton, to insert a true sunset clause in this bill. As I took my seat on the first day of hearings as a member of the Special Senate Committee on the Subject Matter of Bill C-36 — that is at second reading — I noticed there were new faces on the Liberal side. I saw Senator George Furey. I thought: Gee whiz, perhaps the Tobin forces have got control of the leadership.

However, I was brought down to earth when I saw Senator John Bryden of Pearson airport inquiry fame, a stalwart protector of Jean Chrétien since he had the unenviable task of making Jean look credible with the most infinitesimal pieces of information. Senator Poulin rounded out the replacements of the former first string of Stollery, Kenny and Bacon.

• (2230)

This is important for all of us to know because the first Fairbairn committee was very different from the second. The first committee on the subject matter heard testimony for a solid four days and made 10 recommendations for change, which were adopted unanimously by the Senate.

Senator Fraser said she was not here for the vote, and Senator Fraser, with all due deference, has only herself to blame for not being here to call division on the vote. Her colleagues unanimously supported the report that we all worked on, and it became an order of the Senate.

**Some Hon. Senators:** Hear, hear!

**Senator Tkachuk:** I am no longer sure what a Senate order means. Simply put, it means that we all supported the recommendations. That is, until the Langevin Block and Eddie, a modern-day Rasputin of the Prime Minister, decreed that even though the Senate may order, the Langevin Block shall rule.

Honourable senators, I will read a few letters that I received and many of you also received. They are letters from ordinary Canadian citizens who have expressed concern to all honourable senators, and it is time that we put a few of them on the record of the Senate.

I am writing this letter to register my concern over the nature and content of Bill C-36, the Anti-terrorism Act, in spite of the recent changes to its composition announced this week. While a sunset clause has been established, it does not cover all of the new powers granted by the legislation. For those who consider Canadian democracy to be of the highest value this is sobering indeed. Neither are the protestations of the government that these new powers will be used judiciously reassuring. As history has taught us, the temptation to use power is often overwhelming and freedoms lost are terribly difficult to regain. The whole issue becomes even more disturbing when it is claimed by both the Canadian Bar Association and the Canadian Civil Liberties Association that the government already has enough power to deal with terrorist threats.

She quotes from the testimony of Alan Borovoy, General Counsel to the CCLA:

“As for the ability to conduct surveillance, the Canadian Security Intelligence Service, CSIS, is already empowered — with judicial warrants — to electronically bug conversations, surreptitiously search property, secretly open mail, and clandestinely invade confidential records. And, without such warrants, CSIS may target covert spies at people.

All of this intrusive surveillance is now potentially available to monitor what the act calls ‘activities...in support of acts of serious violence...for the purpose of achieving a political objective within Canada or a foreign state.’

You have a choice to vote against this draconian bill as it now stands and thus preserve the gains in freedom and democracy that have taken centuries of blood and suffering to achieve (and sadly have not been achieved in many other parts of the world). When history is written fifty, a hundred, or even two hundred years from now, what will it have to say about your record?

The letter is signed “Brenda Luyt.”

Another letter reads as follows:

Dear Senator,

The Senate is our chamber of “sober second thought” — the part of our parliamentary system that provides a check on rash action that may be taken by the House of Commons. If ever there was a need for sober second thought it is now, while you have Bill C-36, the Anti Terrorism Bill, before you. I urge you to vote against this bill. It has the potential to forever change the character of Canadian society. The increase in police powers, the infringement on privacy, and the provisions for secrecy of police and court proceedings should be completely out of the question, yet they are being rushed through Parliament. It is up to you to stop this bill.

I have read many accounts of unjust political imprisonment from different countries, including Europe not too many years ago. Every month Amnesty International brings new cases of political prisoners to light. With Bill C-36’s provisions and the kind of racial profiling we have seen since September 11, and the kind of police brutality against protesters we have seen since the APEC meetings, we could well find Canada on the list of countries Amnesty International supporters need to write letters to. Do you want to be part of such a horrible and unnecessary turn of history? Please vote against Bill C-36.

She further writes:

Now is time for courage. What will you be proud of in the future — that you towed the party line or that you were able instead to stand up for the civil rights of Canadians?

Remember the Bruce Cockburn song lyrics that said “the trouble with normal is that it always gets worse”? What we would have considered an outrageous violation of our rights 2 years ago has just been passed by our MPs. What will “normal” be after two or three years of having Bill C-36 in

force? And in 5 years, when the “sunset clause” is due to come into effect, will the Government of the day permit it, or will it have become so accustomed and dependent on the increased police powers that it will amend the Bill to eliminate whatever sunset provisions entirely? You have history in your hands right now. Please vote against Bill C-36.

That is from Cathy Holtslander of Saskatoon, Saskatchewan.

**Senator Taylor:** Is that your neighbour?

**Senator Tkachuk:** Senator Taylor, if she were one of my neighbours, I would be proud of it.

• (2240)

Bill C-36 is the perfect legislative example of a government that has no direction or philosophy to deal with national and urgent issues. September 11 was not the first crisis this government has faced since 1993. In fact, there have been a few, including the Quebec referendum, the management of the Brian Mulroney file, the case of the Chinese boat people and the mishandling of tens of thousands of refugees prior to September 11. All these cases can best be described as having been handled inadequately by the government.

In the case of the Quebec referendum and the terrorist attacks on September 11, both of which were threats to our national security in very different ways, there was an abdication of the government’s role as keepers of our security and fiduciaries of our sovereignty. In both cases, the acts of our Prime Minister have been downright embarrassing.

As Conservatives, we have also failed the country. Instead of toiling on behalf of our country and instilling some fear in the hearts of Liberals as a national opposition, we have bickered amongst ourselves. As a result, we may have earned ridicule from the government in private moments.

By not fearing the opposition after three consecutive victories, the government acts even more haphazardly, arrogantly and, might I dare say, sloppily. The word “sloppily” sounds like what it is. “Sloppily” is a word that draws a perfect picture of behaviour. These words are epithets for the government of Jean Chrétien. Worse, across the halls of Parliament stands no party that they fear. That is how the Liberals are getting away with this bill.

It strikes me that as a failed opposition this is what we are supposed to buttress in the Senate. This is the place that most recently reared its head to fight the GST and free trade. It again raised its proud head to fight legislation that would have denied citizens access to the courts. We are being called on to act again.

Those on the government side who sat on the Special Senate Committee on Bill C-36 know why they are there.

Instead of a coherent plan to fight terrorism, we have instead two bills, Bill C-36 and its post-graduate bill, Bill C-42. Instead of a plan to make Canadians safe and secure, we have two bills that will have the opposite effect when finally passed.

We have a government that refuses to say that we are at war, that we face an emergency or that Canadian lives are in jeopardy. Instead, the government is attempting to pass into law draconian legislation —

**The Hon. the Speaker:** I regret to advise the Honourable Senator Tkachuk that his 15 minutes have expired.

**Senator Tkachuk:** Honourable senators, I ask for leave to continue.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Leave is not granted.

**Hon. Lowell Murray:** I move the adjournment of the debate.

**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.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Is there an agreement as to the ringing of the bells?

**Senator Rompkey:** I propose a half-hour bell.

**Senator Stratton:** One hour.

**The Hon. the Speaker:** Call in the senators.

• (2340)

Motion negated on the following division:

[ Senator Tkachuk ]

## YEAS THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	Lynch-Staunton
Buchanan	Murray
Comeau	Nolin
Di Nino	Prud'homme
Gustafson	Rivest
Johnson	Spivak
Kelleher	Stratton
Keon	Tkachuk—18

## NAYS THE HONOURABLE SENATORS

Bacon	Jaffer
Callbeck	Joyal
Carstairs	Kirby
Chalifoux	LaPierre
Christensen	Léger
Cook	Maheu
Corbin	Mahovlich
Cordy	Milne
Day	Moore
De Bané	Morin
Fairbairn	Phalen
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Robichaud
Fitzpatrick	Rompkey
Fraser	Sibbeston
Furey	Taylor
Gill	Tunney
Graham	Watt
Hubley	Wiebe—40

## ABSTENTIONS THE HONOURABLE SENATORS

Nil

**Senator Murray:** Honourable senators, I trust you will indulge me, at least to the extent of letting me discern some faint echoes of the GST debate in what we have been doing this afternoon and this evening, to say that I would be less than honest if I denied that altogether it has been quite a satisfactory and even enjoyable experience.

**Some Hon. Senators:** Hear, hear!

**Senator Murray:** I can tell honourable senators honestly that I had not intended to intervene in the debate on this amendment, though I support it and would be voting for it in any case. However, I have been moved to intervene by the intervention, how many hours ago was it now, of our colleague Senator Fraser. She, among other things, suggested to us that a sunset clause was somehow alien to our Canadian traditions. I thought about that, and it suddenly occurred to me that in our very own Charter of Rights and Freedoms we have provision for a sunset clause.

**Senator Milne:** Creeping Americanization.

**Senator Murray:** Senator Milne says it is creeping Americanization, and I will come to that point in a moment. I am glad to have the opportunity that the honourable senator has provided.

It is in the famous or notorious notwithstanding clause, section 33 of the Charter of Rights and Freedoms. As honourable senators will be aware, that notwithstanding clause provides that:

...in an Act of Parliament or the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Those sections I recall, as all honourable senators will, are pretty much the fundamental freedoms that Parliament and governments are permitted to run over with the notwithstanding clause.

However, subsection 33(3) provides that such a declaration:

shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

**Some Hon. Senators:** Oh, oh!

**Senator Murray:** As I understand the operation of the notwithstanding clause, it is a real sunset clause that is provided for there. A legislature that has enacted a piece of legislation contrary to the Charter and using the notwithstanding clause would have to come back to the legislature and reintroduce the act or the provision that they had passed under the notwithstanding clause. It is a real sunset clause that is provided for, not ersatz sunset clause as we have in this bill.

• (2350)

I say all this with not much satisfaction because, as some honourable senators will recall, a bit more than 20 years ago last month, I think it was, I stood where Senator Stratton is now and did not vote for the Constitution Act of 1982. Rather, I opposed it for other reasons that are not relevant to tonight's debate.

Senator Milne alluded to the fact that some people have said, and I think there is something to it, that the passage of the Charter of Rights and Freedoms was the single most Americanizing thing that was ever done in Canada. I understand that argument and I simply repeat it because that is what Senator Milne wanted. It might be an answer to my response to Senator Fraser's contention that sunset clauses are alien to our traditions here.

I was a member of the special Senate committee that dealt with pre-study of this bill. I do want to confirm, in defence of Senator Fraser, her statement tonight that she was not a great enthusiast. She was not an enthusiast at all of the proposed sunset clause. I do not know that she voted against it, but I know from what she said, and if I may be so bold as to say her body

language, that she was opposed to the sunset clause that found its way into our report. That being said, I think it is also germane to mention that Senator Bacon, on the other hand, wanted a three-year sunset clause.

**Some Hon. Senators:** Hear, hear!

**Senator Murray:** I thought it was incumbent upon the committee to try to find a compromise between the extreme positions of these two Liberal senators. Thus, we settled, the majority of us, for a five-year sunset clause. Even though it does not commend itself to Senator Fraser, obviously, I hope that Senator Bacon will be able to put her reservations aside and her wishes for a more rigorous and more restrictive sunset clause and agree that this is better than no sunset clause at all.

The question of the American legal system and sunset clauses actually came up at our committee meeting on December 5, when we had the bill before us. We heard from a Professor Mendes, who tried to argue, and I will quote him:

Sunset clauses by themselves are not a bad thing, but if there can be a one for the whole bill that is fine. However, there may well be an existing sunset clause more potent than having one for the whole bill, and that is the Supreme Court of Canada. For that court to do its job, the proper evidence needs to be coming out on an annual basis.

However, Professor Don Fleming, from the University of New Brunswick said:

Professor Mendes is right about the position of the sunset clause in the American legal system, but we have to look at it differently in our legal system. We have to look at a sunset clause in a different manner from a Supreme Court of Canada "sunset clause" because the bill is so very complex. Issues going to the Supreme Court of Canada will be issue specific. There will be parts of the bill that will be attacked and parts that will not be attacked.

Then Professor Fleming says:

We should recognize that what we are doing now we are doing in the heat of the moment and there should be an automatic end to it because even the same majority government may think quite differently if they are forced to replace the legislation in five years.

Honourable senators, while I have your rapt attention, I should also point out what the Barreau du Québec has said on this bill in general. From what they have said, I would argue in favour of a very firm sunset clause. The Barreau du Québec said:

[Translation]

— we think that the new means at the disposal of government officials, in addition to special secrecy measures, will have irreversible consequences for the rule of law in Canada. It is illusory to think that once these provisions are adopted, there will be any searching reflection on the topic at a later date.

A bit further on, it says:

The three-year time frame for reviewing the legislation is both too long to prevent the contamination of our practices

—  
“The contamination of our practices,” say the lawyers of the Barreau du Québec. It is too short to call into question the provisions dealing with a situation that may well not be eradicated in the next three years.

[*English*]

Honourable senators, we have, I say with great respect, not heard very convincing arguments tonight in opposition to the sunset clause proposed in the amendment of Senator Lynch-Staunton, not very convincing arguments at all. I would be able, if there were world enough and time, to quote at considerable length other citations from the evidence that we heard, both in the pre-study phase of our work as a committee, and when we had the bill before us. I would be able to quote at length citations from expert witnesses who not only favour a sunset clause, but who are prepared to support this bill only with a sunset clause, and, I may say, with adequate oversight provisions, but that is a matter that we will come to later on in the debate.

As a matter of fact, I intend, if the opportunity arises, to propose an amendment relating to oversight provisions for this bill if it becomes law. I will not, therefore, tonight try to deal

with the arguments that Senator Fraser bootlegged into her own speech on the sunset clause, as opposed to expressing her opposition also to any coherent or comprehensive oversight provisions in the bill. It is much to be regretted.

My own attitude to this bill, from the beginning, has been that I am prepared to give the government, under these circumstances, the benefit of the doubt that the authorities need the powers that are in the bill. I have some understanding of the constraints that the police and security authorities in this country work under, not only because of the Charter and because of the laws as they now exist, but also because of interpretations of the criminal law by the Supreme Court over the years. The authorities feel they need, and the government supports them in this, extraordinary powers to deal with this extraordinary situation. I would be prepared to give them the benefit of the doubt. The least that Parliament can exact in return for giving them these powers is a sunset clause and proper oversight.

**The Hon. the Speaker:** Senator Murray, I regret to advise you that I must rise, pursuant to section 6(1) of our rules, it being twelve o'clock midnight, to interrupt the proceedings before the Senate and declare that a motion to adjourn the Senate has been deemed to have been moved and adopted.

I shall now leave the chair until the time provided for the next meeting of the Senate, which will be nine o'clock tomorrow morning.

The Senate adjourned until tomorrow at 9 a.m.

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