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Tuesday, February 12, 2008

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Tuesday, February 12, 2008

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

CRIMINAL JUSTICE REFORM

Hon. Gerry St. Germain: Honourable senators, Canadians want criminal justice reform and they want it now. Canadians are not only appalled at the extent to which our criminal justice system has eroded, they are scared, angry and fed up.

Violent criminals walk the streets free. Drug dealers ply their trade without restriction, preying on those ill with addiction. Gangsters shoot at each other in our streets, endangering the lives of innocent bystanders. Hardcore sex offenders are released from prison while still a serious threat to women and young people.

Nearly every urban Canadian worries about the safety of their home and their personal property on a daily basis. Victims of crime suffer while the legal elitists who have claimed the judicial system as their own exclusive domain play an endless game of plea bargaining, legal hair-splitting and meaningless justification of atrociously illogical decisions.

They hide behind the unjust principles inherent in the Canadian Charter of Rights and Freedoms — a charter of terrible wrongs in the minds of many Canadians.

In my home province, six gangland murders have been committed in the last few weeks of this year. The RCMP spokesman for the integrated homicide investigation team revealed to the community earlier this week that his investigators have identified the assassins in most of those cold-blooded killings. Crown counsel have refused to lay charges for fear of facing the overly burdensome test associated with a fair trial in today's court system. This situation is appalling.

The elitist philosophy and unrealistic practice that guides their conduct today is disconnected with the realities of our society and circumstances faced by Canadians in every community.

• (1405)

The judges and lawyers of our nation have perpetrated on Canadians a horrible reality: the abandonment of true justice in favour of some liberal-minded notion of fairness. They have transferred rights to criminals and robbed Canadians of precious rights we all thought we could take for granted. Our valiant police officers struggle in vain, their work made next to impossible by a system that has no notion of justice and no interest in ensuring community safety and security.

Ask the families and colleagues of the four brave, fallen RCMP officers who, three years ago, lost their lives at the evil hands of James Roszko, a man charged with crimes more than 40 times and a known violent offender allowed by the courts to terrorize his community. Did justice serve these brave men?

Ask the families of Ed Schellenberg and Christopher Mohan, innocent victims in a Surrey, B.C., gangland massacre in October 2007 that took the lives of four other known gangsters. Where is justice while killers walk the streets today?

Honourable senators, enough is enough. Change must happen now; laws must be strengthened; judges must be held accountable; court practices and procedures must not be left any longer to the lawyers and legal experts but changed to meet the real test of service to society.

Criminals must be imprisoned. Our police must be respected and given the authority and support they need to serve and protect our communities. Our society must be protected.

Honourable senators, much work needs to be done and we must start now in this chamber with the quick approval of the first —

Senator Mercer: Time!

Senator St. Germain: — the first of what, hopefully, will be the series of legislative packages reforming our criminal justice system.

Canadians want Bill C-2 passed.

THE LATE OSCAR PETERSON, C.C., C.Q., O.ONT

Hon. Tommy Banks: Honourable senators, last week Senator Oliver brought to our attention the name of Oscar Peterson when he reminded us of a list of distinguished Black Canadians. We have not yet made mention in this place of the passing of Oscar Peterson on December 23. I want to do so now.

It is a rare thing that in any field of human endeavour someone can be said to be "the best" at what they do. It is a rare thing to be singled out and placed so far above any other practitioner, supporter or creator of that craft or art that they are unassailably "the best."

Oscar Peterson was that. There are a lot of good practitioners of jazz piano. There are a few distinguished, extraordinary practitioners, and then there are four or five that can be identified as outstanding above all else. Oscar Peterson rose above all of them.

He was revered for having eliminated any impediment between what can be thought musically and what came out of his fingers. He removed that impediment. He was the envy, and an icon, to every practitioner and fan of his kind of music in the world.

He did not go through the struggle that most artists must to obtain world notoriety. Oscar Peterson became a star instantly, the first time anyone and everyone heard him play. When he was first thrust on to the international scene in the late 1940s, having already established himself on the CBC in Canada as pre-eminent, he instantly — overnight, in fact — became the jazz piano "Stanley Cup champion" of all time.

He was unassailably and unabashedly Canadian, and always said so whenever and wherever he went. He virtually travelled to everywhere on earth where there was a piano. He was born in Montreal, and ended up living in Mississauga, north of Toronto. As a resident, he never left this country.

He should be remembered and revered as he is by everyone in the world who understands music: Oscar Peterson, the best in the world.

• (1410)

Hon. Donald H. Oliver: Honourable senators, I should like to associate myself with the remarks just made by Senator Banks. I was deeply honoured Sunday night to participate in the gala tribute in Montreal to the late Oscar Peterson. It was a jubilant celebration, through words and songs, of Peterson's life, music, spirituality and his success. Approximately 250 people filled Montreal's St. James United Church to honour one of Canada's most distinguished musicians. Oscar Peterson died at age 82 on December 23.

He was born in the impoverished Montreal community of St. Henri into a musical family. After learning the trumpet, he switched to the piano at age 8, under the tutelage of his sister Daisy. Peterson's natural brilliance quickly broke the international music scene making him a member of jazz royalty.

His remarkable career was highlighted by eight Grammy awards, ten honorary doctorate degrees, the Order of Canada and the companion of the Order of Canada.

Tributes to Canada's "Maharaja of the keyboard" were given on Sunday night by family friend Richard Lord and others. Performances included Gregory Charles; gospel singer Clair Jean-Charles; the Vivienne Deane Ensemble; the Union United Church Mass Choir, which was phenomenal; and jazz pianist Dr. Oliver Jones, Oscar's childhood friend.

Jones said:

> Oscar and I lived about 20 doors apart. I followed in his footsteps from school to the church and later to playing in the clubs. I would say a lot of my success came from knowing what Oscar had accomplished.

Jones performed "Place St. Henri" written by Peterson and himself.

I first heard and met Oscar Peterson when he was performing at the Park Plaza Hotel in Toronto in 1957. I was absolutely overwhelmed by his improvisations and the brilliance of his right hand in particular. We chatted about our passion for jazz.

In memory of Oscar, the Union United Church began a scholarship fund in his name to support full time university students.

The evening ended with the playing and singing of "Hymn to Freedom" composed by Peterson. Oliver Jones began with his own improvisation before the entire congregation rose and sang. Jones played beautifully and magically, warming our hearts in tribute to the greatness of Oscar Peterson.

[*Later*]

Hon. Jerahmiel S. Grafstein: Honourable senators, I want to join with Senator Banks and Senator Oliver in paying tribute to the great Oscar Peterson. When I, too, was a law student, I first came across him at the King Cole Room at the Park Plaza in 1956 when he celebrated all his talent with another great Canadian, Peter Appleyard. It was there that the magic of jazz, previously unknown to me, came alive.

Over the years I got to know Oscar reasonably well. I met him on a number of occasions, most recently after the tsunami in Southeast Asia several years ago when we put together a charitable event to which stars donated their time. Oscar was one of the first to respond to our call. He played for that CBC concert, and we raised over $15 million at the event.

I want to pay tribute to Oscar, to his family and to all jazz lovers throughout the world. Wherever you go in the jazz community around the world, be it Ronnie Scott's in London or the Village in New York, if you mention that you are Canadian, the automatic reply is, "Oscar Peterson." The two are inseparable — Canadianism and Oscar Peterson. May he rest in peace.

AUTISM AWARENESS

MR. STEFAN MARINOIU— WALK FROM TORONTO TO OTTAWA

Hon. Jim Munson: Honourable senators, this week I had the honour to meet a man who walked all the way from Toronto to Ottawa, in cold and snowy weather, to raise awareness about autism.

Mr. Stefan Marinoiu is the father of Simon, a young man with autism who, at age 15, is having a harder and harder time coping. The family is afraid for him and also for their own safety as Simon becomes more aggressive — often a symptom of autism. Like other parents of autistic children, Mr. Marinoiu has sacrificed to buy services and programs his son needs.

He has asked the government for help but has not received it. He is like many witnesses who appear before our Standing Senate Committee on Social Affairs, Science and Technology — people who are at the end of their rope. They are ready to do any number of things. They may be about to lose their homes because they need the money to pay therapists, or they may be about to move to Alberta where benefits for children with autism are more generous. One thing is certain: families with children with autism are under stress. Every day is about hard work, patience, advocacy and sacrifice.

The world is a lonely, hopeless place when a father feels he cannot help and care for his family. That is what happened to Mr. Marinoiu. On January 31, he took this 11-day walk to Ottawa on Highway No. 2, in terrible weather, to come here to express his frustration and to tell Parliament what he needs. He has met with the Minister of Health and is not very satisfied with his response.

I hope, honourable senators, that we will join Mr. Marinoiu in his effort to make this government take action on Simon's behalf, and on behalf of all Canadians with autism.

• (1415)

CANADA POST

RURAL MAIL DELIVERY

Hon. Catherine S. Callbeck: Honourable senators, I rise today to address an issue that could have a serious impact on people living in rural Canada. As some of you may know, Canada Post has initiated a review of its mail delivery to rural mailboxes. In explaining the reason for the review, Canada Post has stated that many rural mail drivers are filing complaints that their health and safety are being affected by the location of some rural mailboxes. It has been suggested that in some situations increased traffic, road conditions, narrow roads and roads with no shoulders or short sightlines make mail delivery too dangerous for those rural mail drivers.

As a result, people in rural Canada are increasingly concerned that Canada Post is planning to end delivery to rural mailboxes. Already, delivery to a significant number of rural mailboxes has been terminated in my home province of Prince Edward Island. Rural mailboxes are being replaced with centrally located community mailboxes, and those who used to receive mail delivery at the end of their driveways now have to travel to pick up their mail.

While I appreciate the concerns of Canada Post in regard to the safety of its mail drivers, it has been brought to my attention that this new policy appears to have been applied in an arbitrary and inconsistent manner. Many Islanders have complained that the location of their community boxes is even less safe than the mailboxes they are replacing, both for themselves and for their mail drivers. There have been problems with snow removal at some of the new locations. Many seniors, people with disabilities and those with no means of transportation are being seriously affected.

In Prince Edward Island, Canada Post originally said that the provincial Department of Transportation and Public Works had approved the location for the new community mailboxes. However, the department immediately issued a news release stating that this was not the case. I understand that now the department and Canada Post are beginning to develop a policy to determine the best location for the boxes and to review those that have already been put in place.

Honourable senators, there are two issues here. The first is obviously the safety of rural residents who are picking up their mail, as well as the safety of the drivers who deliver it. The second issue of concern is the future of rural mail delivery. Currently 843,000 Canadians are served by rural mail box delivery, and they are increasingly concerned that the service they have enjoyed over the years may be coming to an end.

I have written to the President and CEO of Canada Post, Ms. Moya Greene, on this important matter, and I urge all senators to call on Canada Post to reaffirm its commitment to continued delivery to rural mailboxes.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in our gallery today of the Honourable Kathleen Casey, Speaker of the Legislative Assembly of Prince Edward Island; and the Honourable Roger Fitzgerald, Speaker of the House of Assembly of Newfoundland and Labrador. The two Speakers are accompanied by their respective clerks: Mr. Charles H. MacKay, Clerk of the Legislative Assembly of Prince Edward Island; and Mr. William MacKenzie, Clerk of the House of Assembly of Newfoundland and Labrador.

On behalf of all honourable senators, welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

NATIONAL CHILD BENEFIT

2004 PROGRESS REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour of tabling, in both official languages, the National Child Benefit Progress Report: 2004.

• (1420)

LEGAL AND CONSTITUTIONAL AFFAIRS

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(j), I give notice that, later this day I will move:

> That, in accordance with rule 95(3)(a), the Standing Senate Committee on Legal and Constitutional Affairs be authorized to meet Monday, February 18, 2008, Tuesday, February 19, 2008, Wednesday, February 20, 2008, Thursday, February 21, 2008, Friday, February 22, 2008 and Monday, February 25, 2008, even though the Senate may then be adjourned for a period exceeding one week,

for the purposes of studying Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts (*Tackling Violent Crime Act*).

[*English*]

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

Hon. Senators: Agreed.

NATIONAL CAPITAL ACT

BILL TO AMEND—FIRST READING

Hon. Mira Spivak presented Bill S-227, An Act to amend the National Capital Act (establishment and protection of Gatineau Park).

Bill read first time.

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

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

[*Translation*]

CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-428, An Act to amend the Controlled Drugs and Substances Act (methamphetamine).

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*]

THE SENATE

CONSIDERATION OF PUBLIC BILLS—
NOTICE OF INQUIRY

Hon. Sharon Carstairs: Honourable senators, pursuant to rule 57(2), I give notice that, two days hence:

I will call the attention of the Senate to the custom of allowing Senate Public Bills to be considered free of the procedural obstacles that limit the consideration of Private Members' Bills in the other place, and the custom of ensuring all Senators the fair opportunity to have their proposals decided by the Senate.

• (1425)

[*Translation*]

QUESTION PERIOD

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE—
EXPENSE OF CONSTRUCTING SECURITY FENCE

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate since the Minister of Public Works is obviously working on drafting new tendering guidelines for his department.

Last week, we learned that the Minister of Finance failed to use the tendering process for his speeches, one of which cost taxpayers $22 per word. I am sure there would be volunteers here who would work for half that amount next time.

We recently learned that the invoice for a temporary fence erected for an event lasting 22 hours and costing $30 million, came to $850,000. I saw this fence myself while in Montebello.

Would the Leader of the Government in the Senate tell us which government policy the government followed in asking only one business and only one supplier to erect a fence even though several suppliers in Quebec and Ontario could have done the job, according to people in the trade, for a quarter of the price paid for that fence.

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, the fence in question was constructed as determined by the RCMP. Far be it from any government to challenge the security requirements identified by the RCMP. The contract was awarded in respect of Treasury Board guidelines. The fence was provided. The North American Leaders' Summit took place and, fortunately, the security measures taken by the RCMP were all successful.

Senator Hervieux-Payette: In this case, the RCMP is certainly not the Department of Public Works and Government Services. There is a process within the government right now that when any ministry wants to obtain products or services, they must go through the Department of Public Works and Government Services, and they must go through a tender process. In this case, the company from Birmingham, Alabama, certainly could have supplied the raw materials to other companies, which could have supplied the manpower to install this fence in 24 hours.

I ask the Leader of the Government in the Senate this question: What kind of policy does this government have when it comes to supplying goods and services in the interests of Canadians for security of President Calderon, President Bush and, maybe, "President Harper?"

We need to know who the supplier was. Was the supplier suggested by our guests from the United States? Do we not have, in this country, the capability of building fences that meet the requirements for an event like this one?

Senator LeBreton: Is the honourable senator saying that a firm in Alabama could have provided the fence? Is she suggesting that we would choose a firm in Alabama over a firm in Gatineau, Quebec?

Senator Hervieux-Payette: No, the minister missed the point that the firm that installed the fence was from Gatineau. The material for the fence came from Birmingham, Alabama.

Some Hon. Senators: Shame.

Senator Hervieux-Payette: We in Canada can probably build fences for the Summit of the Americas. My friends from Quebec City can remember that we built an extensive fence to protect the leaders of the summit and, in fact, there was much more territory to protect. The territory was protected very well. I am sure that the suppliers, from what I gather from the information that has been given to me, were Canadian, and the fence was installed after the Department of Public Works and Government Services issued tenders. Of course, we received the product for our money.

In this case, however, it is a foreign product supplied by a Canadian who charged us four times too much. Where is the profit in this case going?

Senator LeBreton: Honourable senators, I wish to thank the honourable senator for clarifying that question.

My answer remains the same: A determination was made by the RCMP, which is responsible for security of the site. They made the decision as to what was required for security. The government did not challenge the RCMP. They are in the best position to assess risk. As a result, the contract was awarded following Treasury Board guidelines.

• (1430)

As I mentioned in my first answer, the security fence did its job. The summit went off with no serious security problems.

Senator Hervieux-Payette: Honourable senators, I want to find out which policy the Leader of the Government in the Senate is talking about. I think the ministry that needs the supplies and services is defining these specs, which in turn goes to the department for procurement. Having worked in an engineering firm myself, this process is well known in Canada.

I ask the Leader of the Government in the Senate to explain why the RCMP is determining who should install this fence. The other companies that were consulted on this question said they would have installed the same fence coming from Alabama, if needed, but at a cost of $250,000. Where has the money gone?

Senator LeBreton: Honourable senators, I will take that question as notice.

However, my understanding is that the fencing in question is in the possession of the RCMP, it is stored at their facilities on St. Joseph Boulevard and will be re-used by them on an as-needed basis.

[*Translation*]

Hon. Jean Lapointe: I would put to the Leader of the Government in the Senate the question that comes to my mind. At that price, even though the price of gold is high, was the fence gold-plated or was it filled with gold? That is my question.

[*English*]

Senator LeBreton: Honourable senators, I will not try and fence the answer to that question, let me put it that way.

A decision was made by the RCMP in terms of their security and risk assessment for the summit at Montebello. The contract that was entered into by the RCMP followed Treasury Board guidelines.

Gold-plated or not, the fence is still in the possession of the RCMP. I hope that there will not be many occasions on which it will have to be used, although I am sure there will be some. The RCMP will make the decision as to when and where the fence will be used when security needs arise.

[*Translation*]

Senator Lapointe: Did the leader at least think to give a gold medal to the RCMP for such good work?

[*English*]

Senator LeBreton: I have not —

Senator Di Nino: Let us be serious. This is about security.

Senator LeBreton: Honourable senators, this is a serious issue, one concerning security.

The RCMP do an outstanding job on all matters of security, protecting Canadians in a host of different ways, whether it is at the border or policing centres of the country. Their reward is the gratitude of Canadians who benefit from their protection.

PUBLIC WORKS AND GOVERNMENT SERVICES

LOSS OF COMPACT DISCS CONTAINING CLIENTS' PRIVATE INFORMATION

Hon. Terry M. Mercer: Honourable senators, the Minister of Public Works continues to occupy our attention, even in his absence. I am afraid I may have caused his absence today when I told him last week that I intended to direct a number of questions to him. Perhaps the sharpness of some of my questions scared him away. However, I will address this question to the Leader of the Government in the Senate.

It was reported in *The Globe and Mail* on February 4 that Ottawa sent 138 compact discs across the country containing confidential information, including pricing and bid details, of many companies the department deals with.

The apparent mistake by the Department of Public Works allowed very sensitive information to potentially fall into the hands of competitors of these companies bidding for government

contracts. According to Public Works, the recipients of the compromised CDs have been asked to send them back. So far, 28 of the 138 CDs have been recovered.

• (1435)

Can the Leader of the Government in the Senate tell us how this grievous error could have happened, and what steps have been taken to prevent this from happening again?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. It is indeed a serious question. I read the same reports that he refers to. The Minister of Public Works, I am sure, will be happy to provide an answer, either through a delayed answer or, if the honourable senator wants, he can pose the question to the minister directly, if he makes it here later today — he was delayed en route — or again tomorrow.

Senator Mercer: I am not sure how Canadians can feel safe with their own personal information when Public Works cannot even safeguard the pricing and bidding details of companies. Is that not the majority of the work that the department does, namely, the contracting of goods and services? Public Works buys billions of dollars of goods every year. That means the companies must give the department a lot of information in order to be considered for a contract. What information will they give out next?

I do not want to sound like a traitor, as some of my colleagues in the other place have been accused of, for questioning the safety of our business and personal information and the accountability of Canada's growing-old government, but there is a real concern here. How safe is this information? If we cannot trust Public Works with tender documents and information, how can Canadians trust any personal information that they share with this government?

Senator LeBreton: It is a serious question, as I just indicated, as well as a valid one that requires a serious answer. I will, therefore, take it as notice.

FOREIGN AFFAIRS

ISRAEL—EXPLANATION FOR DEATH OF MILITARY OBSERVER MAJOR PAETA DEREK HESS-VON KRUEDENER

Hon. Hugh Segal: My question is to the Leader of the Government in the Senate. Nearly two years ago, Kingston resident Canadian Forces Major Paeta Derek Hess-von Kruedener was killed when an Israeli 500-pound bomb hit his United Nations observation post in South Lebanon. This particular bunker, which had stood in the same spot for more than 60 years, was destroyed on July 25, 2006, after repeated requests to Israeli military officials by those in the bunker and their commanders to cease fire and repeated radio contact providing precise coordinates.

The Israelis, to their credit, have admitted it was a targeting error and, at the highest levels, expressed regret. However, the Canadian Board of Military Inquiry called the deaths of Major Hess-von Kruedener and the others "preventable" and concluded that the Israeli military was solely responsible for the deaths.

My question to the minister is two-fold: Have the Israeli authorities been formally contacted to explain their reason for the lack of cooperation in making the pilots available for questioning by Canadian Forces Board of Inquiry personnel? Has the Canadian ambassador to Tel Aviv used his offices to press for responses to the continuing unanswered questions; and third and finally, has the UN or Canada sought compensation from the Israelis for what was either an act of omission, or commission, which needlessly killed a brave Canadian military observer deployed by our forces in support of United Nations' efforts in the region?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. The death of Major Hess-von Kruedener was a great tragedy; there is no doubt about that. We, of course, honour his service to the country and his memory, along with the three others who lost their lives at the same time. As the honourable senator knows, Major Hess-von Kruedener was honoured by the military in Canada at a military ceremony in Trenton.

As the honourable senator has said, the Canadian Forces did convene a board of inquiry to investigate the incident. It has released its report, which is publicly available on the department's website.

I am told that the president of the inquiry board maintained contact with the major's family throughout the whole process. Canadian officials have met with Israeli officials regarding the incident and have subsequently been briefed by Israeli officials on the outcome of their investigation. We have provided the Israeli government with a copy of the report of the Department of National Defence on the findings of the board of inquiry. Canada is working with its partners at the United Nations to ensure that steps are taken to prevent similar incidents from occurring where United Nations personnel are deployed. With regard to compensation, I am not aware of any particular effort, but I will take that portion of the question as notice.

• (1440)

HEALTH

NATIONAL STRATEGY FOR AUTISM

Hon. Jim Munson: Honourable senators, my question is for the Leader of the Government in the Senate. Earlier, in a statement, I told the house about Stefan Marinoiu and his courageous walk to plead his case for autism. I do not understand why the situation has to come down to a man acting in desperation for his son and, of course, for tens of thousands of other sons and daughters across the country.

In 2006, the House of Commons passed a motion supported by the Conservatives. The motion stated that in the opinion of the House the government should create a national strategy for autism spectrum disorder. The final report of the Standing Senate Committee on Social Affairs, Science and Technology entitled: *Pay Now or Pay Later, Autism Families in Crisis* recommended a similar plan. In fact, I believe that the committee led the way in calling for a national strategy. Given that we have national strategies for AIDS, diabetes and cancer, why is this government not taking any action to create a national autism strategy for all Canadians?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank Senator Munson for the question. I listened to the honourable senator's statement and, as stated, Minister Clement met with Mr. Marinoiu yesterday. In November 2006, Minister Clement announced a series of initiatives to improve knowledge and research of autism, which was welcomed by the Autism Society of Canada at the time. I am proud to say that the government has fulfilled each of the commitments made.

For example, the government contributed $1 million for the creation of a national chair on autism research and intervention at Simon Fraser University in British Columbia. I stress that it is a national chair. The government hosted a national research symposium and is working with the provinces and territories to improve knowledge and research because this matter was brought to the attention of this government and previous governments.

In addition to supporting research, the government is supporting families. In Budget 2007, the government invested $140 million over two years to establish a registered disability savings plan to assist families dealing with autism and other disabilities in their families.

Senator Munson: I thank the honourable leader for her response, but at the end of the day, this is a question of national leadership. That is what the autistic community is saying to me and to others. When he held his news conference, Mr. Clement was told that his was a modest response to their request.

Every autistic community and organization in this country continues to ask me to keep impressing that we need national leadership. What will it take to simply think outside the box for a second when dealing with the Health Act? There are no boundaries, as we know, when it comes to autism. In Alberta, people are receiving full treatment — $60,000 for intensive behaviour treatment. In Ontario, there are waiting lines. In Atlantic Canada, there is not enough money.

It does not take much thought or foresight for a minister to say, "Let's sit down, ladies and gentlemen from education and health, to see if we can work something out." I just do not know how long Canadians have to wait.

• (1445)

Senator LeBreton: The honourable senator points out the Alberta situation, which is an excellent example of the work that is being done. Ultimately, in many of these health issues, the provinces are the front-line service deliverers.

The McGuinty government in Ontario took the autism people to court and won. That was a sad day in Ontario for parents of autistic children — a sadder day still that they did not live in a province like Alberta.

The fact is that Minister Clement has set aside funds and worked on a series of initiatives. In terms of any conversations or deliberations he has had with the provinces, I will speak to him and see what the provinces are saying in regard to this particularly sad situation and report back to the honourable senator.

NATIONAL SECURITY AND DEFENCE

COMMITTEE RESEARCHER SENT TO AFGHANISTAN

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Opposition.

The Hon. the Speaker: Honourable senators, questions during Question Period may be addressed to the Leader of the Government in the Senate, a minister of the Crown in the Senate or a chair of a Senate standing committee.

Senator Stratton: Then my question will be addressed to the Leader of the Government so she can perhaps ask the Leader of the Opposition to find out the answer.

On February 6 — this is interesting stuff — the *Ottawa Citizen* published an article entitled "Senator Sounds Alarm over Aid to Afghans."

The article indicates that the Standing Senate Committee on National Security and Defence sent a senior researcher to Afghanistan for six months. Can the Leader of the Government please enlighten this chamber with a few facts about this senior researcher? What is the name of the researcher? Under what authority was the researcher sent to Afghanistan? What was the source of the funds for the trip? How much did this six-month trip cost the taxpayers of Canada? Would the Chair of the Standing Senate Committee on National Security and Defence be prepared to table any relevant documents before the Senate?

Before I proceed, the honourable senator was here earlier. I do not know where he is now, or the question would have been directed to him.

Could the Leader of the Government perhaps enlighten this chamber?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I never thought I would see the day that I would be asked to answer a question on behalf of Senator Kenny.

In any event, it is a valid question. I did see the report, but I do not know what the proper procedure is, Your Honour. I do not believe I can take the question as notice.

Perhaps the Chair of the Standing Committee on Internal Economy, Budgets and Administration or, in fact, the Chair of the Standing Senate Committee on National Security and Defence, if he is listening on the monitor, could come in and answer the question. I would like very much to have the answer to those questions.

INTERNATIONAL TRADE

IRAN—EFFORTS TO ESTABLISH TRADE RELATIONS

Hon. Yoine Goldstein: Honourable senators, Iran has been referred to as a member of the "axis of evil." That country is ruled by a dictatorial president who is maniacally psychopathic and seeks the destruction of Israel.

Canada has not had a honeymoon in recent years with Iran. Honourable senators will recall, I am sure, the fact that a Canadian-Iranian newspaper person was murdered in Iran, probably by the government, and our repeated requests for an investigation of this murder have gone absolutely without results.

The international community and the United Nations have imposed repeated sanctions — economic and otherwise — on Iran in the vain hope of stopping its relentless race toward the acquisition of atomic weaponry.

• (1450)

Even Russia — a nation that has supported Iran in many respects regarding its nuclear program — decided to impose economic sanctions as it faced the fact that two weeks ago Iran tested a nuclear-capable rocket capable of reaching the bulk of Russian territory.

Notwithstanding all of that, Canada has the following people in Iran: Dr. Maher Abou-Guendia, Commercial Counsellor and the Senior Trade Commissioner; Ms. Azar Zanganeh, a trade commissioner dealing with agricultural technology and equipment, agriculture and food and beverages, and other matters; and Mr. Sadegh Hedayat, a trade commissioner dealing with automotive, building products, electric power equipment and services, forest industries, and communication technologies. There are others, as well.

At the moment, we have a full contingent in Iran trying to encourage trade between Iran and Canada when the rest of the world is trying to discourage trade with Iran.

My question is to the Leader of the Government in the Senate: What is Canada doing in Iran?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for his question.

The honourable senator cites some troubling incidents in Iran. I will take the question as notice and refer it to the Minister of Foreign Affairs. I will provide the honourable senator with an answer as quickly as possible.

AGRICULTURE AND AGRI-FOOD

WESTERN GRAIN PRODUCERS— EFFECT OF AMENDMENTS TO CANADA GRAIN ACT IN BILL C-39

Hon. Robert W. Peterson: My question is to the Leader of the Government in the Senate.

Honourable senators, 90 per cent of the wheat that Canada sells is hard red wheat. We are recognized as having the highest-quality supply of grain in the world, which commands premium prices.

If Bill C-39 passes, our quality control system will be compromised. In fact, our wheat would be pooled inevitably with American wheat, which must be inspected, graded and fumigated upon arrival.

Why is the government continuing its attack on the Western grain producer?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): First, I could rephrase that question and ask why the official opposition is continuing its attack on the Western grain producer.

We clearly campaigned in the election of 2006 regarding the marketing choice for wheat and barley. There was a subsequent plebiscite with the barley growers who supported marketing choice. Farmers and producers want a marketing choice. Nothing in the government's plans would prevent people, if they so desired, from going through the Canadian Wheat Board.

However, the issue is marketing choice. We believe the vast majority of Western producers want marketing choice, and that is the policy of the government. When there is marketing choice, I believe it will allow the producers to obtain, on an open market, a price for their wheat and barley that is much more beneficial to them.

Again, it is their choice. They have the choice of whether they want to go through the Canadian Wheat Board or into the market on their own. That is the way it should be in a free and open society.

Senator Peterson: The honourable senator is talking about the Canadian Wheat Board. The government is already trying to destroy that organization. That is a different issue. I am talking about the Canadian Grain Commission and the changes to the act that would destroy any protection the Canadian farmer has.

I cannot understand how, when farmers are finally paid a reasonable price for their product, the government wants to bring in recommended changes that could take this reasonable price away. It does not make sense.

• (1455)

Senator LeBreton: The proposed changes in Bill C-39 will help modernize the Canadian Grain Act and the Canadian Grain Commission and improve the regulatory environment for the grain sector.

The proposed changes are based on recommendations of the House of Commons Standing Committee on Agriculture and Agri-Food, a committee of all parties in the House. Those recommendations followed a comprehensive and independent public review of the act and the Canadian Grain Commission at the same time. Stakeholders were consulted and given many opportunities to provide input throughout the review process. The proposed reforms are consistent with the goals of the Growing Forward framework for agriculture.

As I mentioned in my first answer, these changes will contribute to building an innovative grain sector by reducing costs, improving competitiveness, reducing regulation and providing choice.

Surely, in a free and open society, producers should be entitled to have reduced regulations, improved competitiveness and choice in what they do with the products that they actually grow themselves.

[*Translation*]

ANSWERS TO ORDER PAPER QUESTIONS TABLED

PRIVY COUNCIL OFFICE—
GOVERNOR-IN-COUNCIL APPOINTMENTS

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 3 on the Order Paper—by Senator Downe.

DEMOCRATIC REFORM—
MINISTERIAL APPOINTMENTS

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 4 on the Order Paper—by Senator Downe.

NUNAVIK INUIT LAND CLAIMS AGREEMENT BILL

MESSAGE FROM COMMONS—
SENATE AMENDMENT CONCURRED IN

The Hon. the Speaker: Honourable senators, a message has been received from the House of Commons returning Bill C-11, An Act to give effect to the Nunavik Inuit Land Claims Agreement and to make a consequential amendment to another Act, and acquainting the Senate that they have passed the bill without amendment.

PAGES EXCHANGE PROGRAM
WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before proceeding to Orders of the Day, I would like to introduce two pages with us from the House of Commons. Marie-Hélène Brière is studying at the Faculty of Social Sciences at the University of Ottawa, specializing in international development and globalization. Marie-Hélène is from Ajax, Ontario.

[*English*]

Laurel Rasmus of Picton, Ontario, is studying at the Faculty of Social Sciences at the University of Ottawa where she is majoring in international studies and modern languages.

ORDERS OF THE DAY

SETTLEMENT OF INTERNATIONAL
INVESTMENT DISPUTES BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Di Nino, for the second reading of Bill C-9, An Act to implement the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Hon. Yoine Goldstein: Honourable senators, we heard last Wednesday from our colleague the Honourable Senator Nolin about this bill. He described it to us with great clarity and in his typically organized way. I rose at the time to congratulate him on the excellence of his presentation.

Given the excellence of the presentation and the thoroughness of his approach, I have very little to add.

• (1500)

The bill proposes to implement a convention — a treaty — to deal with the settlement of investment disputes between states and between nationals of other states with investment claims in states other than their own. The treaty is loosely referred to as the ICSID Convention — the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Honourable senators, this is not a sexy bill. The treaty that the bill purports to ratify came into force on October 14, 1966, and has been around for some 42 years. As at May 9, 2007, the convention had been signed by 156 countries, of which 144 had proceeded to ratification. Canada became the most recent signatory to the convention on December 15, 2006.

In a nutshell, this bill establishes an international centre for settlement of investment disputes. The centre is located in Washington, D.C., and the institution is closely linked to the World Bank which has, in large measure, inspired and shepherded it through the labyrinth of state signatures and subsequent ratifications.

The object of the convention, honourable senators, is clear: It is intended to provide facilities for conciliation and arbitration of investment disputes.

This is one of the many initiatives that encourage alternative dispute resolution, that is, the solving of disputes by means other than a court case. We are learning — and many of us have already learned — that resolution of disputes through the traditional court system is an expensive, lengthy and frequently inappropriate manner of solving disputes of an economic or family nature.

Domestic courts have become overburdened. In an increasingly litigious society, delays, frequently of a disastrous nature, have overcome the system and the cost of the typical court case is well beyond the means of virtually all individuals. The only ones able to afford this kind of litigation would be corporations or very wealthy individuals. This fact leads to severe limitations on access to the courts, a fundamental right of all citizens.

Many judges and many lawyers have spoken out to encourage alternative techniques of resolving legal problems. The first of the two usually adopted is conciliation, a technique borrowed from the labour relations world where a neutral individual tries to arrange for the parties to a dispute to get together, submit their dispute to the neutral conciliator and allow the conciliator to try to find a compromise that will either satisfy both parties or will be unsatisfactory but acceptable to both parties. We have a saying in the legal community that if both parties to a dispute are unhappy with the result, there is a high probability that justice has been

done. However, successful conciliation requires two parties who are willing to discuss and then compromise. Sometimes that does not work.

The second step, therefore, is arbitration, and in most arbitrations the parties, having put forward their respective positions, are bound by the decision of the arbitrator — or, in some cases, the arbitrators because sometimes there is a panel rather than only one arbitrator — and the decision of the arbitrator or the panel is final and binding. This technique has the advantage of speed, cost effectiveness and finality. This convention envisages both of these techniques, depending on the will of the parties to the dispute. In either event, the litigants will have an efficient, timely and relatively inexpensive resolution of their dispute.

Disputes of an investment nature, which this treaty envisages, generally require the adjudicators to have specialized knowledge of accounting, economics, the market and various usages of the investment world. Not all judges of the standard domestic courts have that expertise. However, arbitrators and conciliators who will be staffing this tribunal will be specifically chosen for their knowledge in this area and, given that expertise, they will be uniquely suited to determine the dispute on the basis of their specialized knowledge and, incidentally, will save the litigants from the necessity of educating a judge who may not be fully familiar with the background of these kinds of disputes.

In all, then, this is a most desirable piece of legislation. It is not partisan. It should have been passed a long time ago. Why, then, one may ask, has the process waited this long in Canada? The answer is simple; it is something called the Constitution.

The subject matter of these disputes and the manner of resolving them is entirely subject to provincial jurisdiction and, because of various quirks in the Constitution, our government is unable to bind the provinces to these kinds of treaties without the consent of the provinces. That consent, with respect to this treaty, is only partially forthcoming at the moment. British Columbia, Newfoundland and Labrador, Nunavut, Ontario and Saskatchewan have already adopted implementing legislation. In the other place, the government assured the House that it would continue to seek provincial and territorial support prior to ratification. I understand that the government has in fact continued to do so.

Honourable senators, this is good legislation. It has been long in coming and the investment community is anxious for it to become law. There are no partisan elements in the bill, which received support in the other place from both my party and the Bloc Québécois. I therefore urge its speedy adoption.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Di Nino, bill referred to the Standing Senate Committee on Foreign Affairs and International Trade.

CANADA TRANSPORTATION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Johnson, seconded by the Honourable Senator Brown, for the second reading of Bill C-8, An Act to amend the Canada Transportation Act (railway transportation).

Hon. Rod A. A. Zimmer: Honourable senators, I am pleased to speak today as the critic on Bill C-8. This is the third and final bill amending the Canada Transportation Act, or CTA as it is commonly known.

The CTA is the framework for economic regulation of railways and air carriers in Canada. The CTA established the Canadian Transportation Agency and provided it with necessary powers as a regulator to administer the act.

Honourable senators, I would like to take this opportunity to thank Senator Janis Johnson for her work on this very important legislation, which she introduced at second reading last Tuesday, February 5, 2008, seconded by Senator Brown. I would like to add that all parties in the other place strongly support this bill.

Bill C-8 was preceded by two other acts related to the CTA. The International Bridges and Tunnels Act was passed in February 2007, and Bill C-11 was passed in June 2007. The latter bill amended provisions related to the agency, air carriers, passenger railways, railway noises and vibrations, and transportation acquisitions and mergers.

This long-awaited rail freight bill dates back to the statutory review of the act in 2000 and 2001. Previous bills have died on the Order Paper in 2003 and 2005 and, as a result, shippers have been waiting anxiously for regulatory improvements and for government to rebalance the legislative provisions of this act.

Honourable senators, over the last few decades the legislative framework for railways has moved toward less regulation as the transport system in Canada has become more mature. However, the economic conduct of railways needs to be recognized in light of the market authority that they have. Historically, the geographic importance of railways and their economic competitiveness has profoundly contributed to this great adventure we call Canada. This bill will improve shippers' leverage and negotiations with the railways and thereby lead to improvements in railway rates and services.

Some shippers have access to competitive alternatives, that is, trucking, marine or a second railway, while others do not, especially those shippers of bulk commodities. These shippers often require legislative remedies to protect them from market power wielded by the railways.

• (1510)

Honourable senators, the policy challenge has always been to find the right balance, to facilitate investment and encourage financial solutions to disputes between railways and shippers while protecting shippers from the potential of railway market power. This framework has been working reasonably well in that

both railways are enjoying healthy financial success and are able to compete effectively and generate sufficient resources to maintain and improve their infrastructures and equipment without government assistance.

However, honourable senators, the time has come to rebalance this regulatory framework toward shippers, which leads to better services and rates. For instance, in my home province of Manitoba, the rail mode in northern Manitoba is the critical transportation infrastructure for passenger and freight use, both for local traffic and to support the Port of Churchill gateway. Manitoba supports and considers it reasonable that the provisions in this act address the issue of the bargaining balance of power between the rail carrier and the shipper, and the ability of the shipper to seek recourse to the CTA.

It is understood that the Government of Canada has promised to initiate a railway services review within 30 days of these amendments being passed, and the review should include a special assessment of railway service levels and its impact on the Port of Churchill gateway.

Churchill is Canada's only major import rail and port corridor on the national grid that is serviced by a regional railway — and not by a class 1 main line railway — and it is critical that the federal government pursue this follow-up legislation after the railway service is completed.

Honourable senators, while Bill C-8 is clearly intended to help shippers, it will also provide regulatory stability to the railways by ending the ongoing seven-year debate on changes to shipper-protection provisions.

In testimony before the Standing Committee on Transport, Infrastructure and Communities, the President of the Railway Association of Canada stated that Bill C-8 would not cause the railways to cancel any investment plans.

Honourable senators, as Senator Johnson stated — and in support of her speech last week — I want to highlight a few more important provisions contained in Bill C-8. They are: substantial commercial harm, ancillary charges and final offer arbitration.

First, at the moment, the CTA must be satisfied that a shipper would suffer substantial commercial harm before it grants regulatory relief to a shipper. The shippers feel that this is an unnecessary and unwarranted barrier, and this provision is being repealed.

Second, ancillary charges have become, in recent years, an issue between the railway and shippers. Other than freight rates, these charges are for cleaning or storing cars on railway tracks, or additional charges to the shipper for taking longer than the permitted time to load or unload a railcar, commonly known as demurrage. These charges are aimed at encouraging good performance by shippers but annoy shippers because the charges are excessive or the conditions unfair.

A new provision in Bill C-8 will allow one or more shipper to raise their concerns to the agency and, in turn, the agency can order a railway to revise the charges or conditions if it determines they are unreasonable.

Third, clause 7 of the bill expands the final offer arbitration, FOA, provisions to groups of shippers. A shipper can apply for FOA if the shipper is not satisfied with freight rates or associated conditions. It is particularly popular with shippers, and although it can be quite expensive, it will give the shippers more power in negotiations with the railways and will reduce the costs and allow the shipper to act collectively rather than being singled out.

To encourage commercial solutions, the shippers must demonstrate to the agency that they have tried to mediate the matter with the railway. The group FOA must deal with matters common to all of them, and the group must submit a joint offer that applies to all of the applicants.

Also, the railways came up with a commercial dispute resolution process that was discussed with shippers and, although good progress was made, discussions broke down. Once this bill is passed, it is hoped that the railways and shippers will re-engage in these discussions.

Finally, when the proposed amendments were tabled in May of 2007, a commitment was made to initiate a review of the railway service to begin 30 days after the bill was passed. Shippers strongly support the proposed revisions.

Honourable senators, Bill C-8 has the full support of shippers, and they have been waiting patiently for years for improvement to protect these provisions. It also has the full support of all of the parties in the other place and in such pivotal institutions as the Canadian Wheat Board.

Today I ask for all honourable senators to do the same in this chamber. I am honoured to be the critic of this bill and to work in conjunction with Senator Johnson, who is the sponsor of this legislation.

Bill C-8 has generated unprecedented support and will provide significant benefits to shippers across our country and contribute to a more efficient and competitive rail industry that promotes Canada's position around the world.

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

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Comeau, bill referred to the Standing Senate Committee on Transport and Communications.

[*Translation*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of February 7, 2008, moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to sit at any time for the purposes of studying Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts (*Tackling Violent Crime Act*), even though the Senate may then be sitting, and that the application of rule 95(4) be suspended in relation thereto.

Motion agreed to.

COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice given earlier today, moved:

> That, in accordance with rule 95(3)(a), the Standing Senate Committee on Legal and Constitutional Affairs have the power to meet Monday, February 18, 2008, Tuesday, February 19, 2008, Wednesday, February 20, 2008, Thursday, February 21, 2008, Friday, February 22, 2008 and Monday, February 25, 2008 even though the Senate may then be adjourned for a period exceeding one week, for the purposes of studying Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts (*Tackling Violent Crime Act*).

Motion agreed to.

STUDY ON INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL AND TREATY RIGHTS

FINAL REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Legal and Constitutional Affairs entitled *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*, tabled in the Senate on December 13, 2007.—(*Honourable Senator Fraser*)

Hon. Joan Fraser: Honourable senators, I would like to begin by thanking all honourable senators, particularly the Deputy Leader of the Government in the Senate, for giving me the opportunity to speak before my turn, which is much appreciated. As you know, our agenda is very full these days.

[*English*]

Honourable senators, this report from the Standing Senate Committee on Legal and Constitutional Affairs concerns a matter that is, to many Canadians, rather obscure but in fact of great importance to all Canadians, and of extreme importance to Aboriginal Canadians.

Honourable senators will recall the discussion in this place last week in connection with Bill C-11 about Aboriginal rights under the Charter of Rights and Freedoms and about clauses in land claims agreements that limit those rights. It is a deeply serious and often wrenching topic.

• (1520)

This report does not deal with land claims agreements; it deals with the way Aboriginal rights under the Charter of Rights are or are not reinforced in ordinary legislation passed by Parliament.

We all recall that section 35(1) of the Canadian Charter of Rights and Freedoms says:

> The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

That language is clear and grand. The framers of the Charter knew that what we were offering the Aboriginal Peoples of Canada was a far-ranging, deep and vital guarantee that, in perpetuity, their Aboriginal rights would be protected by the basic law of this land. Originally, most people in the seats of power, including the bureaucracy, tended to respect that protection. Therefore, from about 1986 to about 1996, when an ordinary bill was passed in Parliament that might impact upon Aboriginal rights, it tended to include what was called a non-derogation clause: a guarantee that this bill we are now passing in Parliament will not derogate from, diminish, Aboriginal rights. In those early years, the wording of the clause tended to be comparatively simple. Usually, it would go approximately like this: For greater certainty, nothing in this act shall be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal Peoples of Canada under section 35 of the Constitution Act, 1982.

That wording is pretty good, but time went on, and various court rulings suggested that Aboriginal rights were not only theoretical or something written on paper, but that they were real and had real implications for not only Aboriginals but also for non-Aboriginals in Canada. A cynic such as me would conclude, on the basis of our committee's study, that this wording became increasingly uncomfortable for governments of both parties, and certainly for members of the bureaucracy. It did, after all, tend to limit their freedom of action, so they started playing around with the wording of non-derogation clauses.

Senator Mercer: No.

Senator Fraser: Yes. Think of it, such a thing.

They started using language like —

Senator Mercer: Scandalous.

Senator Fraser: — for greater certainty nothing in this act shall be construed so as to abrogate or derogate from the protection provided for existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.

Senator Segal: Weasel words.

Senator Fraser: These words are weasel words, exactly. They are cloudy weasel words that might be construed as having been designed to confuse the issue.

At this point, Aboriginal Peoples and, in particular, Aboriginal senators, to whom I pay tribute for their quiet persistence in this matter, became alarmed. They started to sound the alarm. They tried to deal with the government of the day to straighten out this matter; that approach did not work. Eventually the Senate, as is so often the case, decided that it was this body's job to look into this matter of minority rights and launched a study. However, the Standing Senate Committee on Legal and Constitutional Affairs, appropriately, was handed the job. That was in October 2003.

As honourable senators know, the Legal Committee always has a heavy load of government legislation to handle, and studies always take second place to government bills, so this study went on for about four and a half years. Most of it was completed under the able chairmanship of my predecessors, notably Senator Furey and Senator Oliver in particular, and then was concluded last fall and the committee produced this report.

We found astonishing things. There is even one bill, honourable senators, which I certainly had not known about before, called the First Nations Commercial and Industrial Development Act, which gives the government power to pass regulations to provide for the relationship between regulations and Aboriginal and treaty rights, including limiting the extent — that is good of them — to which the regulations may abrogate or derogate from those Aboriginal and treaty rights.

We have come a long way, honourable senators, when we are descending from section 35 down to regulations saying, "Well, we will or will not allow the regulators to derogate from Aboriginal rights."

We heard from many interesting witnesses. I believe it is fair to say that the only witnesses who supported the present approach of individual non-derogation laws couched in such language as the government or the bureaucrats of the day deemed suitable were representatives of the government and of the civil service. Non governmental witnesses, Aboriginal witnesses, lawyers and expert lawyers, to my recollection, were unanimous in saying that this wording was not an acceptable way to go.

One witness said to us that the Department of Justice, which writes many of these bills, "seems to confuse its intentions and preferences with Parliament's," Parliament, after all, being the body that passed the Charter in the first place. "It is Parliament's intentions," he said, "that count, and the fact that the executive branch would like to achieve certain things is secondary to the discussion that the Department of Justice should have with you."

Well, that says a lot right there.

We spent long hours discussing the appropriate way to go. One of the possibilities we looked at was recommending a standard form of non-derogation clause to be included in all future legislation that might affect Aboriginal rights. However, the obvious difficulty was that the same thing could happen as has happened over the past 20 years. Little by little, over time, little adjustments would be made to weaken the impact of a non-derogation clause.

The committee has recommended that instead an amendment should be made to the federal Interpretation Act, which applies to all federal legislation, and that the Interpretation Act be amended to say: Every enactment shall be construed so as to uphold existing Aboriginal and treaty rights recognized and affirmed under section 35 of the Constitution Act, 1982, and not to abrogate or derogate from them.

It is simple and clear, and once it was in the Interpretation Act, it would apply across the board to past, present and future legislation. We therefore also recommended the repeal of the vast array of existing non-derogation clauses. It is a simple step to take, honourable senators. It would keep our promise, the Parliament of Canada's promise, to the Aboriginal peoples of Canada in an elegantly straightforward way.

The report also has a number of other solid recommendations having to do with consultation with Aboriginal peoples, with further study of Aboriginal knowledge and traditional law so as to aid in the harmonization of all of our legal systems. However, the core of it is the recommendation that the Interpretation Act be changed to guarantee the rights of our Aboriginal people.

Honourable senators, I think all committee members were pleased to note that, one month after we made our report, the Canadian Human Rights Commission, in a special report of its own, reported favourably on our suggestion and urged the government to consider our recommendation for a non-derogation clause in the Interpretation Act.

• (1530)

Honourable senators, I believe that Senator Oliver, who is an expert in this matter, will be addressing the issue. On my part, I hope that this chamber will adopt this report speedily; and if it does so, I intend as Chair of the committee to bring forth a motion calling for a government response to our report. Every senator on that committee believes this matter is very important, and I commend it to your attention.

Hon. Donald H. Oliver: Honourable senators, I rise today to support the remarks of the Honourable Senator Fraser and speak in support of a significant report prepared by the Standing Senate Committee on Legal and Constitutional Affairs and tabled in the Senate on December 13, 2007.

The report entitled *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and Treaty Rights* addresses a public policy matter of importance for all Canadians; that is, the relationship between rights enshrined in section 35 of the Constitution Act, 1982 and federal legislation.

The Senate's order of reference instructed the committee to examine the implications of including non-derogation clauses related to Aboriginal and treaty rights in federal legislation. It was my honour to have chaired the committee during its study of the matter and to have worked to ensure that our final report recommended strong measures to safeguard section 35 rights. I believe that the report accomplishes that objective.

I want to briefly canvass some of the legal background that is reviewed in our report in order to highlight the importance of the non-derogation issue and the committee study on non-derogation clauses in federal legislation.

Prior to 1982, a small number of federal laws contained non-derogation provisions related to the rights of Aboriginal people. However, it was the constitutionalization of Aboriginal rights in section 35 of the Constitution Act, 1982 that gave Aboriginal people an authoritative legal foundation on which to defend their rights, and that marked a watershed development in the history of Aboriginal and non-Aboriginal relations in this country.

Section 35 recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. The Supreme Court of Canada has told us in the landmark 1990 case of *Sparrow* that the inclusion of section 35(1) in the Constitution:

> . . . represents the culmination of a long and difficult struggle . . . for the constitutional recognition of aboriginal rights.

Section 25 of the Canadian Charter of Rights and Freedoms, the Constitution's non-derogation clause, further stipulates the Charter guarantees, as Senator Fraser read to you:

> . . . shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or other freedoms that pertain to the aboriginal peoples of Canada. . . .

The relevance of section 25 to our study was that its language was reflected in the original non-derogation clauses that were inserted in certain federal statutes post-1982 in response to Aboriginal peoples' concerns about the legislation's potential effect on their rights.

Between 1986 and 1998, a total of eight laws contained clauses typically providing that nothing in the legislation in question shall be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights under section 35.

However, not every piece of legislation with possible impacts on Aboriginal rights and interests contained a non-derogation clause. In other words, some statutes were passed that did touch upon Aboriginal rights that did not have that clause at all.

The committee learned that, although these provisions had not been challenged in court, the government modified the terms of non-derogation provisions appearing in seven statutes between 1998 and 2002.

In the modified version, the statute in question was not to be construed "so as to abrogate or derogate from" — and this is the language that Senator Fraser spoke about — "the protection provided for existing Aboriginal and treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35."

Concerns about this revised wording were first raised in 2001 during parliamentary committee hearings on the Nunavut Waters and Nunavut Surface Rights Tribunal Act. At that time, federal government witnesses suggested that a return to the original non-derogation clause would limit parliamentary supremacy. They worried that the revised version did not affect constitutional protections.

The Government of Nunavut took the position, on the other hand, that the revised clause prepared by the government did ". . . not provide assurances that Parliament does not intend to impair existing Aboriginal treaty rights through this legislation." Instead, it ". . . incorporates the common-law authority to infringe Aboriginal and treaty rights."

Nunavut witnesses preferred deletion of the clause rather than its retention as drafted. The clause was, in fact, deleted by the Senate.

In the ensuing period, Aboriginal senators pursued the concerns raised by this Nunavut case with government officials, but absolutely no resolution on the matter could be found. From 2002 through to the present, government legislation has presented an inconsistent picture with some bills containing the original non-derogation clause based on section 25, others containing none and some attempting novel approaches, such as treating non-derogation of constitutional section 35 rights as a regulatory matter as set forth already by Senator Fraser.

In the result, it would appear that successive governments' approaches to the interaction of Aboriginal rights and federal legislation since 1982 and the advent of section 35 have been, at the very best, ad hoc and uneven.

Honourable senators, why does this matter warrant the scrutiny of parliamentarians? The answer lies in the constitutional status of section 35 rights, which mandates the vigilance of all branches of government to ensure that they are taken seriously.

As outlined in our report, successive section 35 rulings of the Supreme Court of Canada have given us a clear message of this effect. The court has characterized section 35 as a "solemn commitment that must be given meaningful content," and they said that in the *Sparrow* case. That case told us that Aboriginal rights affirmed by section 35 "must be directed towards the reconciliation of the pre-existence of Aboriginal societies with the sovereignty of the Crown."

The court has stressed that the fiduciary nature of the Crown's unique relationship with Aboriginal peoples has implications for government conduct. It has reminded us repeatedly that "the honour of the Crown is at stake in dealings with aboriginal peoples." The court has told us that this principle "is not a mere incantation, but rather a core precept that finds its application in concrete practices."

These are the core principles related to section 35, and they provided the starting premise and guided our committee's deliberations on the non-derogation issue.

Our report identifies five distinct but related priority issues related to the legislative process in section 35 rights. It makes a series of what I call forward-looking recommendations that deserve broad support in this chamber, and they provide long-overdue, feasible solutions to advance implementation of section 35 rights.

The committee looked at the purpose and the effect of non-derogation clauses. It looked at the role of the Department of Justice in relation to section 35 rights. It looked at the need for greater consultation of Aboriginal stakeholders throughout the legislative process. It looked at the harmonization of Canadian law with Aboriginal legal traditions and implementation matters.

I must say, in relation to Canadian law and Aboriginal legal traditions, Senator Joyal did a great job in raising those matters before our committee.

I wish to focus on the first priority subject identified in the report, the purpose and effect of non-derogation clauses. In my view, it is important to appreciate the differing perspectives brought to bear on this matter by governmental and non-governmental actors, which gave rise to two key committee recommendations.

As our report indicates, the testimony of government and non-government witnesses with respect to the purpose and effect of non-derogation provisions differed very significantly. From government officials, we learned that, in the past, typically little in-depth analysis had been devoted to the question, with non-derogation clauses inserted in statutes strictly on an ad hoc basis, ". . . often as a matter of compromise or expediency at the last minute." We heard that for the government such clauses were intended ". . . to act as nothing more than a reminder or a flag for those administering the legislation that they must be aware of Aboriginal and treaty rights and to act in a way consistent with. . ." their constitutionally protected status. There was, however, concern that the courts might give "unintended substantive effect" to non-derogation provisions. In this regard, it appears the "revised wording" of the government was introduced after the *Sparrow* decision set out a "test for justifiable infringements" of section 35 rights. The government was concerned that legislative flexibility could be undermined if the courts interpreted non-derogation clauses as eliminating any possibility of infringement, however justified. However, we also heard that the government's view from the outset has essentially been that non-derogation clauses are "unnecessary" because section 35 rights already enjoy clear protection under the Constitution. Notwithstanding that, they tried to use language that would even limit the section 25 rights.

• (1540)

Government officials told the committee that, from their perspective, the central issue is to determine "the appropriate relationship between federal legislation and Aboriginal and treaty rights," that it is "less about the wording of particular clauses and more about policy choices." They suggested that possible approaches, depending upon those choices, included repeal of existing clauses in light of their uncertainty or adding a broad clause to the federal Interpretation Act "if it is determined that Aboriginal and treaty rights require more protection than is provided by section 35."

Non-government witnesses before the committee gave the committee a very different view of the significance of and the need for non-derogation provisions. They told the committee that in the absence of government vigilance to ensure legislation does not interfere with section 35 rights, such clauses are "a minimum measure." They also vigorously rejected the idea that non-derogation clauses act simply as "flags" or reminders of section 35, on the basis that "every provision of an enactment must be given separate meaning," and such a flag "obviously has no legislative effect." These witnesses denied that non-derogation clauses were capable of "topping up" constitutional protection since such provisions "speak only to the interpretation of a statute, not to the content of Aboriginal or treaty rights or to the constitutional protection afforded to. . ." them. Furthermore, the concern about unintended consequences was described as "exaggerated" because rights guaranteed to some will always be interpreted in the context of rights available to others.

From our perspective as legislators, it is especially worth noting that non-government witnesses focused a good deal on the role of "parliamentary intent" in the non-derogation context. For them, the ". . . desire to ensure that the act was passed, when passed for an entirely different purpose, does not denigrate in any way from . . ." section 35 rights has been the "driving objective of Parliament" in including statutory non-derogation provisions, if not always that of the Department of Justice. That is, the purpose ". . . has been that the legislation not do something that parliamentarians had not intended it to do." They stressed that while the Department of Justice might confuse its intentions with those of Parliament, government objectives are secondary to the discussion that the department should have with Parliament. The key intention is that of Parliament "as expressed through the words that it enacted."

Non-government witnesses told us unanimously that non-derogation provisions ought to be maintained in federal legislation but that they ought not to contain the ineffective revised wording adopted by the government as of 1998. They favoured inclusion of a "positive statement" provision in the Interpretation Act, as Senator Fraser has told us, for uniform application to all federal statutes, as has been done in Manitoba and Saskatchewan without any incident whatsoever. This approach would, in their view, send a "message to all courts and all lawyers, whether in government or outside, that all federal legislation should be interpreted with due respect to the importance of section 35 rights."

The Hon. the Speaker *pro tempore***:** Senator Oliver, your time has expired. Are you asking for more time?

Senator Oliver: Could I have five minutes?

Hon. Senators: Agreed.

Senator Oliver: Honourable senators, committee members agreed with all our witnesses that the ad hoc approach to legislated non-derogation clauses cannot be sustained. We did not agree with government witnesses that non-derogation clauses are either unnecessary or that they could occasionally be used to "top up" section 35 protection of Aboriginal and treaty rights. We concluded, rather, that the important purpose of non-derogation clauses is to underscore Parliament's unambiguous intention that legislation should be interpreted and implemented consistent with section 35.

As the Supreme Court of Canada has told us, the honour of the Crown in its dealings with Aboriginal peoples is reflected in concrete practices. With this in mind, our committee colleagues and I strongly endorse the continued use of statutory non-derogation clauses. In my opinion, the evidence before the committee clearly illustrates the need for government and

Parliament to put in place measures designed to ensure section 35 rights are more fully respected and safeguarded in the overall federal legislative process. It is therefore our firm view that, in the interests of consistency and clarity, a clearly worded non-derogation clause ought to be added to the federal Interpretation Act for application to all federal statutes.

Senator Fraser has already read honourable senators that clause. This wording was developed by Aboriginal senators and discussed in the Senate in June 2003 and was recommended by a number of non-government witnesses. It is an important positive statement of Parliament's intention which does not interfere in any way with Parliament's legislative capacity. In addition, under the terms of the Interpretation Act, if Parliament decides the non-derogation clause ought not to apply to a given federal statute, a contrary intention in that statute would be sufficient to address the concern.

Honourable senators, I am convinced that this first recommendation is key to meeting the objective of ensuring that section 35 rights are taken into account in the interpretation and implementation of federal legislation. I want to stress my further conviction, which my colleagues on the committee share, that it is also essential for an additional related measure to be put in place concurrently to deal with existing non-derogation clauses. At the moment, such clauses remain in place in about 20 federal laws. As we know, some contain the original Charter-based wording. Others contain the revised wording that gave rise to concerns about their potential impact in section 35. That is an unacceptable situation, which will become even more so with the addition of a third non-derogation provision that is intended to apply across the board.

The committee's second recommendation recognizes the potential for future confusion in this scenario and the need to intervene to ensure uniformity of approach, that is, that the new non-derogation provision does, in practice, apply across the board. It calls for the legislation amending the Interpretation Act to make provision for the concurrent repeal of all non-derogation clauses relating to Aboriginal and treaty rights that have been inserted in federal legislation since 1982.

Honourable senators, in conclusion, I strongly believe that the interests of consistency and clarity demand no less.

Senator Fraser: Would Senator Oliver take a question?

Senator Oliver: I will, if there is time.

Senator Fraser: This is a request disguised as a question, Senator Oliver. It is very embarrassing. One would think I only arrived here yesterday, but after I concluded my remarks, I realized that I had forgotten to move the adoption of the report. Since Senator Oliver, as you have just heard, has been immersed in this topic, it strikes me that it would be appropriate, perhaps, if he would choose to do that.

My question to the honourable senator is: Will he move the adoption of the report?

• (1550)

Senator Oliver: I would be pleased to, honourable senators. I hereby move the adoption of the report.

[Senator Oliver]

Hon. Willie Adams: I would like to address a question to Senator Oliver, if we have time.

I think both Senator Oliver and Senator Fraser have done a good job. My question is about the settlement of land claims with the different organizations and corporations. As has been mentioned, Nunavut is the only situation in which we have settled a land claim where the people ended up with their own government. Other settlements, such as those in the Yukon and the Northwest Territories, have been made with different groups. These agreements deal with surface rights and water rights and especially with mining or exploration. I wonder about this non-derogation clause no longer being in the land claim agreements. What will be different now? Those people just have a corporation agreement. What will enable them to have more power in the future with the Government of Canada?

Senator Oliver: Thank you, Senator Adams. As I understand your question, it is that if the recommendations of the committee in this report are adopted and the government accepts the recommendations, what changes will there be in land claims?

The main change, if our recommendations are accepted, is that there will be an amendment to the Interpretation Act so that the language of the Interpretation Act will apply to all pieces of legislation, all statutes, that bear upon the rights of Canada's Aboriginal peoples. This consistency will help enshrine the rights contained in section 35. There will not be a change in negotiating treaties themselves. This is a legal, statutory, constitutional protection that is being built in by rephrasing the language of the Interpretation Act.

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

Motion agreed to and report adopted.

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—REQUEST FOR PASSAGE

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons in the following words:

> *ORDERED*,—That, given the Government has declared the passage of Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts, as a matter of confidence, and, that the bill has already been at the Senate longer than all stages took in the House of Commons, and that all aspects of this bill have already been the subject of extensive committee hearings in Parliament, and that in the opinion of this House, the Senate majority is not providing appropriate priority to the passage of Bill C-2, a message be sent to the Senate calling on the Senate to pass Bill C-2, the Tackling Violent Crime Act, by March 1, 2008.
>
> *ATTEST:*
>
> AUDREY O'BRIEN,
> *The Clerk of the House of Commons*

Some Hon. Senators: Shame!

POINT OF ORDER

Hon. Tommy Banks: Point of order: I submit, Your Honour, that this procedure is out of order. It is not in order for one house to issue instruction with a date on it to any other house of Parliament. I ask for Your Honour's ruling in that respect.

Hon. Hugh Segal: On the same point of order, whatever views may be across the way with respect to the content of the message, it strikes me that, just as this house can issue, pass and debate a motion asking the other House to do something in a precise and specific period of time, surely we would not deny those who are elected to serve in the other House the expression of a similar point of view, which this house can take into consideration in any way it deems appropriate. I do not think this is a point of order.

Senator Banks: We have never done that.

The Hon. the Speaker: Are there any further observations on the point of order? Senator Banks, do you have a last word?

Senator Banks: If Senator Segal is right, and if this house has ever issued — what would we call this?

Senator Cordy: An ultimatum.

Senator Banks: — a message urging that the other place do something by a specific date, then I am wrong and there would be no point of order, but I do not believe that we have ever done that.

Senator Day: Nor would we.

The Hon. the Speaker: Honourable senators, I have no difficulty in ruling now because I have done nothing more than read a message that we received from the other place. The messenger would not want to get in the line of fire.

This house has no cognizance of what is done in the other place until such time as a message is sent here, whether with a bill or whatever. Given that I have already read it, the message is before the house. What the house does with it, if anything, is up to the house.

There is nothing on the Order Paper relating to this message. The Hansard of the day will simply report that the message was read by the Speaker as it had been received from that other place.

Senator Day: We will give it the consideration it deserves.

• (1600)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Wilfred P. Moore moved second reading of Bill S-224, An Act to amend the Parliament of Canada Act (vacancies). —(*Honourable Senator Moore*)

He said: Honourable senators, representation in Parliament is too important to allow partisan considerations to determine when and whether vacancies will be filled. The current state of the law allows the Prime Minister to exercise a great deal of discretion when it comes to filling vacancies in the Senate and in the House of Commons. That discretion is unnecessary. At the same time, the existence of such discretion is open to abuse, and even if there is nothing more than a perception of abuse, it can undermine public confidence in Parliament.

In the case of the House of Commons, there are already provisions in the Parliament of Canada Act that limit discretion and require that vacancies be filled within a certain amount of time. Generally speaking, by-elections must be called within six months of a vacancy. I have no quarrel with those provisions. In fact, I propose that a similar limit be established for Senate vacancies.

However, I see one weakness in the law that gives the Prime Minister more discretion than is needed, and that can be exploited for partisan purposes against the democratic interests of Canadians who are without representation in the House of Commons.

Under the current law, the Prime Minister can be selective in calling by-elections. As we saw last year, a fresh vacancy might be met with an immediate by-election if a prime minister thinks his or her party will win it. At the same time, a seat that has been vacant for months could remain in limbo while more recent vacancies are filled.

I can understand allowing for some discretion so as to schedule by-elections on dates that are reasonable, to avoid holidays or to take into account similar practical considerations, but I cannot see a public policy interest in allowing the government to call one by-election while leaving other ridings without a representative.

The only reason I can see for wanting that authority is to have the ability to manipulate by-elections for partisan purposes. To address this weakness in the law, Bill S-224 would end the selective calling of by-elections. It would allow some discretion to remain, in terms of timing, but would require by-elections to be called in the sequence in which the corresponding vacancy occurred. This would end the practice of calling a by-election in one seat while leaving out another seat that has been vacant longer.

When it comes to filling Senate vacancies, as I have argued before you in the past, I believe that in law there is little discretion. The legal obligation is clearly stated in the Constitution Act, 1867, even though the current Prime Minister chooses to disregard it and has left some seats vacant for more than two years.

Let me hasten to add that the current Prime Minister is not the only example of this sort of disregard for the requirement to fill vacancies. As Senator Murray has ably pointed out, there are many examples in the past of seats left vacant for far too long.

Let me repeat: I take the view that the current law requires that vacancies be filled as soon as possible. However, it is clear that the current government clearly disagrees with me, so I decided to introduce Bill S-224 to clarify the law and remove any doubt.

Following the example that has been in place in the House of Commons for decades, Bill S-224 would add a provision to the Parliament of Canada Act to define the obligation to fill vacancies by limiting the Prime Minister's discretion to six months.

Honourable senators, let me highlight a few details of recent House of Commons vacancies and corresponding by-elections to illustrate my concern. There are four by-elections taking place now, for which voting day will be March 17. These by-elections are in ridings that became vacant by way of resignation. In order of date of vacancy, they are Toronto Centre, Vancouver Quadra, Willowdale and Desnethé—Missinippi—Churchill River. The first three vacancies occurred in July of last year and the last occurred in August. All four seats were held by Liberals before the vacancies occurred. The maximum allowable time to wait for issuing a writ for an election is 180 days. In every case, the writ was delayed nearly to the limit. Writs for all four vacancies were issued on December 21, 2007, some 172 days after the vacancy in Toronto Centre occurred.

Meanwhile, in the middle of the period in which these vacancies occurred, the Prime Minister called by-elections for other ridings. The riding of Roberval—Lac-St-Jean, which had been held by Mr. Gauthier of the Bloc Québécois, became vacant after the three Liberal resignations I have mentioned. However, the writ for an election for Roberval was issued only 13 days after Gauthier's resignation. Coincidentally, the candidate of the party in government went on to win that riding.

At the same time, three seats previously held by Liberals were left to languish. When the writ was dropped for Roberval—Lac-St-Jean, the vacancy in Toronto Centre was already a month old, but the residents of Toronto Centre would have to wait. In fact, they had to wait 172 days for the writ to drop. Worse still, the by-election that finally came was made to last an incredible 87 days. From the moment the vacancy occurred until the time they are finally able to cast their ballot to choose a new representative, the people of Toronto Centre will have waited 259 days: 8 months, 15 days.

Not only did the people of Roberval—Lac-St-Jean have a by-election less than two weeks after their MP resigned — do not get me wrong; a swift by-election is what they absolutely deserve — but they had a new representative three full months before the writs were even dropped in three other ridings that had become vacant long before theirs. It is almost impossible to avoid the conclusion that the timing was based on the anticipated outcome of the votes in each riding.

Honourable senators, I can think of no public policy justification for allowing the Prime Minister to call by-elections selectively, leaving some constituencies unrepresented for almost a year, while calling other by-elections within a few days of a vacancy. This selective exercise of discretion for partisan design does not belong in a mature democratic country like Canada. It is time we took away the option of selective timing so that it can no longer be open to abuse, whether real or apparent.

Let me turn to Senate vacancies, which are also addressed in my bill.

Last year, Senator Banks called our attention to the large number of vacancies in the Senate, and to the constitutional obligation of the government to fill those vacancies. Many senators participated in that debate. I proposed a motion urging action to fill the vacancies. Many of us are troubled by the Prime Minister's stated policy that he will not fill Senate vacancies, but despite our urging, he remains steadfast in his refusal to respect the Constitution.

Of course, we all remember the single exception to the policy. Mr. Harper announced an appointment in his home province of Alberta before a vacancy had even occurred.

Apart from that exception, vacancies have been allowed to linger. There are now 14 vacancies affecting seven provinces and one territory. My own province is being deprived of 30 per cent of its representation. One of those vacancies, the seat left open by the retirement of Senator Buchanan in April 2006, has gone unfilled for almost 22 months now. Prince Edward Island's seat has been vacant since July 14, 2004 — that is almost four years. If the current Prime Minister persists in his policy until the next election, that seat will have gone vacant for two entire Parliaments: the Thirty-eighth and Thirty-ninth. By the end of this year, the total number of vacancies in the Senate would rise to 17. Next year, there will be 12 more retirements, bringing the total number of potential vacancies to 29 by the end of 2009.

Senators have expressed concern about the impact of the Prime Minister's decision on the rights of the provinces. We have also expressed concern about having sufficient numbers to carry on the proper functioning of the Senate. We all remember that on May 15 of last year the Senate adjourned for a lack of quorum. The government could not muster enough of its members to carry out its agenda. However, the impact is broader than the failure to implement the government's program in a timely way. The Prime Minister's refusal to appoint senators is undermining the Senate's ability to carry out its constitutional role.

Equally alarming is the unique constitutional situation the Prime Minister has created by refusing to recommend appointments. This refusal puts the Governor General in the impossible position of failing to carry out her duty under section 32 of the Constitution Act, 1867.

Honourable senators, throughout this situation, no government senator has really defended the Prime Minister's policy. I especially regret that none of the government senators from my own province have expressed any concern about the province's proper representation in Parliament.

• (1610)

Parenthetically, I note that at their annual convention this past weekend in Halifax, their provincial counterparts flatly rejected the Prime Minister's proposal for electing senators. It would be interesting to know how my colleagues from Nova Scotia voted. Perhaps they would like to share with us how they failed to convince their Nova Scotian fellow partisans to support the policy of Prime Minister Harper.

Unlike the Prime Minister, I do not think we should wait until there is provincial consensus before dealing with Senate vacancies. Given that the Prime Minister's proposals have been rejected in Ontario, Quebec, New Brunswick, Newfoundland and Labrador

and now Nova Scotia, we might be waiting a very long time. This is why I propose to address vacancies by requiring that the government act on them in a timely way.

Bill S-224 would make it clear that the government may not leave vacancies to linger for years on end. It replicates the Parliament of Canada Act provision that requires the government to deal with House of Commons vacancies within 180 days by requiring that Senate vacancies also be filled within 180 days.

Honourable senators, with this bill I believe I am proposing reasonable solutions to a deficiency in representation that affects both Houses. It would ensure that Canadians are fully represented, that vacancies do not last too long and that governments cannot selectively call by-elections or fill vacancies purely for partisan advantage.

This year, we mark the two hundred sixtieth anniversary of responsible government in Canada. On February 2, 1848, Nova Scotia was the first colony to swear in a government chosen exclusively from the party with the largest number of seats in the elected assembly. Now, 260 years later, as a mature democracy, it is time we eliminate one of the few remaining impediments to full and proper representation in both Houses of the federal Parliament.

Representation in Parliament is a fundamental right that Canadians enjoy under the Constitution. It is not for this or any other Prime Minister to manipulate by-elections or Senate appointments in support of partisan tactics. The current state of the law gives the Prime Minister very broad discretion that is open to abuse. There is no good reason for it, and we should put a stop to it once and for all.

On motion of Senator Brown, debate adjourned.

IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Reports of Committees:

Hon. David P. Smith, Chair of the Special Senate Committee on Anti-terrorism, presented the following report:

Tuesday, February 12, 2008

The Special Senate Committee on Anti-terrorism has the honour to present its

SECOND REPORT

Your committee, to which was referred Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act, has, in obedience to the order of reference of Thursday, February 7, 2008, examined the said Bill and now reports the same without amendment.

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

DAVID P. SMITH
Chair

OBSERVATIONS
to the Second Report of the
Special Senate Committee on
Anti-terrorism

Recognizing the impending February 23, 2008 deadline imposed by the Supreme Court of Canada for Parliament to rectify the unconstitutionality of the existing security certificate procedure, the Special Senate Committee on Anti-terrorism is adopting Bill C-3, An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act, without amendment.

The Committee would have appreciated more time to reflect upon all aspects of this bill and the views of those concerned, given the life-altering effects that security certificates have on those named in them, and the reflection the process has on Canadian society and values. Because of the tight timeline for examining Bill C-3, the Committee was not able to hear from all parties who requested to appear.

Some of the issues the Committee is concerned with are:

- The inability of the special advocate to communicate with the person named in the security certificate, except with the judge's authorization, after the special advocate has received the confidential information;

- The lack of a specific provision empowering the special advocate to require the Minister to disclose all documents the special advocate believes may be relevant; and

- The absence of a requirement for Parliament to review the new security certificate process and the functioning of the special advocate within that process once it has been implemented.

Accordingly, we propose that the Senate provide this Committee with the opportunity to conduct a full study on the security certificate process in the months to come, in that the Minister of Public Safety wrote, in a letter dated February 12, 2008, addressed to the Chair:

> In my appearance before you yesterday, the need for further Parliamentary review of Bill C-3, an Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act was raised. Once Bill C-3 has passed, I would welcome the Senate Special Committee on Anti-Terrorism continuing its study of the security certificate provisions of the Immigration and Refugee Protection Act and reporting any recommendations to the Government before December 31, 2008.
>
> I welcome your work in this regard as this is an important piece of legislation and key to our efforts to build a strong and resilient Canada.

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

Hon. Gerald J. Comeau: Now.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

THIRD READING

The Hon. the Speaker: With leave of the Senate and notwithstanding rule 58(1)(b), it is moved by the Honourable Senator Comeau, seconded by the Honourable Senator Tkachuk, that this bill be read the third time now.

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

Hon. David Tkachuk: Honourable senators, thank you for allowing this bill to be read the third time now, as it does have a deadline of February 23, 2008, to pass. If we do not meet the deadline, the security certificate measures expire, and those being held under these measures will no longer be subject to them, and that we cannot let happen.

The committee sat for 10 hours yesterday and listened to 24 witnesses. Twenty-six witnesses were scheduled and two could not make it. From these witnesses, we received a variety of opinions. Some thought we should scrap the special advocate system because of the experience in Britain. Even those who have served as special advocates over there, many of them claimed, are critical of the system.

What we were not told, though, is that the special advocate system in Britain has evolved and that most of, if not all, the criticisms that were cited are dated. There is general satisfaction with the system and there is no general outcry from the British public to scrap security certificates in that country.

Others suggested that, rather than special advocates, the Security Intelligence Review Committee, or SIRC, should be involved in the security certificate process. That is certainly worth thinking about, but it has its flaws as well. SIRC, for example, does not represent individuals when it does its work but represents the tribunal itself. That is where its interests lie, not with the person subject to a security certificate.

Then we were told that those cases should be a matter for the criminal courts to deal with. This was emphasized by a number of the witnesses last night. This notion completely ignores the fact that security certificates involve a different order of activity from everyday criminal activity. They involve the use of highly sensitive intelligence information to protect this country and its citizens from terrorism.

Some of this information cannot be shared with those who are suspected of being terrorists or belonging to a terrorist organization. Sharing the information would compromise our ability to gather information in the future from our intelligence sources. Sharing it would put this country and its citizens at risk.

It would be a derogation of duty by those who work in our security services who, in a very real sense, we have entrusted with our lives. These same people's work, by the way, is overseen by SIRC as an added measure of protection against them abusing their responsibility.

Honourable senators, security certificates are an extraordinary measure; there is no doubt about that. However, we are living in extraordinary times, and there is no doubt about that either. We are at war with terrorists. It is a war we are fighting on a number of fronts. Seventy-eight soldiers have died in that war in Afghanistan. Twenty-five Canadian civilians died in its opening salvo in New York.

The thing about terrorism is that it can lie dormant for weeks, months and years, and in so doing, it can lull those whom it targets into a false sense of security. We saw an example of this yesterday when one of our witnesses testified that the threat of terrorism in Canada is greatly exaggerated. No Air Canada planes have been hijacked; no buildings in Canada have been destroyed, along with the lives of 3,600 people; and so there is no need for special measures like this. This kind of logic entirely ignores the fact that perhaps it is because of special measures like this that no planes have been hijacked and no buildings or lives have been destroyed. I would also add that neither have anyone's human rights been breached by these security certificates.

It bears repeating from my second reading speech that security certificates have only been used 28 times. Only six people are currently subject to them, and five of them are walking our streets. Two of them testified yesterday. The use of security certificates, when viewed in this context, is extremely rare.

• (1620)

A Federal Court found the security certificate reasonable for five of those six people and ordered them deported. Why? Because they are considered inadmissible to this country on security grounds. That is an important point. These men were not supposed to be here in the first place. They never would have been admitted to this country if authorities had known all the information that links them to terrorist activities. The Canadian Security Intelligence Service, Citizenship and Immigration Canada, two ministers and the Federal Court all agreed. These people are here under false pretenses. Not only that, those false pretenses involve links with terrorist activities and organizations.

I advise any honourable senators who have any doubts in that regard to read the rulings of the Federal Court with regard to all five of these gentlemen. The rulings can be found on the Federal Court's website. Take a look before you become all misty-eyed about the supposed injustices they have been suffering in a country whose streets they walk, whose lawyers represent them and whose system, in my mind, has bent over backwards to ensure their rights are protected — a country to which they never should have been granted admittance in the first place.

We heard a great deal yesterday about the human rights of those subject to security certificates. They need to be protected, it was argued, but everyday ordinary Canadians also have rights to live free from fear. There are no guarantees, but we have a right to expect our government and its legislators to do everything they can to protect us from those who would do us harm. Sometimes that means standing tough against those who cloak themselves in the language of human rights in order to undo them.

Honourable senators, much of what we heard yesterday was opinion, such as: I do not think special advocates fit what the Supreme Court was asking for — maybe, maybe not; SIRC would have been a better way to go — maybe, maybe not; and the criminal courts are a better way to deal with these people — maybe, maybe not.

None of this is certain. It is all conjecture and opinion. Senator Andreychuk said it best at committee last night; and that is hardly surprising to me. She said that in reviewing legislation, we do the best we can to get it right. It is seldom, if ever, perfect but we do the best we can. It is a matter of striking balances.

Honourable senators, the Senate committee reviewing this proposed legislation did its job. We sat around the table and heard from witnesses until late into the evening last night to review this bill exhaustively. Senator Smith, who chaired the committee, and all the senators who participated from both political parties should be commended.

We decided that, in the best interests of Canadian security, this bill should be passed without amendment, but in the interest of concerns expressed by the witnesses, further study of the whole issue of security certificates should be conducted. The committee, with the agreement of the Minister of Public Safety, has taken it upon itself to do that. This is an admirable approach to the issue.

Hon. Jane Cordy: May I ask the Honourable Senator Tkachuk a question?

Senator Tkachuk: Yes.

Senator Cordy: I, too, congratulate the Special Committee on Anti-terrorism for going above and beyond in a non-partisan way to work extremely hard. There seems to be a pattern in the Senate whereby bills are received at the last minute and are expected to be passed in haste.

When was Bill C-3 introduced in the House of Commons; and when was this bill introduced in the Senate?

Senator Tkachuk: Bill C-3 was introduced in the House of Commons some eight months after the relevant Supreme Court decision on February 23, 2007. I cannot remember the date when I spoke to this bill in the Senate but the committee dealt with it as expeditiously as possible.

I agree with the honourable senator that it was difficult. The members of Parliament on the other side took up the time and did not allow the Senate committee to have the amount of time that it would have preferred, to study the bill.

If the honourable senator recalls, when she was in government it was a constant concern of mine that bills were often sent over too late with a deadline — especially budget bills. I made many comments to that effect.

Senator Robichaud: We never did that.

Senator Tkachuk: Even though we were not happy about dealing with the bill so quickly, we did our duty. The committee sat all day from 12 p.m. until 10 p.m. We managed many meetings with witnesses in only one day. The usual course of study would have taken four to five weeks, and the committee completed it in one day.

Senator Cordy: However, the honourable senator would agree, I am sure, from his comments, that this is not the way in which the Senate should deal with such an important matter. Trying to pass the bill quickly does not, in any way, condemn the work of committee members because they did an extremely good job through extremely hard work on the subject matter.

Senator Tkachuk: Agreed.

Hon. David P. Smith: Honourable senators, I will provide a bit of background on Bill C-3 as I rise in support of third reading. About one year ago, your committee released a 140-page report containing 40 recommendations that represented several years of work. It has been well received by most people who have studied it.

About two days later, several of the points that we made in our report were exactly what the Supreme Court of Canada focused on. At that time, February 23, 2007, the Court said that two aspects of the existing legislation are not in compliance with the Charter and that if Parliament wanted to address the non-compliance it had one year to do so, February 23, 2008. That is why the committee has been under such time constraints to complete its study.

Yes, the House finished with the bill late last week, and sent the message to the Senate. The first day that it was possible for the committee to meet on the bill was yesterday. I, like Senator Tkachuk, commend all members who sat from 12 noon until 10 p.m. We heard from 10 panels of at least three to four witnesses each, totalling more than 40 witnesses. It would be fair to say that the only witness who was truly excited about it was the minister. Most of the other witnesses had various issues with it, and I will not go into all of that. However, committee members took the responsibility seriously to try to define its position within the short time frame allowed and, because the Senate does not sit next week, rolled up their sleeves and worked hard to completion last night.

Observations were attached to the report, but I will not go through them all. One paragraph in the observations was prepared at a committee meeting held today at 2 p.m., the Senate having given leave. The committee would have appreciated more time to reflect on all aspects of the bill and the views of those concerned, given the life-altering effects that security certificates have on lives, and the reflection they have on Canadian values. With such time constraints around its study of Bill C-3, the committee was not able to hear from the several hundred parties who requested an appearance before the committee. Unable to accommodate everyone, the groups were identified, and one or two spokespeople were invited to appear. It worked out reasonably well because the many groups felt that at least they were heard and their views are on the record.

We set out some of the issues that we remain concerned about, and they are contained in the observations. Crucial to developing the consensus was the letter received by the committee from Minister Stockwell Day, who appeared yesterday. Honourable senators, I seek leave to table this letter.

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

Hon. Senators: Agreed.

• (1630)

Senator Smith: In that letter, honourable senators, Minister Day says:

> In my appearance before you yesterday, the need for further Parliamentary review of Bill C-3, *an Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act* was raised. Once Bill C-3 has passed, I would welcome the Senate Special Committee on Anti-Terrorism continuing its study of the security certificate provisions of the *Immigration and Refugee Protection Act* and reporting any recommendations to the Government before December 31, 2008.
>
> I welcome your work in this regard as this is an important piece of legislation and key to our efforts to build a strong and resilient Canada.
>
> Yours sincerely.
>
> Stockwell Day, P.C., M.P.
> Minister of Public Safety

The gist is this: Work still needs to be done. I note that our opposition members in the other place, and in particular the critic, Mr. Dosanjh, did manage to get four significant amendments to the bill. Those amendments were agreed to by the other side; these amendments improved the proposed legislation and they were agreed to.

However, we think that work still needs to be done. There are some ongoing issues that people do not dispute that were unaddressed in the legislation presented in response to the decision of the Supreme Court of Canada regarding the shortcomings of that legislation vis-à-vis the Charter.

I will give honourable senators one example. As an aside, all of these recommendations were unanimously approved. In the report we tabled, our first recommendation was to delete the requirement that for something to be an act of terrorism the motive had to be for a religious, ideological or political purpose which causes racial profiling.

Who cares what the reasons are? If it is a terrorist act, it is a terrorist act. Many people felt that such procedures encourage racial profiling. There has already been one court decision striking it down.

Some of these things need work and fine tuning. We are prepared to do that and work in cooperation. Therefore, I welcome the letter that we received and welcome the united position that we agreed upon and passed without amendment. However, our work will continue.

The Hon. the Speaker: Senator Moore has a question for Senator Smith.

Hon. Wilfred P. Moore: Senator Smith tabled the letter from the minister where he said he welcomed continuing study of the security certificate provisions of the act and reporting any recommendation to the government before December 31, 2008.

In his observation, he says that we propose the Senate provide this committee with the opportunity to conduct a full study of the security certificate process. If this is passed, is that all that is needed by way of authority to continue or is a motion required today to continue to do this work?

Senator Smith: The mandate of our committee does not expire because of the tabling of this report. It continues to exist. The parties understand that a reference will outline the scope of our work, which is compatible with this letter, and will be agreed upon after we come back from the break, and we will get down to it.

I am satisfied that we have a consensus on both sides to do that.

Senator Moore: Is it agreed by the Senate that the committee can proceed with this work?

Senator Nolin: No, that is not agreed.

Senator Moore: That is what I am asking.

Senator Smith: That has not happened yet, but we fully expect that to be the case. We are dealing in good faith and I believe that will happen. I am sure Senator Nolin will speak to that.

Senator Moore: Does the honourable senator not have the authority now? Is he looking for it?

Senator Nolin: We will have it.

Senator Moore: Does he anticipate that?

Senator Smith: We do.

Hon. Tommy Banks: I have a question. First, I want to thank the committee for all the work it has done on our behalf.

Based on what Senator Smith has said, I have two questions.

Am I correct that if we vote to pass this bill without amendment, we will, in effect, be voting against the recommendations of the previous committee?

Senator Andreychuk: No, that is not correct.

Senator Banks: Second, if he was a betting man, what does the honourable senator think the odds are of the success of recommendations made by the Senate to the government?

My experience is that it is not very good.

Senator Smith: On the latter question, hope springs eternal.

It is worth pointing out that our colleagues on this committee on the other side and our side have not approached this subject in a partisan fashion. Every single one of those 40 recommendations in our report last year was adopted unanimously. That does not happen often. One does what one can.

In regard to the first question, the problem was this: We tabled that report two days before the Supreme Court of Canada decision came out. We anticipated a couple of the problems. We were bang-on and people did make note of that.

Senator Segal: Hear, hear!

Senator Smith: The legislation addressed how the matter could be fixed so that it would comply with the Charter.

I have to assume that people from the Department of Justice Canada said, "Okay, this complies with the Charter." Yesterday, nearly every witness from various civil rights groups, et cetera, felt that it would not comply and it would be contested. Time will tell in that regard.

The issue was not that it is inconsistent; the legislation only dealt with a narrow part of what our overall report dealt with. We are certainly supportive that whatever it is must comply with the Charter, and they are trying to fix it. As to whether or not that does comply, it may very well be contested.

Hon. Marcel Prud'homme: An honourable senator who, since 1960, has been a very long-time friend will take this as a good suggestion. When he talks about "we" and "they," there are others. It is not because you have an agreement between the two major parties that we must eliminate the others.

As a matter of fact, I stayed around to say "no" for third reading today. As the rule allows, it is for the next sitting. However, I was kindly out of the door because I was convinced that there will be another chance to review and re-examine. I was convinced by another long-time friend of a different party, Senator Nolin, that if we proceed today there is no problem that it will go on.

I wish to be on the record as having said I was present and do not agree. I belong to the school of people that believes it will be attacked and will not be found in conformity with the Charter, regardless of what representatives from the Department of Justice may say. The Department of Justice has said in the past so many things that were proven wrong. I would not be surprised if they were wrong again in the future.

I will not delay further. I was absent in order not to say "no" to third reading today.

I listened to the honourable senator. I will listen to Senator Nolin and will let the universe unfold. I thank honourable senators very much. However, next time, please stop this macho style of "my club, your club" or "we" and "they," as if there are only two groups of people here.

This week, I will have more to say to the Honourable Peter Van Loan about the disrespect for this chamber. However, that has nothing to do with the affection I have for the honourable senator and the respect for the work he does here.

Senator Smith: I thank the honourable senator for his sentiments.

I wish to point out that it is not very often that a Supreme Court of Canada deadline is two days away. Yes, it is for February 23, but we do not sit after Thursday. We did not want to leave this matter to the very last day. We followed that verse in the Bible: "Come let us reason together."

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, you have heard the arguments in favour of passing this bill today at third reading. Sometimes we hold our noses when it comes time to pass bills, and we have done so in the past with other legislation, knowing that in the near future we will correct the errors we have agreed to let through. That is the sort of legislation we have before us now.

• (1640)

Honourable senators, I will make a few brief remarks. There is talk about terrorism and security certificates. Perhaps wrongly, those of us who are working on this issue are trying to boil things down and come up with tidy wording that is unfortunately incomplete.

It is important to use the proper words. We are not talking about a security certificate but a certificate signed by two ministers to prohibit a foreigner or permanent resident — it does not apply to citizens — from being in Canada. This is a major restriction.

Moreover, the Charter of Rights and Freedoms provides in section 7 that everyone — not just citizens — has three fundamental rights that we must respect: life, liberty and security of the person. What we are debating is clear. We are not talking about terrorism. We are not making grand speeches. We are talking about respecting everyone's rights, which are recognized in the Charter of Rights and Freedoms.

The Supreme Court examined the process whereby two ministers could sign this sort of certificate. This raised a number of problems, which the Supreme Court looked at. The Chief Justice, who wrote a decision on behalf of the entire court, because it was a unanimous decision, stated that the process, which we have just corrected by passing the legislation, violated the rights set out in section 7 of the Charter of Rights and Freedoms. The Charter provides a mechanism for restricting this protection. The court ruled that this procedure had not been followed because it was not the way to restrict the protection of these rights. The government, rightly, thought things over and introduced Bill C-3.

It seems like a good idea as it appears to be in line with what the court proposed as a possible solution. The court considered how to correct the problem, something it rarely does. With Bill C-3, the government has tried to correct this problem. We have to look carefully at all the arguments.

We will hear terms like terrorism, non-residence and inadmissibility. However, the review must be conducted based on a certain quantity of evidence. This leads us to the first question, namely, what is an acceptable quantity of evidence to be legally convinced that an individual named in a certificate should no longer be admissible to Canada? Thus, the first problem is the weight of evidence.

We heard witnesses yesterday who told us that the weight of evidence required under this procedure is too slight. Bill C-3 does not solve this problem. The committee must therefore look closely at this aspect before the end of the year, if the Senate gives it the mandate to do so.

[*English*]

I want to address the question from Senator Moore. We do not have the terms of reference. We will seek the authority from this chamber to write the appropriate terms of reference. We will do that as soon as possible to make sure we have the authority to write the terms of reference before the end of December.

[*Translation*]

Second, we must ask ourselves how the weight of this evidence should be assessed. The procedure rejected by the court is clearly flawed, which leads to the use of a special advocate. Will that special advocate have access to all the evidence? I asked the minister this question and he replied in the affirmative. However, after having heard several witnesses, we can no longer be certain that all the evidence would be made available.

Thus, what measures will the procedure introduce in order to ensure that the special advocate and the Federal Court will have access to all the evidence, all direct and indirect information from all sources, Canadian and foreign, in order to be convinced that the individual named in a certificate should no longer be entitled to stay in Canada?

Third, there is the whole issue of the relationship between the special advocate and the person named in the certificate. This special advocate who will have access to evidence or sensitive information — and we can agree that it is possible that, in order to make a decision, the ministers who sign the certificate must have access to information that is sensitive and a risk to national security — under Bill C-3, can no longer have any contact with the person named in the certificate whose rights he or she is assigned to defend. Is that what it means to respect our values, our way of doing things, our processes and our legal system? I do not think so. That is another aspect of the process proposed in Bill C-3 that we should examine.

I have listed these rights. Yesterday we heard from a number of witnesses who showed us the flaws in the process. We are all convinced to varying degrees — I believe I am being true to the spirit of the committee — that the process described in Bill C-3 has to be approved on the following condition: we must quickly proceed to an in-depth examination of this bill and pass it, since the time we have been given is limited, but we must also examine the process to ensure that, by the end of the year, we can recommend to the government, as the wording in the minister's letter indicates, that amendments be made to the process to satisfy what the Supreme Court identified as fundamental flaws in the process we are trying to correct.

Honourable senators, through our initiative today to pass Bill C-3, we must send a clear and unequivocal message to the witnesses who came here yesterday to express their serious concerns about the process — both the former process and the one in Bill C-3. We must make sure that they are convinced their testimony did not fall on deaf ears. What we did yesterday has to be the start of the review process our committee on anti-terrorism legislation will undertake as soon as possible.

Honourable senators, I have tried to clarify the process in question and show you its flaws and also suggest non-partisan ways we can come up with a solution that respects the rights of every person in Canada.

• (1650)

Senator Prud'homme: Honourable senators, I have two questions for Senator Nolin. First, will the special advocate always be the same? We know that some lawyers are more accommodating than others; there are judges who are more accommodating than others for signing certificates. Some are stricter, while others are perhaps younger and have more hope.

Second, is the minister's letter — which greatly inspires me — included in the bill? Could it be tabled at the same time as the report?

Senator Nolin: Honourable senators, the letter was tabled when Senator Smith spoke.

As for the special advocate, it is not a single person. The government will create a list of lawyers who are members of the Bar in each province. The bill states that the Department of Justice will be responsible for this list, which will be made public. The individual named in the security certificate will be able to choose his or her special advocate.

Where there is a problem — I am perhaps anticipating your next question — is in the relationship between the special advocate and the person named in the security certificate. Should we explore ways to expand or change the authority of this special advocate to interact with — I dare not use the word "client" — the person named in the security certificate?

[*English*]

Hon. George Baker: Honourable senators, I agree with most of what has been said, but I strongly disagree with some of the statements that have been made. Let me start by referencing Senator Smith's remark of where the Senate committee had made recommendations to the government but, unfortunately, those recommendations were not followed. His one example was perhaps the most important example, and that was the definition of "terrorist activity."

The Senate committee, as Senator Smith pointed out, recommended that the words "religious," "ideological" and "political" should not enter as a qualifying element for the offence of terrorist activity.

Senator Segal: Hear, hear!

Senator Baker: There were good reasons for that. That definition was included in the law. Standing out as the first constituent element for the offence of terrorist activity was that the person must, first, be for a political, religious or ideological purpose.

In other words, you must first establish the purpose. Then, second, under the definition of "terrorist activity," unfortunately Parliament had then the actual specifics of the activity of terrorism.

In order to prove a terrorist activity, one must first establish the political, religious or ideological purpose.

Senator Segal: Shame!

Senator Baker: The Senate committee recommended that that not be done, but that is what was done.

In the Superior Court of Justice in Ontario, Justice Rutherford struck it down and said it was unconstitutional. The constituent element of a political, religious or ideological purpose cannot be the purpose of an offence.

When we hear the testimony from people who say that CSIS and the RCMP are interviewing people in this community or that community and asking them to spy in that community, the first thing one wonders is why these investigators are targeting certain segments of the population. Then one looks back to the law that we passed that requires, as the first constituent element of the offence of terrorist activity, that it be of a political, religious or ideological nature.

The Superior Court of Justice in Ontario struck that down. The Attorney General of Canada then applied for leave to appeal to the Supreme Court of Canada, and two months ago that was refused.

The way it stands now, that is still the law. The unfortunate part of the judgment is that it is referenced twice in the law. Only the first portion was struck down by the Superior Court of Justice in Ontario, but the very same words exist under the side note of "for greater certainty." That is still there. We still have that problem. That will result, undoubtedly, in the government introducing a bill to correct that, that the Senate committee recommended should not be there, and we will see that in a bill because it was struck down by the court.

We had a bill before us recently on investigative hearings because the law was struck down by the Supreme Court of Canada.

In *Vancouver Sun (Re)*, the Supreme Court ruled you cannot have *ex parte* hearings throughout the entire process, that this has to be an open court proceeding to drag somebody in who has not committed a crime, whom the police do not believe committed a crime but whom they suspect may know the whereabouts of somebody they believe may be involved in a terrorist activity. That was struck down by the Supreme Court of Canada.

Senator Tkachuk: Good law-writing by the Liberals.

Senator Baker: We are now asked to address that. Hopefully we will address that by inserting that particular clause.

Today we are dealing with another law that has been struck down, all in the general category of offences.

We are now dealing with something that has been struck down again. Here is where I differ partially with the mover of the motion on the government side, in that we are not dealing with anything to do with terrorist activities. We are only dealing, with this particular bill, with the simple matter of whether or not someone who is detained in jail for years has a right to know why they are there.

The Supreme Court of Canada ruled that a person has a right to know the case they have to meet in order for them to understand why they are there. We received testimony yesterday that that is further complicated by the fact that a person is, by law, given a summary of why he or she is there, but the summary keeps changing and the offence keeps changing time and time again when the person proposes that perhaps the information the authorities have is incorrect.

We are dealing further with people who are in prison for years who do not have a right, under the existing law, to know why they are there. For those who have been released, they have very strict conditions. That is not unusual, honourable senators, to have conditions on your bail, judicial interim release or on your conditions, and it is not unusual to have tracking devices on somebody. That condition has been around for years. However, these are extreme conditions.

As we heard the testimony, the very existence of a person is not now all that bright in Canada or in any other nation in the world. One can say to that person: Leave the country and we will forget about everything. Those people cannot do so anymore; there is no place that they can go with that hanging over their heads.

• (1700)

What we heard was testimony to the effect that, "Look, if you have a charge against me, if I am in jail for two or three years and you will not tell me what it is about, lay a charge and let us have it out in our system of justice in our courts." That was part of the message that we received yesterday.

The question is about getting it right. Honourable senators know from reading case law, in the Supreme Court of Canada, the superior courts of this country and the provincial courts of this country, 10 to 1, will quote a committee of the Senate but they will not quote a committee of the House of Commons.

Some Hon. Senators: Hear, hear!

Senator Baker: This happens in judgment after judgment. I was reading *R. v. Sharpe* the other night and the words of the Chair of the Standing Senate Committee on Legal and Constitutional Affairs were there. The other night I was reading a simple case on drug-impaired driving. They quoted the Senate committee that dealt with the issue in 1983.

The Senate has that responsibility. My take on what has rather tragically happened is that the place of sober second thought, that we recognize as being the institution that guarantees that the law will be as the law should be, was given one week to deal with the bill.

Senator Prud'homme: This is unacceptable.

Senator Baker: Yes. The Supreme Court of Canada, on February 23, 2007, ruled that there should be a replacement law put in to try to eradicate those violations of the Charter that were found in the existing law. Then, eight months later, a bill was tabled in the House of Commons. I repeat: Eight months.

Senator Day: How many months?

Senator Baker: Eight.

Senator Andreychuk: It was eight months.

Senator Baker: It then took three and a half months for the House of Commons to deal with the bill.

Senator Milne: Shame!

Senator Baker: There are only 12 months in a year.

Senator Nolin: We will fix that.

Senator Baker: That is 11 and a half months.

Senator Smith: No fair!

Senator Baker: We now have two weeks, but can we get it over to the House of Commons in two weeks? No. They are on vacation for a week.

Senator Andreychuk: Are they? We are not.

Senator Nolin: Only the Standing Senate Committee on Legal and Constitutional Affairs will be working.

Senator Baker: We have one week to present what we believe to be the sober second thought and upon which the legal authorities in this country rely.

Yesterday I listened to the 10 hours and 15 minutes of testimony from all of these witnesses, and I am sure every senator sitting there was saying, "Okay, the Canadian Bar Association, that is an impartial group." Every organization of lawyers in this country that has a national foundation — or an international foundation in two cases — said, "Senate, you can't pass this bill in the form that it's in." All these organizations spelled it out, "Look, here's what's wrong." In some cases, honourable senators, they were at variance as to how you accomplish an end.

For example, one of them was arguing *Stinchcombe*, which goes back to 1990, on the right of disclosure; whereas someone else was arguing *Suresh* from 2002 on the same issue.

There were parts there, but the point is this: Here we are sitting down, given seven days, and now, if we do up the amendments and ensure they are right, we have to get them in both official languages and then debate that, send it back to the Senate, give it to the House of Commons to be dealt with and receive Royal Assent all before Friday. That is impossible. It cannot be done. It is logistically impossible, and I repeat, it cannot be done.

In regard to the letter from the Minister of Public Safety — and I do not know if I am giving him far too much credit here — the best interpretation I can come up with is it sure justifies the situation that we are in as far as dealing with the problem.

The issue was debated and discussed that perhaps we should amend the bill to put in a general review within three or five years, let those three years go by, let the challenges to the Supreme Court happen, let another three things be struck down and then we have to deal with this all over again. What will we do? The letter arrives from the minister. The minister obviously sees the dilemma that he has put the Senate in. I give him credit for that. He realizes that this is not only unfair but unworkable in the Canadian parliamentary system. This cannot be done with our laws. I wonder if someone would challenge, under section 7 of fundamental justice, the actual passage of the bill if the Senate does not give it due diligence in its consideration.

Anyway, in his letter to the Senate, the minister has said — and this is my interpretation of his letter — his first statement is that he appeared before us and his second statement is that there is a need for further parliamentary review of the bill and that this was brought up to him.

Second, he said that he would welcome the Special Senate Committee on Anti-terrorism to continue the study and gave them a deadline of December 31. He is referring to a study of the amendments that are presently before the Senate. In other words, I take that to mean, on a plain reading of it — I have not read the French but I have read the English — that the minister is saying the deadline is there. If the bill is passed then he will consider, up to December 31, 2008, amendments to the amendments that were proposed in this particular bill. That is my reading of it; that is what I think is the plain reading of it.

Professor, do you see anything different?

Senator Oliver: That is magnanimous.

Senator Baker: That is magnanimous, and he is a professor at Dalhousie, so he should know.

Thank you very much.

Some Hon. Senators: Hear, hear!

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to speak on Bill C-3 as I am not in favour of this bill in the current form. However, I welcome the opportunity given to the committee by the minister to provide amendments on this legislation by December 2008.

This bill addresses security certificate issues. Honourable senators, on the issue of security certificates, our country now has two processes. The first process is for Canadian citizens, and the next process is for permanent residents and non-Canadians. If you are a Canadian citizen, your guilt or innocence is tested through our criminal courts. If you are not a Canadian citizen, or you are a permanent resident or a person with no status in Canada, you undergo a less transparent process.

In the second process, there is not a full sharing of information. Bill C-3 does not remedy this. In Minister Stockwell Day's words to the committee yesterday, he said, "The government will share pertinent information with the special advocate."

Honourable senators, I ask: Who will decide what information is pertinent? With the greatest of respect to the person prosecuting, he may not be the best person to decide what is the most pertinent information to be shared with the special advocate.

A greater concern for me, however, is that there is no continuous contact with the special advocate and the person named in the security certificate. Under Bill C-3, the special

advocate will meet with the person named in the security certificate before the special advocate sees any information or evidence. He speaks to the person before he sees any information. The special advocate cannot meet with the person named in the security certificate after he has seen the information without the permission of the judge. Honourable senators, in our country, we did have a process that was being followed before 2001. We had the Security Intelligence Review Committee model, which was used in these processes before 2002.

• (1710)

In the SIRC model, the entire file was shown to the special advocate, and the special advocate had continuous contact with the person named in the security certificate. We already had a process in place, and for some reason, we have decided not to follow it.

Honourable senators, I stand here and tell you that we know there will be another constitutional challenge. Almost every witness, except the minister, stated to us that they will soon be going to the court. Therefore, we will have another opportunity to look at the issues set out in Bill C-3.

In the meantime, to keep people's faith in our country and our legal system, I humbly ask the Leader of the Government in the Senate that the government seek SIRC to certify all relevant documents that have been given to the special advocate, to set out that all documents relevant have been given to the special advocate.

Honourable senators, I have confidence that each senator in this chamber is here to protect the rights of the minorities living in Canada. Today, I believe those rights are being compromised.

Hon. Joseph A. Day: Honourable senators, I cannot add a significant amount to what has been said, and I agree with most of the points that have been made. Each of us has looked at what has transpired over the last two days from somewhat of a different point of view. However, I think all of us are working towards the same basic principle of trying to ensure that we have good law and trying to ensure that the important role of the Senate is not compromised in the work that we are doing.

First, I thank Senator Smith, who chaired the committee in a very difficult series of panels. We continued on, as has been noted, for between 10 and 11 hours yesterday. I hope Senator Smith will compliment not only the deputy chair of the committee, who was likewise very congenial and helpful, but also the staff and the other members of the committee for a job well done, in my view, under the circumstances.

Honourable senators, it may be of some assistance to go over some of the comments that we heard yesterday from various witnesses.

The first witness that I would like to refer to is Lorne Waldman from the Canadian Bar Association. He said:

> It is a pleasure to be here before this committee. We start off first with the recognition that the process engaged in here is one that, from the point of view of counsel who has represented people on security certificates, impossible. You represent a client; you are told your client is a member of this or that group; and then you do not see any of the evidence. You are then called upon to challenge a certificate that has been issued without knowing the case or without having access to any of the evidence at all. Anyone who has worked on one of these cases realizes that it is impossible.

Mr. Waldman was the representative from the Canadian Bar Association.

Honourable senators, Paul Copeland was next. He is with the organization called Lawyers' Rights Watch Canada. He said:

> On October 22, 2007, eight months after the court's decision, the government introduced Bill C-3. To a large extent, it was a rush through the committee process in the House. Last Wednesday, Bill C-3 passed the House and, on the same day, there was first reading in the Senate. Today, you have a totally jammed agenda. I am amazed you are still awake in this process.
>
> It is my respectful submission leaving the Senate 12 days to consider this critically important bill is inappropriate and is an affront to the Canadian people.

This is the kind of evidence that we heard throughout the day yesterday.

Later, Mr. Copeland, in answering a question from Senator Joyal, said:

> As Mr. Mia said, the sky will not fall.

Here he was referring to not passing this bill in the next 12 days.

> Canada will have to watch five men.

He said there are only five men who are under certificates and imprisoned at the present time. He went on to say:

> It is better that we work on getting the legislation right than get railroaded into passing legislation that is flawed, inadequate and not up to Canadian standards.

Salam Elmenyawi, from the Muslim Council of Montreal, said:

> I have been told by many that this bill will be rubber-stamped through the Senate and it will go back to Parliament; that the maximum would be small changes here and there just for the sake of doing so. I am here today because I do not believe that.
>
> I believe that Canadian values and our democratic process are much more important than all this talk outside and the pressure that you are facing today, including the fact that you have to stay all day today to hear all the witnesses in one day. I thank you for that. It is great for you to be able to stand up, but we hope that this bill will be looked at in a good and fair way.

Honourable senators, next I have a statement by James Kafieh, Legal Advisor, Canadian Arab Federation. This is what he told us:

> This legislation is facilitating an environment of xenophobia and fear-mongering by the government. I know that senators here are under a lot of pressure to

> pass this legislation. With what you have heard today, if you cannot put a stop to this legislation, at least to get the thing fixed, then there is a serious question about the value.

He was talking about the Senate's value. He went on to state:

> If you ever had real purpose, I think this is where you can take your stand. It is worthwhile. At some point, if our process is being driven by what the United States wants for Canada, then we should ask the question: Would we not be better off, instead of having 100 senators in Canada, having one senator in Washington where the decisions are really being made for us?

Mr. Kafieh later said:

> I appreciate your concern. I do not want to be disrespectful in terms of how seriously you take your work here. I am counting on it. That is why I believe this is a good opportunity to demonstrate the role of the Senate and vote this legislation down.

Next we heard from Alex Neve, Secretary General, Amnesty International Canada. He said:

> Good evening, committee members. Amnesty International Canada welcomes the opportunity to be before you this evening. It is regrettable that it comes in a process that has become so rushed and hasty. I know you have heard that several times today. It certainly is a shame that the legislative process did not begin earlier in order to allow ample time. We urge you to take the time needed to ensure full and careful consideration, especially since this bill does not meet this committee's own recommendations on how security certificate reforms should proceed in Canada.

• (1720)

Finally, honourable senators, I refer you to Mr. Roch Tassé from the International Civil Liberties Monitoring Group, who said:

> We know that this chamber is rushing to pass a law that not only goes against the values and rights that are enshrined in our Charter but against the most basic common sense. It would do well to toss aside party allegiances and offer Canadians the sober second thought they are supposed to offer when our parliamentarians lose track of what is best for our country.

Honourable senators, those are just a few of the comments that we heard yesterday as we sat through some very informative testimony and informed witnesses.

Honourable Senator Tkachuk quoted Honourable Senator Andreychuk saying that we in committee have the responsibility of doing the best we can. If we looked at this purely from a legal point of view — from a lawmaker's point of view — this is not the best we can do; but we cannot look at it in the abstract. We have to look at this in the context of what we are dealing with. We have a government that is extremely anxious to have this bill passed. We have a Supreme Court of Canada decision and we have many people who believe that this bill is inadequate. What do we do? We know that there are many more who would like to be heard that we could not hear from.

Honourable senators, there was good cooperation and a cooperative relationship in our committee on both sides. We know the pressures that our colleagues on the government side are under to have this bill passed. Receiving messages such as the one that we received this afternoon does not in any way help foster that cooperative spirit that has existed. The message to which I refer is the one that is ordering the Senate to pass Bill C-2 by March 1.

Honourable senators, on balance, however, recognizing what we need to do and being prepared to turn the other cheek with respect to that message, I believe it is important that we continue our look at this. We know that there are many, many other issues.

Let me conclude with a further quote from Mr. Waldman:

> I am not sure, in the wisdom of the committee, and given all the political considerations, whether or not there will be amendments taking into account these concerns. In the event either way, I would urge this committee to adopt some kind of commitment to review the legislation on its own; to put into the legislation a mandatory review or, if not, adopt a resolution that in one year the committee will revisit this issue.

That, in effect, is what we have done. We talked about an amendment and, as Senator Baker has pointed out, we did not proceed in that regard. However, as has been referred to by one of our honourable colleagues, we have an undertaking and a letter from the minister, who indicates he would welcome our continued review. I believe we need to continue that review. The leadership on both sides, I understand, are agreeable to the committee having a continued mandate on this matter. We have studied this subject for five years. We know where we are proceeding. We know that many of our recommendations in the previous report were not followed. We now know much more, and there were over 100 witnesses who were not able to come and see us.

Honourable senators, I suggest that we meet the Supreme Court of Canada deadline, that we pass the bill, we continue to work on this and we report before December 31, as is outlined in the letter from Minister Day. I suggest that we do one other thing — that we contact every one of those witnesses who came before us and let them know that we are continuing and that we need their continued support to do this job right.

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

Hon. Senators: Question!

The Hon. the Speaker: With leave of the Senate and notwithstanding rule 58(1)(b), it was moved by the Honourable Senator Comeau, seconded by the Honourable Senator Tkachuk, that this bill be read the third time now.

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

Some Hon. Senators: Yes.

Some Hon. Senators: On division.

Motion agreed to, on division, and bill read third time and passed.

IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Goldstein, seconded by the Honourable Senator Campbell, for the second reading of Bill C-280, An Act to Amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171). —(*Honourable Senator Tkachuk*)

The Hon. the Speaker: Honourable senators, Senator Goldstein has risen. I simply advise the house that, if Senator Goldstein speaks, that will have the effect of closing the debate.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I rise on a point of order.

Rule 35, as His Honour will probably note, grants the mover of second reading of a bill the right of final reply. However, if Senator Goldstein does rise to speak, he will effectively, as His Honour just noted, kill the debate pursuant to rule 36. That is, no one else will be allowed to speak at that point.

It is arguable that the rule was not meant to be a closure motion — originally, that was not its intent — or a guillotine motion that would kill the debate but, rather, the rule was meant to give the sponsor a chance to respond to any and all issues that were raised and to clarify matters that were brought up in the process of debate at second reading.

I should probably read rule 36 at this point:

> The final reply provided for in rule 35 closes the debate. It is the duty of the Speaker to ensure that every Senator wishing to speak has the opportunity to do so before final reply.

Since several senators on this side have indicated that they wish to express some comments and they have a desire to speak, this would mean, if Senator Goldstein were to speak at this point, they would be precluded from speaking.

Some senators have indicated to me that they do wish to speak. Therefore, at this point we would ask that Senator Goldstein not be allowed to close this debate.

The Hon. the Speaker: Honourable senators, the outline that Senator Comeau has just made is clear. The purpose of this particular rule is, indeed, for the Speaker to rise and to alert the house that, should a senator who has introduced the measure speak now, that would close the debate. That is the signal to the house. Are there any other senators who wish to participate in the debate? Therefore, if there are any other senators who wish to participate in the debate, the house should hear from them.

Senator Comeau: Therefore, I move the adjournment of the debate because some senators do wish to participate in the debate.

The Hon. the Speaker: The Honourable Senator Comeau moves, seconded by the Honourable Senator Gustafson, that further debate in the matter be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Goldstein, do you have a point of order?

• (1730)

Hon. Yoine Goldstein: Honourable senators, before we adopt that motion, I have heard from no senator who wishes to speak to that issue.

The Hon. the Speaker: Order.

Where we are, honourable senators, is that we have indication that other honourable senators wish to speak, and that is very proper, and a motion to adjourn the debate has been put forward. It has been adopted.

The matter remains on the Order Paper for debate at next sitting of the Senate.

On motion of Senator Comeau, debate adjourned.

PERFLUOROOCTANE SULFONATE VIRTUAL ELIMINATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Lorna Milne moved second reading of Bill C-298, An Act to add perfluorooctane sulfonate (PFOS) and its salts to the Virtual Elimination List under the Canadian Environmental Protection Act, 1999.—(*Honourable Senator Tardif*)

She said: Honourable senators, I am pleased to start the debate today on a bill that is designed to make the environment safer for all Canadians.

Bill C-298 is an initiative that was started by Maria Minna, the Member of Parliament for Beaches—East York, and I am honoured that she asked me to sponsor this bill in the Senate.

This bill is a response to the failure of the regulations associated with the Canadian Environmental Protection Act to eliminate the use of PFOS in Canada. PFOS is short for perfluorooctane sulfonate.

Senator Comeau: Hear, hear! I would not have attempted that.

Senator Milne: During the recent and ongoing review of CEPA by the Energy Committee, I have learned a great deal about long-chain fluoro-carbons, such as PFOS. Bill C-298 as currently written will add perfluorooctane sufonate — if I repeat it often enough we may be able to remember it — to the Virtual Elimination List under the Canadian Environmental Protection Act.

PFOS is one of a class of chemicals known as perfluorinated chemicals, or PFCs, which are used for their non-stick and stain repellent properties in consumer products.

PFOS has many uses, but it is primarily used as a stain repellent in products such as rugs and carpets in every home, fabric and upholstery and food packaging. It is also used in specialized chemical applications, such as firefighting foams, hydraulic fluids, carpet spot removers, mining and oil well surfactants.

Unfortunately, it has been found to cause breast cancer, liver cancer and thyroid cancer in animals, and is known to harm the pancreas, the brain and the immune system.

Honourable senators, the problems associated with PFOS are that it is bio-accumulative and persistent in the environment, even more than PCPs or DDT, of which the use in new applications were banned in 1977 and 1990 respectively.

Environment Canada says PFOS has been detected...

> throughout the world, including in areas distant from any sources and in virtually all fish and wildlife sampled in the northern hemisphere.

In addition, the U.S. Environmental Protection Agency, after testing PFOS by giving it to pregnant rats, found that it killed their pups. When they lowered the level of PFOS enough so that the pups survived, many of the next generation of pups did not survive, meaning that the majority of the pups' pups died. The EPA found this to be a rare result, and they concluded that PFOS represents

> . . . an unacceptable technology that should be eliminated to protect human health and the environment from potentially severe long-term consequences.

As a result, in 2000, the U.S. EPA imposed a ban on PFOS with a few exceptions for special uses. Moreover, in that same year, after receiving pressure from the EPA, the chemical giant 3M voluntarily agreed to stop using PFOS in all its products by 2003 and did so.

In Canada, PFOS was declared toxic under the Canadian Environmental Protection Act, CEPA, and added to Schedule 1 in December 2006. The present Canadian government agrees with this. Since the introduction of Bill C-298, the government has published proposed regulations that prohibit the use, manufacture and import of PFOS and products that contain the substance.

However, the prohibition regulations do exempt some uses: existing stocks of firefighting foam, in semiconductors, photography and chrome electroplating.

Honourable senators, the Standing Senate Committee on Energy, the Environment and Natural Resources heard a great deal of evidence regarding the use of PFOS during its review of CEPA. As a part of that review, we heard from Dr. Kapil Khatter from Pollution Watch on February 20, 2007. During his presentation, he noted:

> PFOS is a good demonstration of how slow the Canadian system works. One need ask only why PFOS was banned in the United States in 2000, yet now, in 2007, we have finally reached the draft regulation stage. I assure you that we have arrived here because of much public pressure.
>
> Where we have had timelines in CEPA, as with the categorization process the government recently completed, the work is done, but the assessment and management stages in CEPA either lack timelines or have timelines that are too long. Currently, the government has five years, plus a potential two-year extension, just to assess a substance.

Dr. Khatter went on to suggest that the three trips to cabinet, which are necessary with the assessment and management of a substance, are too many and cause unnecessary delays. He also raised the basic question of whether there is a need for cabinet approval of a scientific decision on whether a chemical is toxic.

Honourable senators, all of this underlines the need for the passage of Bill C-298. While the government's assessment under the Canadian Environmental Protection Act found PFOS to be persistent and toxic, it was not found to be bio-accumulative.

However, this is only because of the way the regulations for bio-accumulation are written. The regulations are written on the assumption that toxic substances accumulate only in fatty tissue. Unfortunately for us all, PFOS accumulates in protein tissues — the muscles, the spleen and other vital organs such as the brain — in human beings.

Even though PFOS is possibly the most bio-accumulative chemical we know, it has been declared in Canada not to be bio-accumulative. Bill C-298 will declare PFOS a candidate for virtual elimination, as it properly should be. It is proven to be a persistent bio-accumulative and inherently toxic substance.

Environment Canada appears to agree with that position since the officials who appeared in the other place before the Standing Committee on Environment and Sustainable Development on March 20, 2007, agree entirely with the position. They said:

> . . . that we should be eliminating the "level of quantification requirement" in CEPA that is associated with the virtual elimination list provisions at the moment, and that we should be allowing prohibition, or a prohibition regulation, as a means for implementing virtual elimination.

As a result, Bill C-298 was amended in the other place to avoid having the government develop a regulation to define a level of quantification for PFOS and another regulation to limit its releases from products.

It is my understanding that in the case of PFOS Environment Canada believes that the formulation of such regulations simply will not add any value, either to the environment or to the health of Canadians.

Honourable senators, I encourage you to support this legislation. It is clear from the information that I have received that action is needed to eliminate the use of PFOS — this proven toxic chemical — in Canada.

Bill C-298, if passed, will do precisely that, and it will do so in a manner that accurately reflects the growing importance Canadians are placing on our health and on our environment.

• (1740)

Bill C-298 is a completely non-partisan bill concerned only with the health of Canadians. It received all-party support in the other place. I strongly suggest to this chamber that this bill be fast-tracked and that it be sent to the Standing Senate Committee on Energy, the Environment and Natural Resources as soon as possible because it fits in completely with our ongoing review of CEPA, particularly with our in-depth study of PFCs and PFOS. I urge senators to support this bill.

On motion of Senator Nolin, debate adjourned.

NATIONAL PEACEKEEPERS' DAY BILL

SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Fox, P.C., for the second reading of Bill C-287, An Act respecting a National Peacekeepers' Day. —(*Honourable Senator Nancy Ruth*)

Hon. Art Eggleton: This item has now been adjourned 12 times. It is coming up towards the limit. May I have some indication as to when it might be debated?

The Hon. the Speaker *pro tempore*: Does the deputy leader have an answer?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Senator Nancy Ruth does have the adjournment on this order. As a matter of fact, I spoke to her as late as today. My understanding is that she is ready to go as soon as she has her notes finalized. It will be any day now. We are not postponing this in any way. She does want to move with it. She is just finalizing her notes.

Senator Eggleton: Thank you.

Order stands.

[*Translation*]

INDUSTRY

USER FEE PROPOSAL FOR SPECTRUM LICENCE FEE—
REPORT OF TRANSPORT AND COMMUNICATIONS
COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Transport and Communications (*User Fee Proposal for a Spectrum Licence Fee for Broadband Public Safety Communications*), presented in the Senate on February 7, 2008.—(*Honourable Senator Bacon*)

Hon. Lise Bacon moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET AND AUTHORIZATION TO ENGAGE
SERVICES—STUDY ON STATE
OF EARLY LEARNING AND CHILD CARE—
REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on child care—power to hire staff), presented in the Senate on February 7, 2008.—(*Honourable Senator Eggleton, P.C.*)

Hon. Art Eggleton moved the adoption of the report.

Motion agreed to and report adopted.

BUDGET—STUDY ON GOVERNMENT
SCIENCE AND TECHNOLOGY STRATEGY—
REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on issues relating to the federal government's new Science and Technology Strategy), presented in the Senate on February 7, 2008.—(*Honourable Senator Eggleton, P.C.*)

Hon. Art Eggleton moved the adoption of the report.

Motion agreed to and report adopted.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—STUDY ON CANADIAN
ENVIRONMENTAL PROTECTION ACT—
REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—study on the review of the *Canadian Environmental Protection Act*), presented in the Senate on February 7, 2008.—(*Honourable Senator Banks*)

Hon. Tommy Banks moved the adoption of the report.

Motion agreed to and report adopted.

[*Translation*]

OFFICIAL LANGUAGES

BUDGET AND AUTHORIZATION
TO ENGAGE SERVICES AND TRAVEL—
STUDY ON OFFICIAL LANGUAGES ACT—
REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Official Languages (*budget—study on the* Official Languages Act—*power to hire staff and to travel*), presented in the Senate on February 7, 2008. —(*Honourable Senator Chaput*)

Hon. Maria Chaput moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

MOTION TO AUTHORIZE COMMITTEE TO STUDY GUARANTEED ANNUAL INCOME SYSTEM— DEBATE ADJOURNED

Hon. Hugh Segal, pursuant to notice of February 6, 2008, moved:

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on the implementation of a guaranteed annual income system, including the negative income tax model, as a qualitative improvement in income security, with a view to reducing the number of Canadians now living under the poverty line;
>
> That the Committee consider the best possible design of a negative income tax that would:
>
> (*a*) ensure that existing income security expenditures at the federal, provincial and municipal levels remain at the same level;
>
> (*b*) create strong incentives for the able-bodied to work and earn a decent living;
>
> (*c*) provide for coordination of federal and provincial income security through federal—provincial agreements; and
>
> That the Committee submit its final report no later than June 30, 2009; and
>
> That the Committee retain all powers necessary to publicize its findings until 90 days after the tabling of the final report.

He said: Honourable senators, I rise to speak briefly to the motion introduced last week to examine the feasibility and, if possible, the design of a guaranteed annual income negative income tax for all Canadians.

Over the last 30 years, the percentage of Canadians living under the poverty line has not changed, yet the amount we spend on income security has increased. Based on available data that takes us back to 2004, the total government transfer payments to persons in 2004, excluding health and education, was $130 billion annually.

We must realize that these numbers are the ones currently available. To obtain more detailed numbers with respect to subsidized housing or day care, one has to do research on a city-by-city basis. Needless to say, the real numbers are overwhelming and larger.

The bureaucratic way in which we give out welfare has also not changed. The burden on hard-working social workers and case workers, with workloads that are growing all the time, the price that the poor pay for the continued sclerotic and inefficient nature of our federal and provincial programs is, in human terms, very high.

The price that the rest of society pays for the pathologies often associated with poverty is escalating rapidly. The poor get sick first and stay sick longer. The poor have more serious literacy problems. The poor are more often involved in crime and substance abuse; they are wildly over-represented in our jails and penal system and produce the largest amount of the workload for our police forces. Police, judges, Crown attorneys and prison officials across Canada reflect to me on the futility and cruelty of this cycle all the time.

While there have been modest innovations in some areas of social policy, such as the child tax credit in the 1990s, the guaranteed annual income supplement in Ontario for seniors in the 1970s, the working tax benefit incentive recently introduced by Minister Flaherty and a series of incremental initiatives elsewhere, the truth is that the amount of poor and working poor living beneath the poverty line has not diminished.

While folks have moved in and out of poverty, for too many Canadians poverty is intergenerational and quasi-permanent. At a time of labour shortages, at a time when we need more people to make it through to higher education, this is a huge productivity drain on Canada's potential, affecting the financial well-being of every Canadian.

Colleagues, it would be hard in any area of public policy to find one approach that could count among its adherents Sir Winston Churchill; Richard Nixon; Donald S. MacDonald, a former Liberal MP from Rosedale, referring to the royal commission that he led on economic prospects; Milton Friedman, the American neoconservative economist; the Rt. Hon. Robert L. Stanfield; Senator Patrick Moynihan and Linda Frum. A basic income floor, a negative income tax, would meet the test.

• (1750)

The distinguished Ontario Liberal senator, the Honourable David Croll, in 1971 led a Senate committee study on poverty which reported:

> If the social welfare business of Canada had been in the private sector, it would have long ago been declared bankrupt. The reasons are not hard to find. Resistance to change, a stubborn refusal to modernize its thinking, a failure to understand the root causes of poverty, inadequate research and the bureaucracy digging in to preserve itself and the status quo are some of the basic causes of the dilemma in which we find ourselves today.
>
> Harsh words? Yes, but they apply with complete accuracy to the situation in Canada. We are pouring billions of dollars every year into a social-welfare system that merely treats the symptoms of poverty but leaves the disease itself untouched.

Honourable senators, Senator Croll was speaking at the Empire Club in 1972, 36 years ago.

I had spoken before giving notice of this motion with the Chair and Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, Senator Eggleton and his fellow front-bencher, Senator Keon, who have agreed gracefully to give

the idea of this study serious consideration in their committee. I am grateful to them for that consideration and to our colleagues who sit on that committee for what consideration they give to this proposition.

A guaranteed annual income administered through negative income tax, like the GST tax credit, would be automatic upon filing their taxes. The gap between living above the poverty line with self-respect and dignity and anybody's "beneath the poverty line income" would be deposited by the Canada Revenue Agency automatically in people's accounts, just like the GST tax credit is deposited now. Incentives to file would go up. Privacy of recipients would be guaranteed by the act and protected by law. Integrity of filings would be underlined by the existing fraud penalties in the tax act. They are serious ones. Ottawa would administer the program easily through the Canada Revenue Agency, with agreement from the provinces, as it now collects taxes for nine provinces and three territories.

A myriad of other costly, means-test driven, demeaning, overlapping and excessively bureaucratic federal, provincial and municipal programs would be phased out over time.

Poverty is not a moral failure as many narrow and moralistic 17th century and 18th century social prejudices held. Poverty has many causes, not all of which are within our ability or purview to solve. However, poverty is about not having enough on which to live with self-respect, with dignity and with hope. When our incomes go up, Her Majesty takes more. It is called progressive taxation. That is how our system operates. She and her revenue agents do not ask if you have worked harder, taken more risks or gone to night school. You make more, they take more. Within the framework of reasonable and progressive taxation, I accept that. However, we may differ over what the rate of taxation might be.

When income collapses, Her Majesty's welfare officers and civil servants have a million questions before people receive what they need: Are you unemployed? For how long were you, where and for what reason? Have you been widowed? Are you part of a First Nation, on or off the reserve? Are you handicapped? This list goes on and on.

Thousands of civil servants, forms, questionnaires, interviews, bank account audits and checking into whether you live alone or with someone it all costs person years and millions upon millions of dollars that never go to the poor themselves. On top of this cost is the issue of coordination between different groups, agencies, levels and programs.

In my hometown of Kingston, the mayor has convened a task force on poverty. This roundtable is made up of 22 Kingstonians from all walks of life whose goal is to understand not only poverty and its root causes but to make recommendations on how to stem its existence, come up with an action plan to minimize its effects in the Kingston area and on the economy, et cetera. This work goes on in other communities across Canada.

Thirty-five years after Senator Croll's remarkable speech to the Empire Club, I am convinced that a national effort encompassing all Canadians in all regions is what is necessary to provide for all of our citizens.

If governments in the Western world have made a mistake since World War II in our collective efforts to provide a measure of social security, it has been in our desire to design a programmatic solution to the challenge. It has also consisted of our desire to over-intellectualize, over-design and micro-intervene in people's lives. It is a well-intentioned mistake that has been made by the Labour Party, the Republican Party, the Conservative Party, the Gaullist Coalition, the Socialists, the Democratics and the Progressive Conservative, Liberal and Christian democratic governments alike. The mistake has been made for the right reasons and in different ways.

A negative income tax embraces the simple solution that if a tax filer has insufficient income to live above the poverty line — which may differ by circumstance, region and context, numbers we already have in our databases — they are topped up over that line.

This approach means no massive program, no massive intervention, no public means test or interrogation at the welfare office, no embarrassment, less fraud and more dignity and self-respect.

Honourable senators, poverty is, in the end and in the beginning, about money. Health care systems, universal access to them, education for all and help are at the causal and symptomatic ends of the spectrum. A negative income tax helps at the actual point in life when help is most needed.

Education is about the future. Health care is about dealing with the results of poverty. A negative income tax would deal with those who are poor now. It is practical. Over time, it would replace the myriad of welfare and income security programs currently in place excluding health care, education and the Old Age Security pension, which I would leave untouched.

It would be a mark of civility and humanity. It would be Canadian leadership that could move the world, and above all, change the lives of millions of Canadians: our fellow citizens, our neighbours and all members of the Canadian family.

I commend this motion to the honourable senators' review and consideration. In New Brunswick and Manitoba, there have been pilot projects. We can study and learn from them and perhaps design a federal-provincial option that will strengthen not only federal-provincial horizontal unity and cooperation, but also the unity of the Canadian family. We affirm in this place, through our work, that there is always room at the family table for our fellow Canadians.

We can also affirm that we will not tolerate entire generations with their nose pressed to the window of a society they cannot afford to join. We can remove the poverty line for millions in urban and rural Canada and say to all our fellow citizens, "We know the cost of food, shelter, heat and clothes and can ensure that none among us will have less than what is necessary."

With this great step ahead, we can verify our society's values, our decency and our christian respect for the human condition. Embrace Benjamin Disraeli's view that, whether rich or poor, we are all one economic family, organically linked in one country to each other.

We can accomplish this task right here in this place. We can begin with a study of how best to design a national negative income tax to serve as a basic income floor for all Canadians. Great forces of inertia will tell us it is too hard, it is too complex and it is too technical. Our answer to them — whether in the civil service of this government, other governments, the welfare departments of provinces or municipalities or even in some social agencies — should be precise: The old solutions, the old pathology, the old demeaning approaches are not good enough for Canadians anymore.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Will the honourable senator take a question?

Senator Segal: Absolutely.

Senator Tardif: It is my understanding that committees normally set their terms of reference, including their work agenda, for a set period of time and then the Senate approves it.

Can the honourable senator explain why he recommends giving terms of reference to a committee of which he is not a part, and whether he has spoken to the members of the committee of whom he has given a term of reference to?

Senator Segal: Thank you for that question.

As I indicated, I have, indeed, spoken with the chair and the deputy chair of the committee, and I did so before moving the motion and the notice of notion.

Secondly, the motion only authorizes the committee. It does not in any way constrain the freedom of the committee to work through its present agenda. It is a compelling agenda on both population health and on urban poverty. The committee may decide in its wisdom to address this question in a fashion that relates to its other activities. I leave that decision to the wisdom of the members of the committee. However, I thought this chamber, on occasion, had the opportunity to make suggestions that committees can consider, which is the purpose of the motion before honourable senators this afternoon.

On motion of Senator Eggleton, debate adjourned.

The Senate adjourned until Wednesday, February 13, 2008, at 1:30 p.m.

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