CANADA

Debates of the Senate

2nd SESSION • 39th PARLIAMENT • VOLUME 144 • NUMBER 8

OFFICIAL REPORT
(HANSARD)

Wednesday, October 31, 2007

THE HONOURABLE ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

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Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Wednesday, October 31, 2007

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

Prayers.

SENATORS' STATEMENTS

THE HONOURABLE BILL ROMPKEY, P.C.

CONGRATULATIONS ON THIRTY-FIFTH ANNIVERSARY OF ELECTION TO PARLIAMENT

Hon. Gerard A. Phalen: Honourable senators, it is my great pleasure to rise today to pay tribute to my friend and our colleague, Senator Bill Rompkey, on this, the thirty-fifth anniversary of his first election to Parliament. After that election, Senator Rompkey was re-elected six more times. Having worked on many election campaigns, I completely understand what a monumental accomplishment federal election victories are, and so I tip my hat to Senator Rompkey.

During Senator Rompkey's time in the House of Commons, he served as Minister of National Revenue, Minister of State for Small Business and Tourism and Minister of State for Mines. He also served as chair and deputy chair of a number of committees and parliamentary associations.

The Senate was fortunate to have Bill Rompkey appointed to this place in 1995. In the Senate, Senator Rompkey has served both as whip and Deputy Leader of the Government, as well as on a number of our committees.

Politics and Parliament can sometimes make people jaded and disillusioned, but after 35 years, Bill Rompkey remains a genuine, interested, dedicated and unfailingly feisty parliamentarian.

Senator Rompkey will soon arrive at another milestone. He and his lovely wife Carolyn will celebrate their forty-fifth wedding anniversary next year. After 35 years in Parliament and 45 years of marriage, Senator Rompkey always has a smile on his face.

Bill, I believe you have truly found your soulmate and your calling in life and I congratulate you.

[*Later*]

Hon. Joan Cook: Honourable senators, I would like to congratulate our colleague and my fellow Newfoundlander, Senator William Rompkey, for 35 exceptional years in politics.

I first met Bill when he was fostering his zeal for education in the affectionately named "Big Land." Bill was the first superintendent of education with the Labrador East Integrated School Board, a position which he held until 1971.

By the end of 1972, Bill had chosen a career path that brought him to Ottawa and put his enthusiasm and educational background to work. He was elected to the House of Commons for the riding of Grand Falls-White Bay-Labrador and subsequently Labrador.

After many years in various high profile and ministerial positions in the House of Commons, Bill was appointed to the Senate in 1995 by then Prime Minister Chrétien to represent our province of Newfoundland and Labrador.

Bill's commitment to education continued in the Senate, where he was a key player in the long sought after constitutional amendment to the Newfoundland Act in 1998, also known as Term 17. At that time, Newfoundlanders were faced with a provincial plebiscite that asked this question:

> Do you support a single school system where all children, regardless of their religious affiliation, attend the same schools where opportunities for religious education and observances are provided?

Bill worked tirelessly to get this amendment finalized and was applauded for his success and efforts. This unforgettable legislation will go down in the books as a pivotal moment in Newfoundland's educational history.

Bill is a person of many talents. Fisheries is one of his passions and he has served as an outstanding Chair of the Standing Senate Committee on Fisheries and Oceans, as well as holding numerous other prominent positions within the Senate to date. Above and foremost, Bill always places first the well-being of the people of Labrador, to whom he refers as "my people, the people of Labrador, and the lifeblood of our province for more than 500 years."

Honourable senators, Senator Rompkey's outstanding contribution to Newfoundland and Labrador does honour to him and to this institution. Please join me in congratulating our colleague, Senator William Rompkey, on this monumental milestone.

UNITED NATIONS

SEVENTH ANNIVERSARY OF SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY

Hon. Nancy Ruth: Honourable senators, Halloween falls at one of the cross-quarters of the year. We are halfway between the fall equinox and the winter solstice. This is the day that marks the turning, changing, ever-moving and revolving wheels of life, time, seasons and planets.

Halloween is a day of celebration. Young ones swirl down our streets like the falling leaves and then are gone. For many women, this is also a time of remembrance and mourning.

Seasons and times change; they have a beginning and an end. An undeniable human constant is violence against women and girls, whatever the season or time. From the witches of old, to our neighbours and family members, to our sisters around the world, violence is a constant.

Today marks the seventh anniversary of the United Nations Security Council Resolution 1325 on Women, Peace and Security. Canada was a member of the Security Council when the resolution was passed. Canada played an active role in advocating for the resolution within the Security Council.

Resolution 1325 calls for the participation of women in peace processes; gender training in peacekeeping operations; protection of women and girls and respect for their rights; gender mainstreaming in reporting and implementation; and changes to the UN systems relating to conflict, peace and security.

Internationally, much remains to be done to operationalize Resolution 1325. Of the 60 million people worldwide who are displaced by conflicts and disasters, some 75 per cent, or 45 million, of them are women and children.

Sexual violence is epidemic in countries and regions, including those where Canada is involved, such as the great lakes regions of Africa, Haiti, Sudan and Afghanistan. Without basic human security, women and girls are unable to participate in debate, elections, or peace negotiations.

Despite its leadership at the United Nations, Canada does not have an action plan for the implementation of Resolution 1325 in its international work, whereas Denmark, Norway, Sweden and the United Kingdom do.

The UN has made some headway, as 10 out of 18 peacekeeping and political missions have a full-time gender adviser, including Afghanistan. Training on sexual exploitation and abuse is mandatory for all personnel on peacekeeping missions.

Canada's implementation is being monitored by the Gender and Peacebuilding Working Group, a broad-based coalition of experienced NGOs. The group has stated that Canada's implementation plan must be a "whole of government plan" with demonstrated commitment of senior leadership.

• (1340)

THE LATE MAJOR PAETA DEREK HESS-VON KRUEDENERTHE LATE CORPORAL RANDY PAYNE

Hon. Hugh Segal: Honourable senators, in this season of remembrance for our brave men and women who are standing proud for Canada all over the world and risking so much, I want to take a brief moment today to remember two of these soldiers from the Kingston-Frontenac-Leeds area. We in small-town Eastern Ontario sometimes feel sheltered and removed from the realities of what goes on half a world away — and then we read of the sacrifices made by those who are trying to do nothing but good in Canada's name. Major Paeta Derek Hess-von Kruedener, a Princess Patricia Canadian Light Infantry officer from Kingston, died in July 2006 in southern Lebanon. He served at a United Nations observation post and maintained his position under heavy fire.

This past summer, Major Paeta Derek Hess-von Kruedener was posthumously awarded the Meritorious Service Decoration for bringing great honour to the Canadian Forces and to the military profession.

On April 22 of this year, Corporal Randy Payne, the father of two small children, from the tiny town of Mallorytown with a population of 1,000, was killed by a roadside bomb when returning to Kandahar from a goodwill mission in northern Afghanistan. Corporal Payne served as a volunteer firefighter in Mallorytown and his loss was deeply felt in the community.

Honourable senators, I want to pay tribute to these men and to all who have risked so much to maintain Canada's military presence around the world in all manner of service. All through the sovereign counties of Frontenac and Leeds, through little towns like Sydenham, Mallorytown, Athens, Gananoque and others, there are small memorials paying tribute to even greater sacrifices by local residents who volunteered when the need was there and who fought for freedom and stability, to repel aggression in difficult places like Montecassino, Vimy, Kandahar, Korea, Normandy, Hong Kong and elsewhere. These monuments speak to the historical coil that unites all Canadians across the generations, in all ethnic groups, to those from cities, towns and villages, who laid their lives down in the air, on and beneath the sea and on the land so that we may know open debate and freedom in this house and elsewhere.

In Brockville, Gananoque, Mallorytown, Athens, Kingston, Sydenham and elsewhere, we know what these towns gave to Canada's freedom and how little right any who have come after have to underestimate or take for granted the sacrifices made by these young men and women in our national interest.

THE LATE ROBERT GOULET

Hon. Tommy Banks: Honourable senators, I wish to take a brief moment to mark the sudden passing of Robert Goulet last night. Anyone who knows anything about musical theatre or the mechanics of musical theatre knows that Robert Goulet possessed the best voice there ever was in musical theatre. His intonation was unerring and his presence on any stage was a great credit to it. We have all marvelled at some of his performances.

• (1345)

Robert Goulet was an American. He was born in Lawrence, Massachusetts, of French Canadian parents, but they moved to a francophone town north of Edmonton when he was young. Shortly after that, they moved to Edmonton, where he received his education at St. Joseph's High School, and began his singing lessons under the illustrious and now famous Jean Letourneau. In Edmonton, he also began his career singing in musical productions, including the first musical production of Orion Musical Theatre.

He then left Edmonton and went to Toronto, where he became a staple on CBC Television as the male singing partner of Shirley Harmer on Canadian General Electric "Showtime," Sunday nights at eight o'clock. Then, he auditioned for *Camelot*, and the rest is, as they say, history. He became an enormously popular musical theatre star. He starred in Las Vegas and, later in his life, in touring companies of *South Pacific*, in which he played Emile de Becque and, in a remounted touring company of *Camelot*, this time playing Arthur instead of Lancelot.

We are left, fortunately, with a huge legacy from Robert Goulet in his many recordings of various kinds in which his enormous talent is always evident. Robert Goulet was a good man, and he always thought of a large part of himself as Canadian. He was one of the greats of musical theatre.

REMEMBRANCE DAY

Hon. Michael A. Meighen: Honourable senators, one week from this coming Sunday in the eleventh month, on the eleventh day, at the eleventh hour, Canadians will formally take two minutes to remember those who died in the service of their country. It was on that day and at that moment that the armistice was signed in 1918, which finally silenced the guns in the war to end all wars.

Unfortunately, that armistice proved not to be the end of war, and now we also remember our military personnel who lost their lives in other theatres, including World War II, Korea, a multitude of peacekeeping missions and, most recently, in Afghanistan. In total, we will remember more than 116,000 Canadians who did not return to their families.

We mourn their loss, but we celebrate their accomplishments. The number and severity of military conflicts has been greatly reduced. Nations rarely embark today on missions of conquest.

This reduction is part of the legacy which our Armed Forces have helped to create. They have made the world a safer place for their families, for Canadians and for all of humanity. They continue their work on our behalf to the present day.

Their sacrifices have been many: not only lives lost, honourable senators, but lives changed forever. Captain Trevor Greene is one such individual. Some 20 months ago, while serving as a member of the reserves in Afghanistan — and we must remember what a vital role the reserves play in our Canadian Forces of today — Captain Greene was struck in the back of the head with an axe while in discussions with villagers. Many people would not have survived, but he did, and is continuing a lengthy, painful and difficult rehabilitation process.

Many Canadians find they have connections, both direct and indirect, with those who serve. I was interested to learn that I have two connections with Captain Greene. He has family in St. Andrew's, New Brunswick, where I have a home, and he is a graduate of the University of King's College in Halifax, where I have the honour to be chancellor.

Those most touched remember every day the sacrifices they and their families have made, and continue to make. They understand the importance of the work being done to bring about peace and stability in Afghanistan and throughout the world.

The goal is yet to be achieved and may never be achieved, but progress has been made and is being made, and the work is important. We do not send our people into harm's way without good reason.

I have been privileged to meet some of the fine men and women in our military services who have returned from engagements abroad. These experiences are not shrugged off and forgotten. Many of those serving are profoundly affected. Some will suffer in varying degrees for the rest of their lives. The physical injuries are the most tangible, honourable senators, but, in some cases, not the most difficult.

[Senator Banks]

[*Translation*]

This Remembrance Day, let us think not only about those who sacrificed their lives, but also about those who have suffered and are still suffering the terrible consequences of conflict. Let us pray for peace and for those who have given so much to build peace.

• (1350)

ROUTINE PROCEEDINGS

SECURITY INTELLIGENCE REVIEW COMMITTEE

2006-07 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2006-07 annual report of the Security Intelligence Review Committee.

THE ESTIMATES, 2007-08

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY MAIN ESTIMATES AND TO REFER DOCUMENTS AND EVIDENCE OF PREVIOUS SESSION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Estimates for the fiscal year ending March 31, 2008, with the exception of Parliament Vote 10; and
>
> That the papers and evidence received and taken and work accomplished by the Committee on this subject during the First Session of the Thirty-ninth Parliament be referred to the Committee.

[*English*]

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—FIRST READING

Hon. Pat Carney presented Bill S-217, An Act to Amend the International Boundary Waters Treaty Act (bulk water removal).

Bill read first time.

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

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

PROTECTION OF VICTIMS OF HUMAN TRAFFICKING BILL

FIRST READING

Hon. Gerard A. Phalen presented Bill S-218, An Act to Amend the Immigration and Refugee Protection Act and to enact certain other measures, in order to provide assistance and protection to victims of human trafficking.

Bill read first time.

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

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

[*Translation*]

BUSINESS OF THE SENATE

NOTICE OF MOTION TO AUTHORIZE COMMITTEES TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That Committees be authorized, pursuant to Rule 95(3)(a), to meet between Monday, November 5, 2007, and Monday, November 12, 2007, inclusive, for the purposes of holding organization meetings, even though the Senate may then be adjourned for a period exceeding one week.

• (1355)

QUESTION PERIOD

PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT— INDUSTRIAL SECURITY OF CLASSIFIED INFORMATION IN AWARDING CONTRACTS

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government given that the Minister of Public Works and Government Services is absent. I am not really surprised that he is not here given that, in her report tabled yesterday, the Auditor General severely reprimanded the Minister of Public Works with regard to management of industrial security in awarding government contracts. According to the report, these failures are serious because they pertain to issues of national security.

What do the minister and her government intend to do to assure us that the Department of Public Works exercises its roles and responsibilities with respect to the industrial security program?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question. Since she directed the question to the Minister of Public Works, in his absence, I will take the question as notice.

[*Translation*]

Senator Hervieux-Payette: Since we are discussing the issue of national security, I would like to point out to the minister that the Auditor General found that some government officials tried to circumvent security procedures in order to reduce costs and avoid delays in a major DND project.

The minister should pay close attention to such important issues involving national security, issues that her government professes to champion, although in reality, the matter seems to be eluding this government.

[*English*]

Senator LeBreton: Honourable senators, there is no question that the government takes all issues of security seriously. The Auditor General's report has been received. We very much appreciate the Auditor General for focusing in on these issues; they are very important to the government and to all of us.

I believe that the Auditor General has highlighted some areas where improvement is needed. The government is committed to responding to the Auditor General's report in an effort to alleviate some of these situations.

[*Translation*]

CITIZENSHIP AND IMMIGRATION

CANADA-QUEBEC ACCORD RELATING TO IMMIGRATION AND TEMPORARY ADMISSION OF ALIENS

Hon. Jean-Claude Rivest: Honourable senators, my question concerns the integration of immigrants. This is a sensitive and difficult issue that is important both to Canadian society and to the people concerned.

This problem takes on a unique dimension in Quebec, because language is added to all the difficulties that face newcomers to Canada.

In the early 1990s, in the wake of the Meech Lake Accord, the then Prime Minister of Canada, Mr. Mulroney, signed an agreement with the Premier of Quebec, Mr. Bourassa, that recognized this inherent difficulty for immigrants who wanted to integrate into Quebec society. Under this agreement, the federal government transferred public service employees and an estimated $400 million to the Government of Quebec.

This very important program has been extremely beneficial for Quebec society and has proven effective not only in integrating newcomers economically and socially, but also in helping them with the often difficult process of learning French. The success of

this program maintains the linguistic balance within Quebec, which, as we all know, is of primary importance in maintaining national unity.

• (1400)

Recent news reports have indicated that the Government of Canada's $400 million contribution was transferred directly into Quebec's Consolidated Revenue Fund, but the Government of Quebec has allocated only $200 million to the immigrant integration program.

I hope that this information is wrong. Given the size of the federal government's contribution, the needs and the seriousness of the issue, the Government of Quebec should allocate the federal government's contribution in full to the integration of immigrants.

That was the goal of both the prime minister and the premier who signed the accord; I hope that that is exactly what the Government of Quebec will do just that.

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. The honourable senator is quite right, the 1991 Canada-Quebec accord on immigration, to which he referred, provides Quebec with an annual grant from the Government of Canada to support settlement and integration services in Quebec for which Quebec has exclusive responsibility. The funding associated with the accord is in the form of a grant, but the grant is transferred through the Quebec government's Consolidated Revenue Fund and not through the Quebec Ministry of Immigration, and the provincial government reports to the public on the use of the grant through the public accounts.

As the honourable senator will recall, the accord states that the funding must be used for reception and integration services if:

a. those services, when considered in their entirety, correspond to the services offered by Canada in the rest of the country;

b. the services provided by Quebec are offered without discrimination to any permanent resident of Quebec, whether or not that permanent resident has been selected by Quebec.

The short answer to the question is that both the federal and provincial governments have guidelines for public reporting to the respective populations on the policies and outcomes of this program, but the language of the accord is clear that it is to be used for the purposes of accepting and welcoming immigrants into Canada.

HUMAN RESOURCES AND SOCIAL DEVELOPMENT

CHILD TAX BENEFIT

Hon. Catherine S. Callbeck: Honourable senators, my question is for the Leader of the Government in the Senate. Last week, the Chief Justice of the Supreme Court of Canada lamented the fact that one in six Canadian children live in poverty. This Conservative government record of solving child poverty has been dismal. The recent Speech from the Throne added nothing new to help those children in the worst of circumstances. Yesterday's announcement from the Minister of Finance was more of the same Conservative approach — government by tax cut — which means that the poorest families in our society receive the least amount of help, while the wealthiest families benefit the most.

Perhaps we should not be surprised, because this is the same government that introduced the child tax credit, a $2,000 non-refundable tax for parents who pay income tax. This tax credit means absolutely nothing to low-income families, because it is non-refundable, meaning that those parents who do not earn enough to pay income tax receive absolutely nothing for their children.

In light of the large surpluses that the government has announced, why did this government not bring forth a refundable tax credit that would be of benefit to parents who need it the most?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank the senator for the question. The economic update announced yesterday by the Minister of Finance was in direct relation to the Speech from the Throne, in which the government committed to broad-based tax cuts. Obviously, everyone could mention areas for which they think tax cuts should be brought forth, but this is a broad-based tax cut. We have dealt with many issues, such as poverty, in the previous budget.

• (1405)

Just to refresh the honourable senator's memory, Budget 2007 introduced the Working Income Tax Benefit, worth $550 million per year, to help low-income Canadians get over the so-called "welfare wall." Budget 2006 — our first budget — provided for new housing trust funds for provinces and territories for affordable housing, including funds for Aboriginal people off-reserve and northern housing. It also cut the GST, and we have cut it again.

By the way, the GST rebate — even though we have cut the GST to 5 per cent — still stays in place. We have cut the GST twice, introduced the Universal Child Care Benefit and raised the Child Disability Benefit.

The new Homelessness Partnering Strategy, worth $269 million over two years, took effect on April 1 of this year. We are also providing $256 million to a two-year extension of the Canada Mortgage and Housing Corporation's Residential Rehabilitation Assistance Program, which provides renovation projects to low-income households, and we also allowed senior couples to reduce taxes by transferring half their eligible pension income to the lower-income spouse.

Hence, it is quite incorrect to say that this government is not addressing the very real concerns about poverty in this country — and we have only been here for two years.

Some Hon. Senators: Hear, hear!

Senator Callbeck: Honourable senators, I asked the minister about the child tax credit, and the minister has not answered my question. This tax credit does not do anything for the children of

parents at the lowest income levels. In fact, the child tax credit has the effect of increasing the gap between the rich and the poor, because only parents who pay income tax will receive anything through this benefit.

When will the Conservative government acknowledge that this child tax credit fails to do anything for children who need it the most? When will this government implement a tax measure that actually helps all families with children, including families with the lowest income?

Senator LeBreton: Honourable senators, by the way, today the Leader of the Opposition in the other place said he would consider rescinding our commitment to reducing the GST.

Honourable senators, we have removed a great number of people off of the tax rolls, and families with young children get $100 per month per child for every child under the age of six. That is of direct benefit to all families.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

ARCTIC SOVEREIGNTY

Hon. Willie Adams: Honourable senators, I have a question for the Leader of the Government in the Senate in relation to the announcement in the last Throne Speech about Arctic sovereignty. We have been in the Arctic for thousands of years — since the beginning. In the last few years, we have experienced climate change. As a result, Arctic sovereignty will be a determining factor in the future of Nunavut. We settled land claims in 1993 and the Nunavut government was created in 1999, with 19 elected members. Those elected people are concerned about how they will develop Arctic sovereignty.

Arctic sovereignty began in 1953 — that is 54 years ago — with the settlement of Resolute and Grise Fiord. Last June, I was in those two communities.

• (1410)

These communities have families with land, homes and children who are growing up there. They like living in their communities. In the beginning, Arctic sovereignty was a separate issue. The government put up the land and there was a connection to Northern Quebec. The people of Nunavut would like to be part of the development of Arctic sovereignty.

The Inuit of this region know the water and the land and are familiar with the ways of the North. It is a good thing for the young people up there today to join the military and the navy, in order to have control in the future of Arctic sovereignty. My question to the Leader of the Government in the Senate is: What is the intention of the government in relation to the Inuit and Arctic sovereignty?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank the senator for the question. I am proud to be part of a government that has focused on the issue of Arctic sovereignty, most particularly because it was something that was brought to the public eye by Prime Minister John George Diefenbaker and then Minister of Northern Affairs and Natural Resources Alvin Hamilton. The program was called "Roads to Resources." I reminded honourable senators in the last session of Parliament that this program was belittled and derided by the then Liberal opposition leader Lester Pearson when he described it as "Roads from Igloo to Igloo." Those were his exact words.

Honourable senators, the Throne Speech made considerable mention of the government's intentions for the North in a wide variety of areas. Our integrated northern strategy will be built on the objectives of economic and social development, sovereignty, openness, environmental protection and, more important, we will be working closely with the Inuit in all aspects of this development.

NATIONAL DEFENCE

ARCTIC SOVEREIGNTY—INVOLVEMENT OF RANGERS

Hon. Roméo Antonius Dallaire: Honourable senators, this history lesson about half a century ago with Prime Minister Diefenbaker and the Arctic is fine, but one must wonder, over those years, even during Conservative governments, about whether or not we were interested in doing anything. We have not moved very far. It is also interesting that in the 1987 white paper that Perrin Beatty brought in, there was a plan to build an Arctic base. Two years later that same government crashed and destroyed that plan, and we ended up with a white paper but no money and no military.

My question is in regard to the rangers. Does this government intend to use the incredible capability to which Senator Adams referred and install rangers as a permanent force in the North instead of engaging them on a part-time basis and hauling them in when we in the South feel like it?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank the senator for the question. Part of the answer to the question was provided by Senator Adams in his preamble. It was another Conservative government that established Nunavut in the first place and settled the land claims, even though it was the subsequent government that was there to "pick the flowers," so to speak, on the issue.

In any event, as I responded to Senator Adams, the government is committed to the entire question of Arctic sovereignty and the involvement of the Inuit in all aspects. I will make the views of the honourable senator in regard to the rangers known to my colleagues in the Department of National Defence.

• (1415)

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

ARCTIC SOVEREIGNTY— ECONOMIC AND RESOURCE DEVOLUTION

Hon. Hugh Segal: Honourable senators, I ask the Leader of the Government in the Senate, in support of the question put by my colleague, Senator Adams, whether she might inquire of the Privy Council Office for a list of all the negotiations that have taken place over the last many years relative to economic and resource devolution, which I believe was mentioned in Her Majesty's speech and is part of the government program?

A great prime minister once said that the best indication of sovereignty is economic self-sufficiency. The governments of the Northwest Territories, Nunavut, the Yukon and others have been looking for a measure, as my honourable colleague will know, with respect to devolution. I believe they have seen many negotiations proceed in good faith, led by politicians of all parties, only to be slowed down by, I am sure, distinguished, but in my view wrong-headed, public servants in the Department of Finance and at Treasury Board who have stopped the process from going ahead. If the minister could share with us the history of those negotiations, I think that information would allow this chamber to be supportive of the government in every respect relative to the devolution proposition advanced in the Speech from the Throne, which was encouraging to many of us in this chamber.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I should add, in response to Senator Dallaire's question, that we have already committed to expanding and re-equipping the rangers and adding 900 members. I meant to report that.

Senator Segal asked for a long shopping list of some detail. I am happy to take the question as notice to provide him with a lengthy written response.

LIBRARY AND ARCHIVES CANADA

HOURS OF OPERATION

Hon. Lorna Milne: Honourable senators, Treasury Board documents reveal that when the National Archives and the National Library merged to form Library and Archives Canada in 2002, the transformation was not in any way supposed to reduce the quality of service delivered by the new institution. Both institutions viewed the move as a strategic opportunity to expand their mandates and to serve Canadians better. However, as of September 1, service hours at the National Library have been reduced from 47.5 hours per week to 30 hours per week.

In addition, reading rooms that were accessible to researchers between eight o'clock in the morning and eleven o'clock at night, seven days a week, are now open only until 8 p.m., and are closed on the weekend.

My question for the Leader of the Government in the Senate today is: What message is this government sending to Canadians when it starves the archives for money so these changes needed to be made? Is it okay to be interested in our own history but only during business hours?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I do not know what circumstances prevailed in establishing new hours of operation for the Library and Archives Canada, so I will take the question as notice.

Senator Milne: Honourable senators, I thank the leader for that answer. I look forward to the response. Researchers from all over Ottawa and Canada converge on Ottawa to get their hands on the tangible documents that depict and explain Canada's history. While I can appreciate the mandated need of Library and Archives Canada to now cut costs, I do not believe it should result in a tangible reduction to the quality of the service delivered to Canadians.

The argument that more research occurs online is true and it is good, but only 1 per cent of the collection is presently online. Therefore, I would like the Leader of the Government in the Senate to inform honourable senators how much money these changes will save Library and Archives Canada, how many people have been taken off digitizing the present collection to keep the open hours, and how many positions will be completely lost because of these changes?

Is this government comfortable in knowing it is restricting all Canadians from accessing their own history for the sake of a few GST dollars that will amount to about one cent on each cup of coffee that Canadians drink?

Senator LeBreton: Honourable senators, this government, probably for the first time in some time, is concerned about our history, our heritage and the fact that we have a great history and a great heritage. Unfortunately, our Canadian youth, perhaps, are not as aware.

• (1420)

I am deliberately not looking at Senator Milne because I am sure she is going through one of her song and dance routines again.

Senator Milne's question was long and detailed. The government, of course, would not want in any way to restrict access to valid information that would help Canadians to better educate themselves, to know our history and to share a sense of pride in the country.

I shall take Senator Milne's question as notice because, to be perfectly honest, I had not heard that Library and Archives Canada had changed its hours. I know I am responsible for answering all questions on behalf of the government, but the opening and closing hours of Library and Archives Canada has not crossed my desk.

THE ENVIRONMENT

CLIMATE CHANGE—GREENHOUSE GAS EMISSIONS

Hon. Francis William Mahovlich: Honourable senators, I rise today to ask a question to the Leader of the Government in the Senate about the very important issues of the environment, climate change and the Kyoto Protocol.

On October 25, when Senator Tkachuk spoke on this same topic, he referred to an article by Gwyn Prins and Steve Rayner entitled "Time to Ditch Kyoto," which was published in the British science journal, *Nature*.

In that article, the authors talk of how the Kyoto Protocol has failed to fight climate change. They talk of how the less than 20 of the 194 countries in the world that are responsible for about 80 per cent of the world's emissions — one of which is our very own home and native land — have failed to reduce their greenhouse gas emissions.

The authors stress that there is a great need for increased spending on clean energy research and development. In their words, spending on research and development should be "on a wartime footing."

As an example, the U.S. spends about $80 billion per year on military research. Messrs. Prins and Rayner argue that an equal amount should go toward finding ways to decarbonize the global energy system.

I believe, as the article states, there is no silver-bullet solution to climate change; rather, a multi-pronged, silver-buckshot approach may be better. Either way, the issue cannot be ignored and must be acted upon immediately. The issue of climate change is an important matter, one that affects Canadians of all political stripes. It is my hope that the government will not side-step this issue.

To bring the point home, John Baird, the Minister of the Environment, has said that the government intends to forge ahead with its own strategy for reducing greenhouse gases domestically while working with other countries on long-term solutions.

My question to the government leader is as follows: When will the government rise to the challenge and tell Canadians how it plans to reduce greenhouse gases?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank the senator for the question. The answer to the question is that we are doing it now.

On the Kyoto accord, even Liberal members, including the leader and deputy leader, have acknowledged that it is impossible to meet the Kyoto targets. Even Eddie Goldenberg, who worked for then Prime Minister Chrétien, in his book said that the Kyoto Protocol was signed without any idea as to how to implement it.

I shall take this opportunity to refresh Senator Mahovlich's memory on some of the things this government is doing to reduce greenhouse gases.

• (1425)

On the subject of climate change, this government has demonstrated leadership at home with our plan to achieve an absolute reduction in greenhouse gases of 20 per cent by 2020, and of 60 per cent to 70 per cent by 2050. We have demonstrated leadership in the world, as has been acknowledged by other world leaders, including environmentalists, at the G8, APEC and the UN. We have invested $375 million in conservation programs and to protect heritage places such as Nahanni National Park Reserve and the Great Bear Rainforest. Last week the Prime Minister and the Minister of the Environment were in Northern Ontario with the Honourable Joe Comuzzi to designate the northern part of Lake Superior as an environmental heritage site — the largest in the world. In the area of enforcement, we are getting tough on those who poach and plunder.

The Hon. the Speaker *pro tempore***:** Honourable senators, the time for Question Period has expired.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Comeau, for the second reading of Bill S-3, An Act to amend the Criminal Code (investigative hearing and recognizance with conditions).

Hon. George Baker: Honourable senators, I wish to congratulate those honourable senators who were involved for many years with the Special Senate Committee on the Anti-terrorism Act to study and produce a report on the subject of terrorism. The work done by those in this place has been recognized by the Prime Minister, by the Minister of Justice and by the Leader of the Government. The Senate is regarded as the place where the expertise lies in regard to this subject matter and that is why the government decided to introduce Bill S-3 in the Senate rather than in the House of Commons.

I watched Senator Segal on television last night, although I do not know if the program was pre-recorded, where he praised the Senate on its great work on the subject of this bill and on other subjects as well.

Some Hon. Senators: More, more.

Senator Baker: Honourable senators, I do not have a written speech, so I will not speak long on this matter. However, I will try to address the key portions of the proposed legislation.

The position taken by the Liberal leader in the House of Commons is no different than that taken by the members of the special Senate committee; they both agree that change must be made to the legislation.

Today we are dealing with proposed legislation that speaks to the sunset provision that caused certain aspects of the act to come to an end. I was involved with the original legislation in the other place prior to its enactment. Certain subjects arose that continue to arise. These subjects include the provisions dealing with investigative hearings, or as the Supreme Court of Canada has relabelled them, "judicial investigative hearings;" and the provision on recognizance, which means "bail," as the Honourable Senator Oliver would tell us.

These provisions do not relate to arresting someone when there are reasonable grounds to believe that they are about to commit an indictable offence or when they have committed an offence. These provisions have gained the interest of academics and the general population alike because they are extraordinary measures.

• (1430)

In other words, the first measure deals with the provision to bring somebody before a judge by subpoena or by arrest, who, perhaps, on reasonable grounds, has knowledge of

the whereabouts of somebody who may be suspected of being involved in a terrorism activity, as defined under this section. Imagine that.

The second portion is equally as extraordinary because it deals with detention and recognizance for somebody who is suspected of having something to do with a terrorism activity. As you know, to arrest somebody, you require reasonable grounds to believe. Senator LeBreton has been involved for many years in the section of the Criminal Code dealing with impaired driving, and she has made a great effort to bring justice to that provision and to stop the great destruction occurring on our highways. When we look at that provision, the most litigated part of the Criminal Code, we see this great difference between suspicion and belief. In other words, the indicia for belief could be ten particular subjects, whereas suspicion could be only one indicium. Therefore, there is a great line there. That is why this legislation has raised such interest in the general public.

Honourable senators, when we dealt with the change in the House of Commons and then here in the Senate, many of us believe that changes made to this legislation right now bring it in line with what the Senate committee had recommended, and the Leader of the Opposition, Stéphane Dion, had suggested.

However, another element that has not been addressed is the decisions of the Supreme Court of Canada that might suggest this bill be amended. The Prime Minister has said no amendments. I hope one of my colleagues will address this question in a speech where the Prime Minister dictates that no amendment should be given to this bill in the Senate, or it may trigger an election. I imagine one of my colleagues will address this question in a future speech.

This bill comes here for first consideration. This is not sober second thought. This is first thought. Under normal circumstances, if an amendment is to be made to the bill, the government normally brings it in. That process is the normal one. Therefore, let us suggest to the government today that perhaps the government should introduce two possible amendments in the committee to bring it in line with decisions of the Supreme Court of Canada.

Three decisions have been made on this bill by the Supreme Court of Canada. Is it not remarkable to pass a bill in the House of Commons, effective December 2001, and since that time to have to deal with three decisions by the Supreme Court of Canada on this little bill we are dealing with today? That is extraordinary.

The first decision of the Supreme Court of Canada was to say that the provisions of the bill did not contravene section 7 of the Charter. The provision of the bill that we are about to take up in the particular instance referred to the Supreme Court of Canada. It had to do with compelled testimony and whether that testimony could be used against that person in a future proceeding. I will read for you the judgment of the court from the Supreme Court of Canada, which backs up the government in producing this bill.

I will read the headnote. It is much simpler. It provides a summary done by the publishing agent Westlaw. The date of the judgment is June 23, 2004, and it is entitled, Application under Section 83.28 of the Criminal Code, which is what we are dealing with, and it is identified as 2004 Carswell B.C. 1378.

It says the following:

> Section 83.28 of Criminal Code, dealing with investigative hearings related to terrorism offences, does not infringe s.7 of Canadian Charter of Rights and Freedoms — Procedural protections available to "named person" subject to order to attend for examination at judicial investigative hearing were equal to and, in case of derivative use immunity, greater than protections afforded to witnesses compelled to testify in other proceedings, such as criminal trials, preliminary hearings or commission hearings . . .

Imagine; there is greater protection in this bill, according to the Supreme Court of Canada, as it relates to this subject. Every time I think about this subject, I think about my honourable friend to my left, Senator Grafstein, because with respect to derivative use immunity, the case in that, as Professor Oliver Wendell Holmes will attest to, is *British Columbia Securities Commission v. Branch*. In that case, Justice Sopinka delivered the decision of the court on derivative use immunity, apart from use immunity, and said that under no circumstances could the evidence be used in a future proceeding.

In this bill, it says only in a criminal proceeding. When we read the bill, it is clear that, perhaps, on this one point, the Supreme Court of Canada is correct. They are the authority. I do not think someone could question that aspect of the legislation. It is explicit in the bill.

I remind honourable senators that five sections define "judicial proceeding" in section 118 of the Criminal Code. Honourable senators will notice in this bill that with respect to certain provisions on terrorism, the restrictions do not pertain to section 132 and section 136. First, a judicial proceeding, according to the law, is a proceeding established by an order of the court or the court itself, and then it goes to the Senate and the Senate committees. Then there are the punishments after that, for perjury. Anyone who intentionally misleads a Senate committee is liable to 14 years in jail.

Senator Segal has asked an interesting question: Does that punishment apply to senators? Senators may have privilege in that particular case, but it is an interesting point. I wonder why Senator Segal is asking.

As we continue, that was the judgment of the Supreme Court of Canada on this particular section. However, honourable senators, there is a little warning here from the academics.

• (1440)

Some of us here are prolific readers of case law. We subscribe to Quicklaw and WestlaweCARSWELL, and every morning we turn on the computer and read the cases. Many senators in this place do that. We do not go to movies or read novels; we read case law.

At the beginning of every reported case there is an annotation. There are certain professors of law in Canada, very distinguished people, who are called upon to pass judgment on a judgment as an annotation to the decision. In this particular case, it was Tim Quigley, a famous author of law at the University of Saskatchewan.

He criticized the decision that was made at the time. At the end, he wrote:

> When Parliament reviews investigative hearings and other aspects of the anti-terrorism legislation in 2007, unless other events point to a continuing need for these draconian provisions, let us hope that our Parliamentarians refuse to extend them.

That is an extraordinary annotation to have on a piece of legislation by a professor. That began, honourable senators, by saying:

> It is reassuring, therefore, that a majority of the Court at least upheld the principle of open courts in the companion case, *Vancouver Sun, Re* . . .

When we read this bill, what do we see? We see *ex parte*, privacy and secrecy, do we not?

Senator Grafstein: The light does not shine into the Star Chamber.

Senator Baker: That is correct.

The Vancouver Sun, Global Television and the *National Post* said that they had discovered that this proceeding had taken place through serendipity, and that that contradicts the principles of freedom of the press and open courts.

Mr. Quigley has just told us that there was an accompanying decision that said that these proceedings must not just be held *ex parte* but in open court.

We now come to the first suggested amendment from the government to bring it in line with the Supreme Court of Canada decision in *Vancouver Sun, (Re)* of the Supreme Court of Canada, 2004, CarswellBC 1376, a decision made June 23, 2004.

As honourable senators know, it is not unusual to have something start *ex parte*. If an order has already been given by a court but you do not have an entire proceeding *ex parte*, you would have it *inter parte*, in which notice is given to the other side that it is taking place.

In this case, we have a bill that was interpreted by the courts as meaning "in secret" simply because it started *ex parte*. When an interesting decision is made and the Supreme Court of Canada invents a new word or phrase, that word or phrase is explained at the beginning of the case. In this case they invented the phrase "judicial investigative hearing," which is not contained in the bill. They explain what that phrase means. This is a decision of Iacobucci, Arbour, McLachlin, Major, Binnie and Fish — six justices, which is a fairly solid decision of the Supreme Court of Canada — although any decision of the Supreme Court of Canada is solid; it does not matter what it is.

In this particular case, the three remaining justices wanted to go even further. Let me read this judicial investigative hearing decision for honourable senators. First, in the definition, it says:

> The judicial investigative hearing provided for in s. 83.28 of the *Code* is a procedure with no comparable history in Canadian law. It provides essentially that a peace officer, with the prior approval of the Attorney General, may apply *ex parte* to a judge for an order for "the gathering of information".

The Canadian press is saying to the Supreme Court of Canada: We have such a thing as a principle of open court. We have freedom of the press. We want to be included in this action. We want to know what is going on.

The Supreme Court of Canada made their decision. At paragraph 53 they said this:

> . . . it is clear under s. 83.28(5)(*e*) . . .

This is in the bill.

> . . . that the terms and conditions attached to the judicial investigative hearing must be varied and adjusted to achieve the proper balance between confidentiality and publicity as the matter progresses.

Then they went on to make some statements. I will read the first line of each of these parts.

Paragraph 23 states:

> This Court has emphasized on many occasions that the "open court principle" is a hallmark of a democratic society and applies to all judicial proceedings.

Then they refer to all of the cases.

Paragraph 24 begins as follows:

> The open court principle has long been recognized as a cornerstone of the common law.

Then they refer to many cases.

Lord Atkin is quoted as saying:

> "Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity". . . .

Paragraph 25 states:

> Public access to the courts guarantees the integrity of the judicial process by demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law" . . . . Openness is necessary to maintain the independence and impartiality of the courts.

Paragraph 26 states:

> The open court principle is inextricably linked to the freedom of expression protected by s. 2(*b*) of the *Charter* and advances the core values therein . . . . The freedom of the press to report on judicial proceedings is a core value. Equally, the right of the public to receive information is also protected by the constitutional guarantee of freedom of expression . . . .

The decision also recommends that pre-trial proceedings are of an open-court nature.

The suggested amendment that the government should think about bringing forth is in the decision of the Supreme Court of Canada. I will read it; it is a paragraph long. The amendment would be after the section referenced at paragraph 57:

> That the proposed judicial investigative hearing be held in public, subject to any order of the presiding judge that the public be excluded and/or that a publication ban be put in place regarding aspects of the anticipated evidence to be given by the Named Person.

Paragraph 58 also orders that:

> . . . the investigative judge review the continuing need for any secrecy at the end of the investigative hearing and release publicly any part of the information gathered at the hearing that can be made public without unduly jeopardizing the interests of the Named Person, of third parties, or of the investigation. . . . Even in cases where the very existence of an investigative hearing would have been the subject of a sealing order . . . .

Senator Andreychuk, a former judge, tells me that sealing orders are used in a controlled drugs and substances case where a police officer swears an affidavit that gives names of informants, where they say who did what and they do not want to expose that information. That affidavit is then sealed. It can be unsealed by an application, but when it is unsealed, everything is blacked out, such as the name of the informant or anything that would lead to the identification of an informant.

• (1450)

Regarding the subject of a sealing order, "the investigative judge should put in place, at the end of the hearing, a mechanism whereby its existence, and as much as possible of its content, should be publicly released." That is the Supreme Court of Canada in *Vancouver Sun (Re)*. Those are not my words, nor those of a Senate committee, nor the words of a judge of the Supreme Court. Those words can be found in the Supreme Court of Canada judgment in *Vancouver Sun (Re)*. We would strongly recommend that the government have a look at that, as a possible amendment.

The second amendment concerns the second portion of this bill, which involves bail. The word "bail" is not used. The term "judicial interim release" or "show cause hearing" is sometimes used. In the bill before us, the term that is used is "recognizance with conditions."

I was wondering if Senator Smith was present in the chamber — because I was intending to quote from a decision by an Ontario Superior Court justice by the name of Smith. Nevertheless, perhaps the most important part of this bill is when it says that "the judge shall order that the person be released unless the peace officer. . ." With respect to the recognizance, I am looking at proposed section 83.3(7)(*b*)(i) of Bill S-3, which states — and I quote:

> (i) the judge shall order that the person be released unless the peace officer who laid the information shows cause why the person's detention in custody is justified on one or more of the following grounds:

Honourable senators, this is detention. In other words, we have someone who is not accused of a criminal act, who is not believed to be a criminal or even believed to be likely to commit a criminal act in the future. What we are talking about is a person who could know the whereabouts of someone or on reasonable grounds know the whereabouts of someone who is a suspect.

Who are these people? The first clause of this bill talks about being able to arrest these people and bring them in. What people on reasonable grounds would know the whereabouts of a suspect? We could be talking about anyone — a priest, a member of someone's family, a spouse, although a spouse, under the Canada Evidence Act, cannot give evidence against another spouse. That is not excluded in this bill. We could be talking about the paper boy, the milkman, a teacher, a senator or a politician. Anyone who has intimate knowledge of the whereabouts of a person is subject to an investigative order.

The proposed section — part of which I quoted a moment ago — encompasses seven paragraphs, all of which is taken word for word from the Criminal Code on bail, section 515(10)(*c*).

When I first read this bill, these words — which I shall quote momentarily — jumped out at me just like a Mack truck. "This is a gaping hole," I said to myself. Let me quote:

> (*c*) any other just cause and, without limiting the generality of the foregoing. . .

"Any other just cause" — to do what? To detain someone in jail. If you say you are detaining someone until they get a recognizance but then it continues if they do not obey the recognizance, they are subject to 12 months in jail, *ex parte*.

The interesting part is these words jumped out at me, honourable senators, because of a decision of the Supreme Court of Canada. Since we passed this in the House of Commons, when I was there — and the Senate had it as well — there was a decision by the Supreme Court of Canada striking down that section, taking it out. Yet, it is again reproduced. It was in the Criminal Code previously because there was no decision to excise it at the time. There are many decisions. Every jurisdiction in this country has made a decision on this and they have said these words must be removed.

I will not quote from Judge Smith of the Superior Court of Ontario, but let us go to the Manitoba Court of Queen's Bench — which is the Superior Court in the province of Manitoba — and all of the other provinces are the same.

Let us look at a B.C. ruling, 2005 CarswellBC, 3156. Here are the words:

> The constitutionality of this provision was addressed by the Supreme Court of Canada in *R. v. Hall* (2002), 167 C.C.C. (3d) 449 (S.C.C.). Mr. Hall was charged with first degree murder. The victim had been killed in her own home. She suffered 37 stab wounds. Her injuries were such that it appeared that her assailant intended to cut her head off. The horrific nature of the crime led to significant media attention and raised significant public concern in the community in which it occurred. . . .

> The court found that the opening clause, namely: "on any other just cause being shown and, without limiting the generality of the foregoing. . ." was unconstitutional. . .

We are talking about the tertiary or the third ground in this bill. There are three grounds; everyone knows the grounds. First, the person will be released, unless there is a belief that the individual will not show up for court; the second ground is that if the individual is believed to be a danger to society, he or she will not be released. The third ground is the ground I am about to reference, a portion of which has been struck down.

I shall now reference the Manitoba Court of Queen's Bench, 2007 CarswellMan, 190. The reference to the tertiary ground is as follows. It says at paragraph 22 — and I quote:

> [22] The first phrase of s. 515(10)(*c*) which permits denial of bail "on any other just cause being shown" is unconstitutional.

J. Sinclair is quoting the Chief Justice of the Supreme Court of Canada. He states:

> Even assuming a pressing and substantial legislative objective for the phrase "on any other just cause being shown", the generality of the phrase impels its failure on the proportionality branch of the *Oakes* test (*R. v. Oakes*, [1986] 1 S.C.R. 103). Section 52 of the *Constitution Act, 1982*, provides that a law is void to the extent it is inconsistent with the *Charter*. It follows that this phrase fails. The next phrase in the provision, "without limiting the generality of the foregoing", is also void, since it serves only to confirm the generality of the phrase permitting a judge to deny bail "on any other just cause".

Honourable senators, this is fairly clear. I suppose one could argue — but I doubt it — that this was struck down within the meaning of this section of the Criminal Code and we are now introducing another section of the Criminal Code that says the same thing, so perhaps the courts will not attribute the same reasons to it. I notice the professor nodding his head.

When you examine something, it is always within the meaning of a particular provision. However, in the context that it was struck down in *R. v. Hall* of the Supreme Court, an absolutely vicious and horrendous crime that was committed in a small Ontario community, the horror experienced by the public and then the use of the phrase by the Supreme Court of Canada here "in any other provision" no matter what the provision is, no matter what the purpose of the provision, this is clearly unconstitutional and must be expunged. The problem is: Who will be the expunger?

My time has probably run out. These are thoughts that we bring to you. I again want to congratulate the Senate committee, senators on both sides of the chamber, who dealt with this bill.

• (1500)

I was watching it from the other place when the committee was struck, but there is an expertise here that does not exist in the House of Commons. Believe me, I was there for 29 years and I know that the House of Commons looks only to the next election, whereas the Senate looks to the next generation.

The Hon. the Speaker *pro tempore***:** Senator Baker, will you accept questions?

Senator Baker: Of course.

Hon. Jerahmiel S. Grafstein: I commend Senator Baker for that extraordinary exposé. It reminds me of the cases he and I discussed earlier. I have several questions to ask him because I have not had an opportunity to review those cases, or look as carefully at this legislation. Senator Baker and Senator Fairbairn will recall that when the committee on the terrorist bill was first struck, the Liberal government of the day was opposed to a sunset clause, and it was the suggestion of Senator Joyal and me that the opposition take up and amend that terrorist bill to include a sunset clause. In effect, we were the authors or godfathers of that clause because at that time there was a rush to judgment. Therefore, we always believed that a rush to judgement would be inappropriate.

This is an extraordinary measure. The courts say it is extraordinary, Senator Baker has said it and government has said it. In fact, Minister Day thinks it is extraordinary because he has come back and amended it after reading the decision by the Supreme Court of Canada. Therefore, this is an extraordinary measure with extraordinary consequences, and hence the sunset clause.

My first question for Senator Baker is: In light of this extraordinary amendment to an extraordinary measure, has he considered whether we should consider a sunset clause for a short period of time to see whether the courts deem it workable or constitutional?

My second question is short, but first allow me to say that within the context of an *ex parte* or star chamber decision, something strikes me as obviously flawed. At the end of the day, the amendment essentially allows for a unilateral hearing to be held without the other side even arguing whether an extraordinary *ex parte* hearing should take place within a judicial investigation. Has Senator Baker given some thought to whether that measure should be more limited than it is under these provisions?

Senator Baker: First, I agree with Senator Grafstein. What happens in an *ex parte* hearing? If one looks at each province's rules of court, they have forms and they have rules regarding *ex parte* hearings. They occur only, for example, in family law, which Senator Andreychuk is an expert on. In family law, if a judge makes an order stating that children shall remain in a particular city, and the spouse or parent who does not have custody at the time learns that the children are being taken to the airport, an application is made to a judge *ex parte*. The other parent can go to the judge and obtain an order to stop those children from being removed. Those circumstances would be extraordinary circumstances.

Everything is on time periods when you look at civil law, so when we get to a position where something is passed and someone could go in *ex parte* and say, "They did not file their documents on time so I am applying *ex parte* to have this removed from the court record," everything is extraordinary. However, this provision enables a police officer to have an *ex parte* hearing, and have the detention and arrest take place, all *ex parte*.

The honourable senator will notice the section that deals with rights to counsel. Normally, when someone is detained, they immediately have a right to counsel as per section 10(b) of the Charter. It is only when you have allowed in the law a detention to carry out a purpose — such as to administer a roadside test, which is then measured against section 1 of the Charter and as a reasonable limit on your rights — you must be given rights to counsel.

What does this law say? This law says that a person has a right to counsel during any part of the proceedings. In other words, the arrest takes place and then the proceedings start. This is not the initiation of proceedings; this is the proceedings under this law granting rights to counsel.

On Senator Grafstein's question of the open-endedness of it, obviously if they looked at *The Vancouver Sun* and they simply applied — as I read out — what the Supreme Court of Canada has said, that amendment would be the appropriate one in that particular case. As far as the sunset provision is concerned, one would have to make up one's mind on whether the legislation is even needed at this point.

Hon. Lorna Milne: Senator Baker, in his opening remarks, said that the government has declared that if this place makes any amendments to this bill, it will be considered a matter of confidence. We know that this chamber is not a chamber of confidence. How can the government possibly do that? This approach is against all parliamentary procedures that I have ever heard of.

Senator Baker: Honourable senators, perhaps we can convince Senator Joyal to prepare an address on this subject. I know I would like to hear one. It would be worthwhile since he is recognized as a constitutional expert, and one would hope that he would undertake to give us his thoughts on this subject in a future speech.

Hon. Serge Joyal: Two days hence.

Hon. David Tkachuk: Honourable senators, I listened to Senator Baker's speech with great interest. I want to know whether, after the honourable senator's last comment to Senator Milne, he supports this bill in principle.

Senator Baker: I listened to Senator Tkachuk carefully the other day when he gave his speech on this particular bill. He gave an excellent speech. I know part of it was prepared by the Department of Justice because he put forward their position on why we needed this extraordinary measure and why it could not be done through the existing law. He went into detail on section 495 of the Criminal Code, which is the section on arrest. I forget what the honourable senator said, but the law is that someone can be arrested during the commission of any offence, or if the police have reasonable grounds to believe that the person is about to commit an indictable offence.

Senator Tkachuk then went on to section 495.5, and it says that even in hybrid offences someone cannot be arrested except in exigent circumstances, or to establish the identity of the person. The point is, we cannot apply the law existing to this particular bill because there is nothing in the law that gives the authority to arrest someone if there are not reasonable grounds to believe that they have committed a crime or they are about to commit a crime. That is why it is indictable, not hybrid, which means we can go either one way or the other, summary or indictable.

• (1510)

The point is that these extraordinary measures are needed because absolutely nothing in the existing law could be used to accomplish the same thing, except this: As far as I am concerned, the identity of people being questioned and the concern of the government that someone's name would get out is easily handled under the existing law and reverse onus. Reverse onus is already in the bail provisions in section 515 of the Criminal Code. Every day in our courts, people must show cause why they must be released, if they have a prior record. Every single day the government preaches this: We will make this bill a reverse-onus bill. Excuse me, but on bail it is all reverse onus unless it is a simple matter and they have released the person anyway.

Senator Oliver: He agrees in principle.

Senator Tkachuk: That was a long answer to an easy and short question. I asked Senator Baker whether, considering what his own leader in the House has said, which I also mentioned in my speech, I am to assume that the honourable senator supports this bill in principle, or does he not, after what he said to Senator Milne?

Senator Baker: Honourable senators, I respect the principles of parliamentary procedure. In other words, a bill is introduced into the House, then the bill is dealt with at second reading and then it is sent to a committee, at which time it can be amended. We hear from witnesses and we hear from the government whether or not they wish to apply the decision of the Supreme Court of Canada. At the end of the day, under our parliamentary system, a final decision is made at third reading.

Does that answer the honourable senator's question?

On motion of Senator Tardif, debate adjourned.

CANADA-UNITED STATES TAX CONVENTION ACT, 1984

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Angus, seconded by the Honourable Senator Brown, for the second reading of Bill S-2, An Act to amend the Canada-United States Tax Convention Act, 1984.

Hon. Ross Fitzpatrick: This speech will be short, Senator Baker, though perhaps not as erudite.

Honourable senators, this afternoon I have the privilege of responding to second reading of Bill S-2, An Act to amend the Canada-United States Tax Convention Act, 1984. However, I will first take a moment to congratulate my colleague Senator Angus, who is to be the new chair of the Standing Senate Committee on Banking, Trade and Commerce. He was a respected deputy chair of the committee under the chairmanship of my colleague and friend, Senator Grafstein, who excelled as chair of the committee

during his three-year term. I congratulate not only Senator Angus, but also Senator Grafstein, for the outstanding contribution to the work and direction of the Banking Committee. I think it is appropriate to voice these sentiments at this time because Senator Grafstein has been so instrumental in pursuing improved Canada-United States relations through the Canada-United States Inter-Parliamentary Group.

Honourable senators, I will now address the bill. Essentially, the bill enacts into our domestic law the recently concluded protocol that amends the Convention between Canada and the United States of America with respect to taxes on income and on capital. Senator Angus summarized the key issues in his address Wednesday last.

This bill, however, is more than mere "housekeeping." It is an extremely important piece of legislation because the United States is our closest neighbour and our largest trading partner. It is therefore imperative that we keep our bilateral tax agreements up to date.

This convention has been a work-in-progress. Since 1980, the convention has been amended four times — in 1983, 1984, 1995 and 1997 — and I am pleased to see that the Conservative government is continuing the Liberal tradition of ensuring that our tax arrangements with our most important trading partner are kept current.

Bill S-2 is an appropriate measure because it meets the requirement of improving our trade relations with the United States. A modern, fair, freely negotiated tax convention with the United States is of vital importance to the smooth functioning of the Canadian economy. However, honourable senators, I take this opportunity to say that along with tax conventions such as this one, it is crucial that we improve our productivity in Canada to meet our continuing competitive challenges.

I would be remiss if I did not point out that the government's announcement yesterday to further reduce the Goods and Services Tax will have a negligible effect on the economic health of the country, and will do nothing to increase productivity. We need balanced and broad-based tax relief if we are to raise our level of productivity and improve our competitiveness. In this regard, I am pleased that the government's economic statement yesterday implemented personal income tax cuts, corporate tax cuts and small business tax cuts; however, I would have liked to have seen a reduction in the capital gains tax as well.

In addition to tax relief, many other concrete measures can be enlisted to enhance our nation's productivity. As suggested by the Senate Banking Committee, Industry Canada could develop a "productivity prism" to assess both current and proposed federal policies and programs to determine their impact on productivity in Canada.

As well as reducing the corporate tax rate, the federal capital tax should be eliminated, and capital-cost allowance rates should be aligned with the useful life of assets.

Productivity can also benefit by eliminating unnecessary restrictions on foreign investments and by taking steps to increase direct foreign investment.

Ensuring ease of access to reasonable-cost financing for all Canadian businesses, especially small- and medium-sized businesses, would also be a boon to productivity.

We should continue to pursue international trade agreements that improve the ability of Canadian businesses to compete in the global marketplace.

Internal barriers to trade are an impediment to productivity, so we should work towards making the domestic marketplace more competitive. Such protectionism discourages competitiveness, distorts market forces and reduces efficiency. In this respect, the government would do well to support the lead that the government of my province of British Columbia has taken.

Our productivity would also benefit from the development of international dispute settlement mechanisms that facilitate long-term solutions to trade irritants.

The committee also recommended that the federal government create a forum on productivity. The forum would measure and report on productivity performance, as well as assess the combined productivity effects of federal initiatives aimed at influencing productivity performance. The forum would report directly to Parliament and would be comprised of representatives from business, organized labour, academics, public policy organizations and government.

• (1520)

Honourable senators, as important as it is to have a modern and up-to-date comprehensive tax convention with the United States, it is equally important to address other essential elements of the Canadian economy. It is imperative that we begin to adopt measures that will raise our productivity and performance, and thereby ensure our ability to compete in global markets.

In closing, we support Bill S-2, but we urge the government to do more to improve our productivity and competitiveness and to address our ever increasing non-resource trade deficit.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Canada and the United States signed a protocol that amends the convention between Canada and the United States of America with respect to taxes on income and on capital. My understanding is that the U.S. Congress and our two Houses of Parliament must pass legislation by the end of the year in order to be able to benefit from the provisions of the agreement. If this agreement is not passed in both Houses by the end of this year, we will delay the benefits that will be derived from the provisions of this bill.

Some honourable senators on this side are quite concerned that our committees are not yet underway, and God knows when that will happen. We are not sitting next week, which brings us to mid-November before the committees will begin to be constituted, and that must happen before they are able to start meeting.

My concern is that we must start hearing witnesses in order to be able to advance this bill. At the end of the day, after we have reviewed the provisions of this bill with witnesses, we will need to send the bill to the House of Commons. Those of us who have been around this place for some years will understand that things can often go awry in December and this bill may not get the attention that it needs in order to be passed into law. To

paraphrase a famous Canadian, we would like to get this thing done. With that in mind, we would like to pass this bill right away; it does have a looming deadline.

I encourage all senators to refer this bill to the Committee of the Whole. To facilitate the work of the clerks, the chair and the two sides to engage witnesses, we would not suggest doing that this afternoon. However, at an appropriate time tomorrow, in consultation with the other side, we would hope to proceed to Committee of the Whole to deal expeditiously with this bill. We might be able to proceed to Committee of the Whole tomorrow; if not, at least the process would be underway.

I would appeal to the other side to refer this bill to Committee of the Whole at an appropriate time tomorrow.

Senator Fitzpatrick: I thank the senator for his suggestion. I believe all honourable senators would like to see the committees established as soon as possible.

With respect to the suggestion of presenting Bill S-2 to Committee of the Whole, I will leave that up to our leadership to determine.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it is certainly in the best interests of everyone to have the committees organize as quickly as possible. However, we would expect that the committees will be up and running very soon, and this suggestion for Bill S-2 is somewhat premature. We are familiar with getting things within the last week from the House of Commons with which they are asking the Senate to deal. If we can get this bill to them by the end of November, they should have ample time to deal with it. Committee of the Whole is not the customary way, from what I understand, to move a bill of this nature forward. We think it is too early at this time to proceed to Committee of the Whole. We would prefer to refer the bill to the Banking Committee.

Hon. Anne C. Cools: Honourable senators, I have a question for Senator Fitzpatrick. I listened carefully to him and am very aware of his background and experience in the world of commerce and trade. Senator Fitzpatrick made a statement in the context of his speech that was somewhat en passant, but he said he would like to see some changes and reforms, or something to that effect, in regard to the capital gains tax. Would he expand on that for me?

Senator Fitzpatrick: Honourable senators, in order to maintain our competitive position and encourage investment and productivity in Canada, it is necessary for us to be competitive with the United States. We should be looking at our capital gains tax to bring it in line with the capital gains tax in the United States.

Several years ago the Senate Banking Committee made a recommendation for a reduction of the capital gains tax, which was accepted by the government of the day. It was also suggested at that time that the tax should be even further reduced. That discussion related to the question of productivity and our competitiveness.

Senator Tardif: I move the adjournment of the debate.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker *pro tempore***:** All those in favour will signify by saying "yea."

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

Hon. Terry Stratton: Honourable senators, if we want to finish this matter, we should have a 30-minute bell.

The Hon. the Speaker *pro tempore***:** Is there agreement on the 30-minute bell?

Senator Tardif: That is agreed.

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

• (1550)

The Senate resumed.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Bacon	Joyal
Baker	Kenny
Banks	Mahovlich
Callbeck	Merchant
Chaput	Milne
Cook	Mitchell
Cools	Moore
Corbin	Pépin
Cordy	Phalen
Dallaire	Poulin
Dawson	Robichaud
De Bané	Rompkey
Eggleton	Sibbeston
Fitzpatrick	Stollery
Fox	Tardif
Goldstein	Trenholme Counsell
Grafstein	Watt
Hervieux-Payette	Zimmer—37
Hubley	

NAYS
THE HONOURABLE SENATORS

Andreychuk
Angus
Brown
Carney
Champagne
Comeau
Eyton
Gustafson
Keon
LeBreton
Meighen
Nancy Ruth
Nolin
Oliver
Segal
Stratton
Tkachuk—17

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

[*Translation*]

The Hon. the Speaker *pro tempore***:** Honourable senators, it being 4 p.m., pursuant to the order adopted by the Senate, I declare the Senate continued until Thursday, November 1, 2007, at 1:30 p.m.

The Senate adjourned until Thursday, November 1, 2007 at 1:30 p.m.

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