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Tuesday, June 17, 2008

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Tuesday, June 17, 2008

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

Prayers.

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE AURÉLIEN GILL

The Hon. the Speaker: Honourable senators, I received a notice earlier today from the Leader of the Opposition who requests, pursuant to rule 22(10), that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Aurélien Gill, who will retire from the Senate on August 26, 2008. I remind honourable senators that, pursuant to our rules, each senator will be allowed only three minutes and may speak only once. However, it is agreed that we continue our tribute to Senator Gill under Senators' Statements and that Senator Gill hold his comments until the end of Senators' Statements.

Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: We will, therefore, have 30 minutes, which does not include the time allotted for Senator Gill's response. So ordered.

• (1405)

[*Translation*]

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, it is with great emotion and some sadness that I rise today to pay tribute to a loyal friend and very devoted colleague, the Honourable Aurélien Gill, who will retire from the Senate in August to guide the work of the Truth and Reconciliation Commission. He will still be working for his great cause.

An experienced businessman, passionate Aboriginal leader and seasoned parliamentarian, Aurélien Gill will have left his mark in all of his careers, and will have profoundly touched all those who have had the privilege to know him, be around him and work with him.

Aurélien Gill was born in Mashteuiatsh, also known as Pointe Bleue, a Montagnais community on Lac Saint-Jean, and studied education at Laval University, before enrolling in the National Defence College in Kingston, a college that trains senior officers and civil servants.

He started his career in teaching, then moved on to success in the federal government. His intelligence, hard work and dedication to public service helped him rise through the ranks to become Director General in the Department of Indian and Northern Affairs.

A very gifted teacher and public servant, Aurélien Gill will also leave his mark as a leader in the campaign for the recognition and self-governance of Aboriginal nations. Over the years, he has founded a number of organizations, such as the Confederation of Indians of Quebec, the Attikamek-Montagnais Council — well-known among Quebecers — and the Native Benefits Plan. From 1974 to 1985, he was Chief of the Montagnais of Lac Saint-Jean (Pointe Bleue), a testament to his excellent leadership skills.

Appointed to the Senate in 1998 by Prime Minister Jean Chrétien, Aurélien Gill put his talents and skills to work in the upper chamber. He continued to talk about and advocate for First Nations independence with extraordinary passion, eloquence and conviction. As a senator, he gave many passionate and fiery speeches on the state of our First Nations, but I believe that the history books will show that his greatest contribution as a parliamentarian was his visionary bill to create an assembly of Aboriginal peoples.

Bill S-234, a timely bill, was introduced on May 7, 2008, and I support it wholeheartedly because it would create a gathering place for Aboriginal people to debate and make decisions about their future.

Dear Aurélien, although you will no longer be here by the time this bill goes to committee for review, I am delighted that our friend and colleague Senator Watt, has volunteered to guide it through the twists and turns of the legislative process. I hope that a great many honourable senators will support this historic measure. I would like to take this opportunity to thank our Speaker for being so open to accepting this bill.

Dear Aurélien, during the 10 years you have spent here, you have shared your extraordinary talents, energy and eloquence. You have earned the respect and admiration of all who have known and worked with you. On behalf of our colleagues, I would like to wish you an active, enjoyable and very productive retirement.

May you have plenty of time to indulge in your favourite pastimes and to enjoy your wonderful hunt camp in Shefferville. Perhaps we will have the opportunity to visit you there one day.

I will end by bidding you farewell, my dear friend, in the language of your Montagnais ancestors:

Niaut nwuit she ouan nan.

Hon. Jean-Claude Rivest: Honourable senators, I too would like to pay tribute to our friend Aurélien Gill and wish him good luck with his many activities. I hope that he will continue to bear witness, in his own way, to his deep, long-standing connection to his Montagnais roots and to the larger Aboriginal community of Quebec and Canada.

• (1410)

Of course, we will all have the opportunity to meet Aurélien again outside this chamber and tell him how much he was appreciated here in the Senate for his irreproachable integrity and dedication, and his remarkable generosity. He has dedicated his entire life to Aboriginal people and has earned the respect not only of his fellow Montagnais and other First Nations peoples in the Saguenay—Lac Saint-Jean region, but also that of the entire community.

Aurélien will recall the time he and I had the opportunity to walk across Paris together. We had the chance to talk and we agreed that Quebec has also failed to treat its Aboriginal population in an exemplary manner.

Following the formal apology that was given in the House of Commons and the Senate last week, I believe we are at the dawn of an important new beginning for Canada, which will finally acknowledge the full merit of Aboriginal rights.

Aurélien Gill's contribution to this cause will remain a beacon and a benchmark for building a better future, not only for Aboriginal peoples, but for all Quebecers and all Canadians. After all, that has been the objective and the political ambition of our friend Aurélien.

I wish you all the best in the years to come, Aurélien!

Hon. Lucie Pépin: Honourable senators, I am pleased to join my colleagues here today in paying tribute to Aurélien Gill — someone who is more than just a colleague, but also a friend — upon his departure.

This new chapter for Senator Gill represents another step in a career that has been dedicated entirely to improving the lives of this country's first inhabitants.

His people are his passion. Throughout his professional life, Aurélien has worked tirelessly to make this world a better place for First Nations, Metis and Inuit peoples, a world where respect, equality and dignity prevail and where they can assume responsibility for their own affairs.

Not surprisingly, in his decade as a senator, he has never stopped lending his voice to the concerns of Aboriginal peoples and has remained a passionate defender of strengthening their autonomy. I would like to thank you, Aurélien, for always keeping us alert to the injustices suffered by Aboriginal people.

I agree with Aurélien that in order to encourage our Aboriginal fellow citizens to take their place in Canadian society, there is a need to enhance their autonomy both nationally and locally.

Everyone knows how sincere, frank and determined Senator Gill is. A lesser known side of Aurélien is that of a man with a great gift for livening up social functions. He is a great party guy, and I have personal knowledge of that.

Whenever we had party functions or gatherings, no sooner had the music started than he would say, "Let's go, girl!", and we would dash toward the dance floor where everyone was impatiently waiting for us to get the whole crowd going.

Aurélien is a spontaneous man who shows great generosity in his everyday life, a rare quality in our increasingly impersonal society. We wish for him that in the years to come his enthusiasm and cheerfulness never wane.

Senator, you will be missed, but know that there will always be a spot for you in each of our offices.

I join all honourable senators in wishing him and Aline health, much happiness together and a well-deserved rest in Masstéyach among their grandchildren. Farewell and the best of luck to you! Tchi nich koumitin, niaout.

• (1415)

Hon. Lise Bacon: Honourable senators, I am pleased today to honour a colleague and friend, the Honourable Senator Gill. In September 1998, we had the honour to welcome him into this chamber. I was in the front row at that important event because I had the honour to be his sponsor. I was very happy when he arrived, and today I am sorry that he is leaving.

I have known Senator Gill for many years. He is an extraordinary man. Throughout his career, he has combined business acumen with a desire to serve his community and a determination to improve the lot of the First Nations. He deserves our admiration as a model of social involvement. He effectively represents the members of his community.

Senator Gill has distinguished himself as a leader of Aboriginal associations in Quebec and in Canada-wide groups such as the Assembly of First Nations and the Provincial and National Aboriginal Advisory Council. His community and social involvement has always focused on advancing the cause of the First Nations.

I am convinced, dear colleague, that your involvement is not ending as you leave our chamber. Instead, a new chapter in your life is beginning. I encourage you to keep up your fine work with your community and to continue to be a model for Aboriginal people.

In our work in the Senate, Senator Gill has played an active role in advancing Aboriginal issues. The work of people like Senator Gill deserves to be recognized. It is important that the Senate be able to count on the members of our First Nations and that Canada's diverse population be represented in this chamber. The Senate must reflect the population of Canada and include members of the different communities that make up our country. Appointing senators makes this and other things possible.

Senator Gill, I commend you on your many accomplishments. You are my favourite activist, and I wish you good luck.

Hon. Roméo Antonius Dallaire: Honourable senators, I want to add my voice to these tributes and talk about Senator Gill's many fine qualities. I will be sorry to see him leave the Senate this summer. I have to admit that I was quite intrigued by his given

name, Aurélien, which is different from common names such as Joseph, Arthur or François. I noticed it immediately when I arrived in the Senate three years ago and looked at the list of senators.

I noted that he had been awarded the Order of Quebec in 1991. As a fellow member, I am pleased to say to him that he truly deserved this generous gesture and recognition by the province.

We are very familiar with your activism in the areas of education and culture. Your work with the Amerindian Police Council surprised us with your concern for security, both in one's community and in general.

Senator Gill was a student at the National Defence College from 1977 to 1978, when I was a young captain. He was taught by the great strategists of our country and visited the entire world because people in that course travelled everywhere. During these trips, he observed the conditions of Amerindians and Aboriginal peoples in other countries and the action being taken in their regard. He returned with the perspective that we could do much better in Canada, a country that respects human rights and where the Charter of Rights and Freedoms must be respected by all.

That he is a great strategist is not a surprise or a revelation, because the Amerindian community he represents in the Senate participated in the great strategic moments of our country. It allowed us in Canada to remain independent from the Americans. I would like to talk about a historical event in which Quebec's First Nations participated. The event took place in 1775, at Fort Saint-Jean, during the invasion of Canada by Richard Montgomery's army, attempting to finally bring Canada under the Americans' yoke.

• (1420)

A small group of a dozen British soldiers, a hundred French Canadian militiamen and more than 600 Amerindians fought at Fort Saint-Jean for 43 days and delayed the advance, making it possible for Canada to remain Canada.

[*English*]

Hon. Willie Adams: Honourable senators, it is sad to see my friend leaving the Senate. I will be following him a year from now. Senator Gill is leaving because he has reached the age of retirement.

I worked with Senator Gill on the Standing Senate Committee on Aboriginal Peoples. It is interesting that Senator Gill's bill, Bill S-234, is at committee stage. Last week, Aboriginal representatives appeared before the Committee of the Whole Senate. Hearing from Aboriginal people such as Mary Simon and people from the Assembly of First Nations in the Senate was interesting. Representatives of the Aboriginal people should come to the Senate every year to report on the negotiations with the Government of Canada on outstanding land claims.

Senator Gill, you have worked with Aboriginal bands, and you worked with many people before you were appointed to the Senate. Now you have done good work in the Senate. I hope your future life and your time with your wife will be a time of happiness. Perhaps we will visit you to see how you are doing. Thank you for your time in the Senate.

[*Translation*]

Hon. Joan Fraser: Honourable senators, I had the good luck of joining the Senate on the same day as Aurélien Gill. I say "luck" because there could have been no better way to be introduced to the Senate.

Unlike many of my colleagues, I did not know Aurélien Gill. I did not know who he was. It made no difference; it only took 30 seconds for me to be struck by his integrity, kindness, generosity and pride — all without one ounce of vanity.

I told myself that, if all senators were like him I would have wonderful years ahead of me. We are not all as good or as admirable or as remarkable as Aurélien Gill, but he is a role model for us. It was not until later that I became aware of his extraordinary passion for the causes he believes in, particularly the cause of his people, the First Nations.

Here in this chamber we have all heard his amazing speeches, and not just the one he delivered when introducing his bill, which is truly monumental, but also his other speeches the years, which have educated us about the First Nations' situation.

I can say to the senators across the way that if they think Senator Gill is eloquent in the chamber, they should hear him in caucus, especially the Quebec caucus.

I know that Senator Gill was slightly frustrated by the slow pace of things here. That is normal. However, I would like to assure him of the profound impact he has had on us, on our understanding of things and on our hearts and, for that, we should all thank him most sincerely.

• (1425)

Aurélien, we wish you and your family many years of happiness. Sometimes psychological impact is just as important as legislative impact.

Our hearts will never be the same.

[*English*]

Hon. Nick G. Sibbeston: Honourable senators, I also wish to offer my tribute to the Honourable Senator Aurélien Gill, who will be retiring from the Senate later this summer.

Senator Gill has been a teacher, a public servant and a successful businessman, but more than anything he has been a tireless defender of Aboriginal people and especially of the people of his own region of Mashteuiatsh Montagnais, where he served as chief for 10 years.

I had the opportunity to visit Senator Gill's region a few years ago to see first-hand the challenges faced by First Nations in the area, but I also saw the great economic and social successes they have achieved — much of it under Senator Gill's leadership and guidance.

Aurélien Gill's work for Aboriginal people extended far beyond the borders of his community, of course. He helped found several important provincial and national Aboriginal organizations, and served for many years on the Indian Claims Commission dealing with problems with specific claims. I know it must give him satisfaction to see Bill C-30 pass, which is the Specific Claims Tribunal Act — a monumentally important bill for our country. I am glad that bill was passed while he was here.

A number of years ago we were dealing with another specific claims act. We do not often have differences, but he was passionate and eager to have a great deal done. I was encouraging little steps, that we must be patient. However, Senator Gill wanted the whole package. It is nice to see that the government has come through with Bill C-30 while he was here.

I wish to say that I am very conscious of the bill he has brought to the Senate just before he retires. Bill S-234, a bill to establish an assembly of Aboriginal people, will be a monumental bill. It will create discussion and it will make our country realize the importance of having Aboriginal people involved in a body that would represent Aboriginal peoples in our country. I will be speaking on that bill and supporting it.

Senator Gill's ideas and his dedication will continue to inspire all of us who work to improve the lives of Aboriginal people. I note that there are a handful of Aboriginal people in our Senate, and he is one of the important ones. We will miss him, but his family will gain. They will have him all to themselves. However, we must realize where he is going and wish him a happy retirement.

Hon. Terry Stratton: As honourable senators know, I do not do this very often. In fact, it is quite rare. However, I have been thinking about this for a while because some time ago Senator Gill, Senator Fitzpatrick and I formed a small committee at the request of the former prime minister to take a look at the softwood lumber issue out West. Therefore, I had the delight of travelling with Senator Gill to the West.

Honourable senators, you get to know someone when you are in a small group like that. It really is what is wonderful about this place, because you have a persona in the chamber, and you have the other persona that you really get to know by travelling with someone.

I found Senator Gill to be a sincere, warm-hearted friend. He and I have had quite a good relationship ever since that trip. Aurélien, I wish you well. Bonne santé.

• (1430)

As I said, I do not talk very often on this kind of issue because I do not entirely agree with it, especially with regard to the number of honourable senators who stand up every time.

In this particular case, Aurélien, have a wonderful retirement. I will keep practising my French. Hopefully, it will get better and better.

With respect to Senator St. Germain, he is in British Columbia for medical reasons. Otherwise, he would be here today speaking to you in glowing terms, as I hope the rest of us do.

I wish you well, friend.

Hon. Charlie Watt: Honourable senators, bear with me. I wish to direct the following words to Senator Gill.

[*Editor's Note: Senator Watt spoke in Inuktitut.*]

Honourable senators, what do I say? I have known Senator Gill for many years. I first met him in the late 1960s. He was working out of Quebec City at the time. When I first met him, I did not know who he was, but we soon named him, not Senator Gill, but something else which I will say because the Inuit in the North know him. Senator Gill is known in the Inuit world as "blue-eyed Indian." He did a significant amount of work for the Inuit while in Quebec City working with the Department of Indian Affairs and Northern Development.

Over the years, Senator Gill and I have worked closely together. As a matter of fact, Senator Gill, Chief André Delisle and Max Gros-Louis are the three who are known to the Inuit world because they said that we must do something. We must move forward and let the rest of the world know who we are so we are not entirely forgotten in this country. For that reason, I believe Senator Gill has done a great deal on behalf of his people and also on behalf of the Inuit.

I speak from the bottom of my heart. I am happy to have been close to you and to have been your friend. I will continue to keep in touch with you, Senator Gill. I will always remain a friend.

I hope to live up to your expectations and deliver what you have left me with, which is not an easy task. I will count on my colleagues in the Senate to help me with Senator Gill's bill, which deals with the need to establish an Inuit assembly within the assembly, within the parliamentary concept. This is an area that has been spoken of for quite a number of years within Aboriginal society. Senator Gill decided before he retired to make a move on that file in the hope that it will materialize on his behalf and on behalf of his people.

Senator Gill, I do not know exactly what to say because you have been very close to me. I am losing a partner, a person who can tap my shoulder and say, "Charlie, maybe this is a better way to handle the issue." I will miss you. The only thing I can say is that I know you will be surrounded by your family, your wife and your daughters. Enjoy yourself and take a break. You might have to buy a strong pair of binoculars to keep an eye on me to ensure that I am delivering what you expect me to deliver here in the Senate.

Thank you very much, Senator Gill; it has been great knowing you over the years.

• (1435)

Hon. Wilfred P. Moore: Honourable senators, I wish to be associated with remarks made today in tribute to Senator Aurélien Gill.

Following his appointment to the Senate in 1998, I got to know Senator Gill and to become his friend. Over the years, I have enjoyed his company at social outings, and it was during those gatherings that he schooled me in reserve life and the plight of our Aboriginal brethren.

Since his appointment to the Senate, he has been an ardent advocate for the Aboriginal people, pointing out the shortcomings they are experiencing and urging us to recognize and ameliorate their situation.

One cannot speak of Senator Gill without mentioning his Bill S-234, an act to establish an assembly and an executive council of the Aboriginal Peoples of Canada. Not only is it a solid piece of work, it is the most promising and substantial bill that I have seen initiated during my time in this place. It takes a leader of intelligence, commitment, confidence, passion and bravery to envisage such a bill and to bring it forward.

This far, the Aboriginal people have not done well by the governments of Canada, primarily white folk. It is my hope that this bill of Senator Gill will serve as a blueprint to move forward and to enable our Aboriginal colleagues to have their proper place in Canada and its institutions, as urged by Chief Phil Fontaine last Thursday on the floor of the Senate.

I shall miss the Honourable Senator Chief Aurélien Gill, his friendship and his advice. I wish the best of everything for him and for his family in the years ahead.

Hon. Tommy Banks: Senator Gill, as you have heard and will continue to hear, we will all miss you very much. You were among those senators who, whether or not you remember it, made me feel most welcome when I first arrived here. You have been a friend at every occasion and every circumstance, and you are leaving behind in the bill you introduced a few weeks ago a hefty reminder that will survive you. We all thank you for that. Best wishes, Senator Gill.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, the very first time I met the Honourable Senator Gill, we began a friendship that has been growing ever since. Indeed, our friendship has kept growing over the years. At the time, I did not realize that those beautiful, blue, bright eyes were those of a great First Nation leader. It is thanks to his numerous comments and speeches that I developed an interest in the Aboriginal cause. Whenever he took the floor, I would always pay close attention. It was on those occasions that I discovered the goodness of the person who would become my friend.

We laughed a lot together, but when he told me about his illness, I stopped laughing. Even during his absence, I often thought of Senator Gill, but since I have absolute confidence in Providence, I prayed every morning and every night since that day, for my precious friend.

When he came back to the Senate after undergoing a series of treatments, I immediately realized that his courage and determination would allow him to regain his full health. I promised my friend that I would get fully involved in his dream, which is the creation of a chamber for the First Nations, the Inuit and the Metis.

I will conclude by saying that my fondest wish is that our friendship will continue for a long time after his well-deserved retirement.

Finally, I will repeat the last words spoken by my late, elder brother Gabriel. They were, "Hail, Chief!"

• (1440)

Hon. Aurélien Gill: Honourable senators, I have to start by thanking you for your kind words. I am not sure I deserve them, but I thank you and I am grateful.

Honourable senators, I would like to thank you, and your colleagues before you, for your understanding, your openness and your generous cooperation throughout the years. Thank you very much.

Honourable senators, the time always comes for one last speech. I am leaving this chamber with pride, and also with gratitude. I am grateful to you, honourable senators, to the staff, the security officers, all the staff of the Senate of Canada, the interpreters and pages for their respect and their skills, for all this work, this generosity and these years.

I am also grateful to and thankful for all those who have worked with me. Special thanks and my heartfelt gratitude go to my family, my wife, my children, my grandchildren and all my friends for their continuing support.

Quite often we leave a position with a feeling of incompletion, but I am quite satisfied. You have listened to me, you have helped me and I know that something will remain. Life goes on and so do plans.

It goes without saying that I was quite often emotional — I am again today, obviously — but rest assured, reason prevailed. Every time I tried to describe to you a situation in one of the many First Nations communities, many images of horrible situations and desolation came to my mind; I had no control over that.

[*English*]

I have great hopes for our Aboriginal people: First Nations, Metis and Inuit. They have been my primary concern since my appointment to the Senate of Canada and all my life.

[*Translation*]

As I already mentioned, I have felt privileged in my life to be able to express myself in different institutions — in government, in public, and in the Senate in particular. As I leave this chamber, I want to express the wish that my Aboriginal fellow citizens have the opportunity to use their talents and to participate in ever-growing numbers, within the existing institutions and those I hope will come, in the development of Aboriginal peoples and all other Canadians.

[*English*]

I have great faith in the future. It has always been my most profound desire to live in a just, beautiful and noble society.

[*Translation*]

• (1445)

I am very proud of the bill I am leaving with the Senate. I really hope that something will come of that bill, for we must continue to communicate, to dream and to build.

[*English*]

Canada will have attained great maturity the day that the Aboriginal people — First Nations, Metis and Inuit — have regained their political representation and their political responsibility.

[*Translation*]

We must encourage First Nations people to return to the land. As I have often said in this chamber, we must change our view of history in order to change our view of the future. Certain topics are very difficult, but the issues facing First Nations people must be resolved. A path and a solution must be found. That day is not far off, for the world is changing, and it will change for the better. One day there will be a representative assembly of First Nations. One day, economic and social action will bear fruit.

One day, with the maturity that this new Canada will enjoy, there will be someone to say, "We, the First Nations people, have not only survived, but we have made a contribution; we have worked towards making the world a better place for all Canadians, without exception, without excluding anyone."

[*English*]

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TENTH REPORT OF COMMITTEE PRESENTED

Hon. George J. Furey, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, June 17, 2008

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

TENTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2008-2009.

Banking, Trade and Commerce (Legislation)

Professional and Other Services	$ 28,000
Transportation and Communications	$ 0
All Other Expenditures	$ 8,000
Total	**$ 36,000**

Respectfully submitted,

GEORGE J. FUREY,
Chair

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Furey, with leave of the Senate and notwithstanding rule 58(1)(j), report placed on the Orders of the Day for consideration later this day.

[*Translation*]

BUSINESS OF THE SENATE

ROYAL ASSENT—MOTION TO PERMIT ELECTRONIC AND PHOTOGRAPHIC COVERAGE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(j), I move:

That television cameras be authorized in the Senate Chamber to record the Royal Assent Ceremony on Wednesday, June 18, 2008, with the least possible disruption of the proceedings; and

That photographers also be authorized in the Senate Chamber to photograph the ceremony, with the least possible disruption of the proceedings.

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

Hon. Senators: Agreed.

Motion agreed to.

• (1450)

[*English*]

NATIONAL DEFENCE 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-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act.

Bill read first time.

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

On motion of Senator Comeau, bill placed on the Orders of the Day for second reading later this day.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to sit at 5:30 p.m., today, Tuesday, June, 17, 2008, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

By way of explanation, senators, the Minister of Agriculture is appearing before the committee at that time.

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

Hon. Senators: Agreed.

Motion agreed to.

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT INTERIM REPORT WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

> That the Standing Senate Committee on Human Rights be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate before June 30, 2008, an interim report under the order of reference adopted by the Senate on November 21, 2007, authorising the committee to examine and monitor issues relating to human rights and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations, if the Senate is then adjourned for a period exceeding one week; and that the report be deemed to have been tabled in the chamber.

[*Translation*]

INVESTMENT CANADA ACT

BILL TO AMEND—FIRST READING

Leave having been given to revert to Introduction and First Reading of Senate Public Bills:

Hon. Céline Hervieux-Payette (Leader of the Opposition) presented Bill S-241, An Act to Amend the Investment Canada Act (foreign investments).

Bill read first time.

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

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

• (1455)

QUESTION PERIOD

INDUSTRY

COMPANY TAKEOVERS BY FOREIGN ENTERPRISES

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government. Since 1985, when the Investment Canada Act was passed, more than 12,500 Canadian companies have been acquired by non-Canadian interests. These companies include Dofasco, Inco, Alcan, Falconbridge, Deer Creek Energy, Western Oil Sands, PrimeWest Energy and Norcan Energy Resources.

Recently, the U.S. Department of the Treasury stated that even acquisitions of less than 10 per cent of an American company could be subject to review by the Committee on Foreign Investment.

In late 2007, New Zealand refused to give the Canada Pension Plan Investment Board access to 39 per cent of the Auckland airport lands. In April of this year, the Japanese government used its veto to block the sale of shares in an energy sector corporation for the first time. More recently, a few weeks ago, the German coalition government was revising its legislation on foreign investment review to better protect German strategic interests. France, the United Kingdom and China are just a few of the many countries that have the power to block mergers for national security reasons.

According to Scotia Capital strategist Vincent Delisle, most developed nations have begun a general review of foreign investment rules. Given this context, what is the Conservative government waiting for to ensure that Canada's interests are protected and to amend the Investment Canada Act?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. As she well knows, in today's economy, there are many global industries and many Canadian-owned industries have taken over or purchased many foreign companies. There is considerable foreign interest in this country.

The only example of the government stepping in was when the Minister of Industry, the Honourable Jim Prentice, spoke out in respect of Alliant Techsystems Inc.'s application to acquire control of the Information Systems Business of Macdonald,

Dettwiler and Associates. I believe that was the only time in a significant number of years that the government stepped in to protect a Canadian interest.

With regard to any changes to the Investment Canada Act, I will take the honourable senator's question as notice. In this global economy, foreign companies are interested in Canadian industry. On the issue of state-owned enterprises, which we addressed before, the minister is looking at it. Likewise, Canada has invested heavily in many countries around the world. We are in a global economy and Industry Canada, I am sure, is cognizant of that.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, I would nevertheless like to remind the Leader of the Government in the Senate that most OECD countries have measures to protect strategic sectors from foreign investment. The protection of direct, well-paid jobs in Canada is generally ensured through corporate head offices. When foreign companies take over Canadian firms in the areas of banking, accounting and engineering, most of the high-end jobs, for which Canadians are well trained, may be transferred to other countries.

We should remember that, last year, for the first time under a Conservative government, Canada's net investment position recorded a deficit.

• (1500)

We should also remember that most of Canada's foreign investments are in countries such as Barbados and that the purpose of these investments is not to create jobs but to take advantage of tax shelters.

At the beginning of the year, you appointed Mr. Red Wilson to review this matter. However, the Leader of the Liberal Party of Canada, the Honourable Stéphane Dion, asked for a three-month moratorium on all corporate takeovers. He also asked that the government to make specific proposals.

The session will end this week and the government has not tabled the report and certainly not a bill. Rather than lecturing us on Canada's participation in the global economy, I am asking the Leader of the Government to explain why Britain, France, the United States, Japan, Australia and many other countries have laws to protect their countries' interests whereas Canada is not moving forward with a review of its legislation in light of the deficit recorded since the Conservative government has been in power.

[*English*]

Senator LeBreton: I think it is inaccurate for the honourable senator to claim that we are in a serious deficit. I have not seen figures to bear that out. In some areas of the world, there is more competition and more pressing need for Canada to act.

On the issue of competition, the minister struck a committee and that body is looking at this issue. I expect the minister will be in a position to report soon. When he established this committee late last year or early this year, he gave the committee until the summer — I think it is June 30 — to do their work. I will ask the minister when he may be prepared to table that report.

[*Translation*]

FOREIGN AFFAIRS

CASE OF OMAR KHADR

Hon. Roméo Antonius Dallaire: Honourable senators, on April 15, I asked the Leader of the Government in the Senate whether the Prime Minister personally received information from his officials about the conditions in which Omar Khadr was being held.

The minister told me that she would ask the Department of Foreign Affairs and International Trade for the information and give me an answer. Given everything that is happening and how urgently we need an answer about the case of Omar Khadr — because the case is going to trial — can the minister confirm that the Prime Minister is receiving specific information about this case and making decisions about it?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I will have to check my response to the honourable senator because I have always been quite consistent, as has the government, in answering questions in regard to Mr. Omar Khadr.

Nothing has changed since I answered the honourable senator's last questions about Mr. Khadr. While I did see the report last night on the CBC, I have nothing to add at this time.

It is true that the government is monitoring this case, as I have said in this place before. It was evident from last night's report that there are some serious charges involved. Obviously, some people have a different view of the situation.

• (1505)

As the honourable senator knows, the Supreme Court made a decision, although from my understanding, Mr. Khadr's lawyers were not totally satisfied with many of the other recommendations. The government will decide on any further action after it has had a chance to look at the decision and review what the court has said.

Senator Dallaire: I must come back to the Leader of the Government, who initially said that nothing has changed since my query. However, the judge who threatened to bring forward some of the information that was required for the trial was summarily fired and has just recently been replaced. The Supreme Court of Canada, to which I will refer more fully than my colleague did when he made his presentation, said that the process in place at Guantanamo Bay, where Mr. Khadr has been detained, violates U.S. domestic law and international human rights obligations to which Canada subscribes.

Then we have the Supreme Court of the United States for the third time taking on Guantanamo Bay as an institution, saying it is illegal and inappropriate and there should be due process.

With all of that, and given that it involves a child soldier, that we signed the convention, that there is international law, that there is some guy in front of the International Criminal Court who has been using child soldiers and that everyone else has agreed that we not put him through a judicial process but that we rehabilitate and reintegrate him, what is holding us back from implementing everything that we have agreed to historically, when in fact it involves a Canadian?

Senator LeBreton: I thank the honourable senator for the question. He is citing actions of a court of law of another country. He would not expect me to comment on the decisions of the Supreme Court of the United States.

The government is aware of the actions of the court. I was referring, of course, to the decisions of the Supreme Court of Canada.

I must point out to the honourable senator that even prior to the decision of the Supreme Court of Canada, the government had provided approximately 3,000 documents to Mr. Khadr's counsel, so there has been cooperation from the government to Mr. Khadr's counsel.

How the United States eventually resolves the issue of Guantanamo Bay is for the United States to decide. That is not an issue for the Canadian government to decide.

Senator Dallaire: I take from the leader's words that the Canadian government agrees completely with the process that is in existence in Guantanamo Bay against all references and conventions. The Government of Canada agrees that it is due process and that it is just that the U.S. has kept this boy in jail for six years. The Canadian government agrees that they extracted information from him in an illegal fashion and is proceeding with a process that has been deemed illegal in their own country. Even if we want to respect them, and in fact, their actions are going dead against conventions and rules of international law to which we subscribe, the leader still says we do not fiddle in someone else's backyard.

He killed an American soldier, apparently, and that is in question.

Is it not the fact that it involves an ally, the United States, that we do not want to bring him home? Is it because we do not want to interfere with the war on terrorism, or are we putting that aside and letting ourselves be manipulated by a process that is illegal and ultimately will bring us down that same road of not following human rights, due process and civil liberties?

Senator LeBreton: The honourable senator asks me if I agree; I totally disagree. It is very clear that Mr. Khadr is facing serious charges. He has been in Guantanamo Bay for quite some time. Under a previous government, according to reports, he was interviewed. They met him and interviewed him. It was a previous government that turned over the results of those interrogations to the Government of the United States; it was not this government.

• (1510)

"So what," Senator Dallaire says. Where was the honourable senator when —

Senator Dallaire: Don't you dare ask me where I was!

The Hon. the Speaker: Order.

Senator Dallaire: I could ask you where you were too.

Senator LeBreton: I was here, actually. I do not remember ever hearing the honourable senator asking a question about Omar Khadr when he was a member of the governing party.

However, as I have said before, this is a very serious case. There are very serious charges. The government is being very careful in the handling of this case. The government is monitoring the situation. As people have met with Mr. Khadr, we have every reason to believe that he has been properly treated and the process is under way in the United States.

I am well aware of the judge being removed from the case. I am not familiar with the ins and outs of the U.S. justice system, but this matter is before the U.S. courts and I would say that we should let these legal processes and appeals that are under way proceed and hopefully come to some resolution on this matter.

Hon. Mobina S. B. Jaffer: Honourable senators, I will tell the leader where I was. I was in this house and I did not ask questions because I felt that the U.S. government was dealing with Mr. Khadr fairly. In the last few years that has not been the case. We know that all Western governments have brought their citizens back to their countries. Why can we not bring Mr. Khadr back to this country and have him suffer the consequences for his actions here in our country and rehabilitate him? He is our child soldier.

Senator LeBreton: I thank the honourable senator for her question. When she states that she was here and she understood that Mr. Khadr was being treated fairly by the U.S. government, nothing much has changed in terms of the charges against him. Certainly, as I mentioned a few moments ago, the government, even before the Supreme Court decision in this country, had turned over 3,000 pages of documents to Mr. Khadr's counsel.

I do not know what transpired between the time that Mr. Khadr was sent to Guantanamo Bay and now, to all of a sudden have people say that for four years, from 2002 to 2006, he was being well treated or not being mistreated by the American authorities, and then after 2006 something changed and that he is being mistreated.

I do not follow the honourable senator's logic. There has been much work done on this case by Mr. Khadr's counsel, but the Canadian government — and it is the case with this government as with the government before — is satisfied that Mr. Khadr is being humanely and properly treated. There is an appeals process under way under the U.S. justice system. There is a serious charge involved. I do not think anyone denies that. Therefore, nothing

much has changed except that it appears Mr. Khadr's case has been getting more attention and seems to be working its way through the system.

Senator Jaffer: I wish to tell the leader what has changed.

We have found out that Mr. Khadr has been tortured; we have found out that the judge on his trial has been removed; and we have found out that Mr. Khadr is suffering ill health. Most importantly, all other Western countries have brought their citizens back to their countries. Why are we letting this young man down?

Senator LeBreton: There have been many reports on both sides. Some make the accusations of mistreatment; others counteract that. We as a government have a process in place for monitoring and checking on the well-being of Mr. Khadr, as had the honourable senator's government before us. The show on CBC last night presented arguments on both sides. Some people thought he did not murder the American soldier and others thought he did. That is not for us to decide; that is for a court of law to decide. In this case, we should let the courts decide.

• (1515)

Hon. Tommy Banks: Honourable senators, the Leader of the Government in the Senate has raised the issue of logic. It seems to have been established in the trial that the action that took place during which Mr. Khadr is alleged to have committed homicide was a firefight. Do we agree that when there is a firefight between two opposing military forces that the forces who succeed in killing someone on the other side are to be charged with murder?

Senator LeBreton: I will not answer that question. In a conflict such as the case here, and in a condition of war, I will not comment. The fact is that this matter is before the courts of the United States. There is not much I or anyone can say. We should not be prejudging or commenting on a case that is presently before the courts. There are stories on all sides of this issue. Everyone can draw their own conclusions. The only people who can really sort out what is fact and what actually happened are judges in a court of law.

[*Translation*]

HERITAGE

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION— REPORT ON TELEVISION FUNDING

Hon. Maria Chaput: Honourable senators, my question is for the Leader of the Government in the Senate. The CRTC recently submitted its report on the future of the Canadian Television Fund to Canadian Heritage. This report is unacceptable, because it makes no mention of French-language television production in minority situations.

If the CRTC's recommendations were implemented now, minority French-language producers would have no guarantee of available funding. Under the Official Languages Act, the government is required to support and protect the French-language production industry in minority situations.

Could the Leader of the Government advise the Minister of Canadian Heritage, Ms. Verner, that she must ask the CRTC to amend its report to include all the players on Canada's television scene, including francophones in minority environments?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): As the honourable senator knows, the CRTC is an independent agency, and their decisions are their decisions. It is rare to have people challenge their decisions, although it has happened. I am not familiar with this latest decision of the CRTC, so I will take the honourable senator's question as notice.

BROADBAND CAPACITY IN RURAL AREAS

Hon. Hugh Segal: Honourable senators, my question is for the Leader of the Government in the Senate. In a report from the Standing Senate Committee on Agriculture and Forestry, tabled last night by Senator Fairbairn, one of the recommendations was that cabinet consider making a policy direction to the CRTC with respect to the process of approving any broadband or other business activities in a way that would mandate the CRTC to ask for an engagement relative to extending broadband and rapid download capacity to rural Canada so that young kids in rural parts of the country would have the same rights to high-speed Internet as kids in urban areas.

• (1520)

While the report is yet to be debated by this chamber, I wonder if Senator LeBreton might undertake to see whether cabinet at some point might be prepared to consider that path relative to protecting the rights of young people in rural Canada to have the same high-speed Internet as kids in the cities have on an ongoing basis.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): As the honourable senator knows, the government necessarily responds to reports of standing committees. Therefore, when that report is considered, I am sure my cabinet colleagues will look seriously at the recommendations of the committee and act accordingly.

NATIONAL CAPITAL COMMISSION

VICTORIA ISLAND—NATIONAL ABORIGINAL CENTRE

Hon. Mira Spivak: Honourable senators, my question is to the Leader of the Government in the Senate.

On Saturday, June 21, Victoria Island in the Ottawa River will be the site of an annual sacred pipe ceremony to honour the summer solstice, to commemorate this site as the spiritual meeting grounds of the Anicinabe peoples, to celebrate National Aboriginal Day and to light the sacred fire for the gathering of nations.

For four decades, this site at Chaudière Falls, where Champlain arrived in 1613, has been designated as a site for a National Aboriginal Centre. For almost a decade, Algonquin elder Dr. William Commanda has worked to develop the proposal. It was approved by the NCC in August 2006.

In the wake of the historic apology to Aboriginal peoples, will that apology be followed with support for this indigenous centre?

My further question to the Leader of the Government in the Senate is: What news can she give us about the status of this project? What word can be brought from the government to the sacred pipe ceremony on Saturday?

I further add that this elder, Dr. William Commanda, is 94 years of age.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, that particular site is stunningly beautiful. It has been used many times by our Aboriginal peoples. On the historic day of the apology, they had a sunrise ceremony, and a group of Aboriginal people used that site as the starting point to make their way up to Parliament Hill.

With regard to the proposal for the Aboriginal centre, I will take the question as notice.

I know that the Minister of Indian Affairs and Northern Development, Chuck Strahl, is keen and engaged in moving many files forward. He sees the day of apology as hope and optimism for the future in moving forward and making concrete differences in the Aboriginal community all over the country.

With regard to the specific site, I am well aware of the NCC's recommendation, and I will take the question as notice.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

ON-RESERVE ABORIGINAL EDUCATION

Hon. Sharon Carstairs: Honourable senators, I was pleased to hear the Honourable Leader of the Government in the Senate indicate that the apology was a step forward.

Therefore, I ask the honourable senator if she can explain why the Government of Canada's per capita cost for the education of Aboriginal children on reserve is significantly lower than the per capita cost the average province spends.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, a tremendous amount of work is being done by Minister Chuck Strahl in terms of moving forward on Aboriginal education. He has been meeting with Aboriginal leaders as well as provincial and territorial governments.

• (1525)

Of course, the situation of Aboriginal schools is not where it should be. I believe that Minister Strahl will find a solution for this problem, working in the spirit of going forward, and with a lot of support from the Aboriginal community and the provinces and territories. I feel confident that great strides will be made in the near future with regard to Aboriginal education.

Senator Carstairs: Honourable senators, abuse of alcohol in pregnant mothers can lead to fetal alcohol syndrome. On some reserves, up to 30 per cent of children in school suffer from fetal alcohol syndrome, yet the special needs budgets provided by the Government of Canada to fund the education of Aboriginal children on reserves are significantly lower than the special needs budgets given to most schools in this country.

Can the Leader of the Government explain why?

Senator LeBreton: The honourable senator obviously does not accept my comments of going forward with optimism and goodwill. I believe we have made great strides, previously with Minister Prentice and now with Minister Strahl, so much so that Chief Phil Fontaine, Chief Patrick Brazeau, Mary Simon and others commented on it in the ceremony after the apology last Wednesday.

Even though the honourable senator is not optimistic about the future and what the government might do, I am optimistic because I know that Minister Strahl is working hard on this topic.

VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** I draw the attention of honourable senators to the presence in the gallery of Patrick Brazeau, National Chief of the Congress of Aboriginal Peoples.

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

Hon. Senators: Hear, hear.

ORDERS OF THE DAY

BUDGET IMPLEMENTATION BILL, 2008

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Nolin, for the third reading of Bill C-50, An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget.

Hon. Joseph A. Day: Honourable senators, the third reading debate began on Bill C-50 last evening. My deputy chair of the Standing Senate Committee on National Finance, Senator Stratton, spoke, and I commend him for his overview of the bill. I also commend to you the words and the comments by Senator Murray.

Senator Murray spoke about the value of having pre-studied this particular bill. We spent three weeks, prior to receiving the bill, studying the subject matter of the bill so we could understand what was in the bill when we received it. I agree with Senator Murray, and I think Senator Stratton does as well.

I thank all members of the committee for coming out during that pre-study, over a three-week period with extended sittings. All of us had an opportunity to go much more in-depth into some of the issues.

Unfortunately, when we have that opportunity, we see more and more items that we would like to investigate further, and we have more points to comment on than we might otherwise have had if we had received the bill in the normal course. There is also public pressure on us to pass the bill quickly and bring it back here before the House of Commons recesses. I was pleased that we were able to do the pre-study.

The point made by Senator Murray yesterday is that this is not a matter of confidence. Nothing in this chamber is a matter of confidence. It probably ignores, to some degree, the fact that what we do here has political repercussions, whether we are or are not a house of confidence.

• (1530)

Therefore, Senator Murray might have pushed the envelope a bit with respect to that issue. However, he makes a point that there are some matters in this bill that we should consider dealing with differently from other matters in this bill.

Honourable senators, let me deal with some of the issues that we learned of, and that were of concern to members of the committee. Honourable senators will recall that, when we returned this budget implementation bill without amendment, we attached certain observations. Those observations will form the focus of my remarks today. I will try to point out to honourable senators some of the concerns that the majority, at least, of the members of the committee had in relation to the points that we will discuss.

First, I wish to mention the fact that this bill, although we shorten its title and call it a "budget implementation bill," has a long name. It is "An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008. . . ." It then continues: ". . . and to enact provisions to preserve the fiscal plan set out in that budget."

I will state again: "and to enact provisions." That wording gives the government a basis for a much broader bill, an omnibus bill, than a pure budget implementation. The subject of the omnibus bill, honourable senators, is where I will start my remarks.

One of the more troubling practices of governments in recent years is the tendency of including legislation measures that have no direct relationship to budget implementation bills. Bill C-50, the bill before us, runs for 139 pages. It comprises 10 different parts. It contains 164 clauses that amend 26 other pieces of legislation. In fact, it creates one piece of legislation. A new act is created when we vote on, and if we pass, Bill C-50. We are creating another separate, stand-alone bill.

Honourable senators, listen to some of the different areas that are touched upon in this bill. There are a variety of tax changes; a new financial aid program for students; sweeping changes to our immigration system; mortgage insurance changes; a significant change to the powers of the Governor of the Bank of Canada; a new premium-setting system for Employment Insurance programs; payments to the provinces and territories under various agreements; payments to several entities, such as the University of Calgary; and other less-known areas of activity, such as changes to the Donkin Coal Block Development Opportunity Act.

Honourable senators, the practice of throwing everything but the kitchen sink into a budget bill makes it difficult for any single committee in this place or, indeed, in the other place to perform a thorough job on all the various aspects of the legislation. There is a tendency to be distracted by one or two larger issues that receive a high degree of media attention. In addition, we in the Standing Senate Committee on National Finance are not experienced with respect to Part 6 of the bill. Part 6 of the bill is the immigration portion of this bill.

It is not possible to explore fully the big picture with respect to that particular immigration aspect or other components of the bill.

We are forced to deal with the various components in a superficial manner because of the time constraints, even though we spent three weeks on this study. All honourable senators worked hard to try to understand the components. Honourable senators can understand, when not studying the big picture and trying to focus on the amendment, how one could miss some of the unintended consequential changes that might occur.

This year, we attempted to improve our changes by conducting the pre-study, as I indicated. That pre-study was helpful. However, again, I think we only managed to scratch the surface on many of these aspects.

Of course, budget bills often contain provisions that transfer large sums of money. We understand that aspect. They do that both to other levels of government and to other entities. Bill C-50 follows that pattern.

I submit to you, honourable senators, that these promises of money are sewn into the budget bill to secure rapid passage. Such announcements can be implemented easily through the supply bills, such as Bill C-58 and Bill C-59 that we dealt with yesterday, supported by the estimates, which we study throughout the year, as well as the supplementary estimates. Indeed, in many cases, such an approach would ensure more rapid passage of the major financial aspects.

However, as I indicated to honourable senators, the financial aspects are woven into all these other aspects to fend off scrutiny and to disarm the opposition. A committee that attempts to conduct a thorough examination risks being accused of delaying a transfer of those sums of money. We suddenly receive letters from all over the country — from municipalities and provincial governments — saying, "Do not hold up this bill."

In the present bill, the government has included a large number of amendments to acts of Parliament that have no bearing on fiscal or economic policy. In particular, the amendments to the Immigration and Refugee Protection Act belong entirely in a

stand-alone bill. They have nothing to do with the fiscal management of the government, and they have sweeping implications as to how Canada conducts, or will conduct, its immigration program.

The Standing Senate Committee on National Finance has no particular expertise in immigration matters and, given that these amendments were only one of 10 parts of this bill, we could devote only so much time to examining them.

In the future, I think this chamber — if it is not done before such a bill arrives — should seriously consider splitting such bills. I do not recommend this course of action to delay the progress of the government's legislative agenda but, rather, to ensure that major policy initiatives receive the full and expert attention of the relevant committee that has the institutional memory and the focus to evaluate that particular portion properly.

Senator Carstairs: Hear, hear!

Some Hon. Senators: Hear, hear!

Senator Day: Honourable senators, now that I have presented the overriding concern about throwing everything in this bill, I will move on to some specific aspects.

Next, there are scholarships. Honourable senators, I will be selective in dealing with various matters. I wanted to deal with scholarships first because time will not permit me to deal with all the issues and the questions that arose throughout our study of Bill C-50.

I first point out to honourable senators that we did not hear from certain people that we wanted to hear from. Time did not permit it and their schedules did not meet with the schedules that we had over the three-week period. We did not hear from the Governor of the Bank of Canada, although several requests were made to him. We did not hear from the Minister of Finance or from the Minister of Citizenship and Immigration. Several other interest groups asked to appear before us that we could not hear from.

The Canadian Millennium Scholarship Foundation board was one of those boards from which we did not hear. We heard from student groups. However, it would have been good to hear from a board that has been in place for 10 years; one that we heard started out in a somewhat rocky fashion in that new foundation but pulled things together and was doing some good work. We were unable to bring them in to talk about what their concerns and achievements were.

• (1540)

One of the major concerns articulated by just about every commentator is the fact that the government is effectively stretching the same pot of money to reach a larger number of students. The government is cancelling the Millennium Scholarship Foundation and creating another program of assistance for students, which will only go to those students who have made an application for a loan.

In our committee's deliberations, we also learned of concerns shared by two different national student organizations that the important research capacity of the Millennium Scholarship Foundation would be lost because the program announced to replace it did not include any research component.

There was also the issue in the Millennium Scholarship Fund of students receiving scholarships on merit, or students who needed some assistance but did not want to borrow money from the Canada Student Loans Program and were working part time or working in the summer. The Millennium Scholarship Fund provided for that assistance, and those aspects are now no longer available under this new program.

Let me turn to the subject of Employment Insurance. This is one of the areas where there is new legislation. Our committee heard from several witnesses, including representatives from the Canadian Institute of Actuaries, who expressed concern that the provision for $2 billion for the Employment Insurance Fund reserve is simply inadequate. It is not enough of a reserve for this new stand-alone organization to handle the ups and downs of the economy. They are mandated to borrow and pay back anything more than $2 billion, and to set premiums annually that keep them from exceeding that.

What will happen there, honourable senators? It is obvious what will happen: This burden will be borne on the backs of people and employers who pay into Employment Insurance; whereas, previously, Employment Insurance was part of government and had a much larger amount of money available to take out the swings. The stated goals of a financing board are to avoid dramatic fluctuations in premium rates. With only $2 billion, how will they do that? The Canadian Institute of Actuaries says that $2 billion is not nearly enough to do that. They need between $10 billion and $15 billion. Virtually everyone that appeared before us stated the same.

Considering that the government announced this initiative as a way of addressing the Employment Insurance surplus, which they claim exceeded $50 billion, if there is a surplus in government funds anywhere near $50 billion, why are they saying that we are cutting everything off right now — we will keep $48 billion and we will give $2 billion to this new organization?

In the absence of some substantial reserve, the Canadian Institute of Actuaries and others testified the premiums will fluctuate dramatically, even in good economic times. What is more, the tiny reserve will force the board to raise premiums dramatically during an economic downturn, further depressing — and that is the problem here — job creation at the worst possible time. Addressing the EI surplus was a laudable objective. However, I regret to say that the specifics of the government's plan leave much to be desired.

I could speak more, honourable senators, on the board that is being created and the qualifications — for instance, who will be on this board? There is a great concern from the labour sector that they will not be represented on the board that sets the premiums that they and their membership must pay. There is much concern about that.

Honourable senators, let me go on to an area of great concern to many of us, namely, Part 6 of this bill dealing with the Immigration and Refugee Protection Act. I have already mentioned Part 6 in passing, but it is an area that deserves

attention. Part 6 deals with amendments to the Immigration and Refugee Protection Act and gives to the minister unprecedented discretionary power.

I want to reiterate that these changes have sweeping implications. We felt at a loss in the committee to evaluate them fully — that is, to see them as part of the larger picture — in the little time we had before the end of the parliamentary calendar, which is nearly upon us.

The consensus among most witnesses was that these changes represent an unnecessary and excessive expansion of the discretion of the Minister of Citizenship and Immigration. They are unnecessary because the powers that they publicly allege to be seeking are obtainable through the normal regulatory process in the existing legislation and they are excessive because they are much more than is needed.

I was struck by a witness who told us that the minister already has that legislative authority. This witness is very knowledgeable in this particular area. The witness wondered aloud whether these legislative changes actually implemented the stated plans of the minister and the government, or whether they served an objective that the government has not publicly revealed.

We were also concerned in committee with the government's desire to establish the power to issue instructions under the act without notice and consultation, subject only to the requirement to publish instructions after the fact. The government stated very plainly that it intends to consult broadly, but we are legislators, honourable senators; we deal with the law as we interpret it and as we pass it, not with promises of processes in the future.

This legislation provides the power to establish instructions. The minister can give instructions to all of her department as to how to deal with applications, without any consultation. Not only can these instructions be issued without notice, they can have a retroactive effect. Someone could apply for immigration or refugee status and then the minister, after the fact — seeing this group of would-be immigrants, seeing this group of applications — could decide to issue instructions to say, "Reject all of those applications."

The applications can be rejected without it being a decision. That is it another provision, honourable senators. Not being a decision means that it is not open for judicial review. These are the provisions that are contained in this legislation.

We have an established process for regulations and, together with the House, we have the Standing Joint Committee for the Scrutiny of Regulations. These are not statutory instruments; these are not instruments subject to the scrutiny of regulations. We are not able to review these.

Even more troubling, honourable senators, is the fact that the regulations are not statutory instruments. They will not be subject to any prepublished draft regulations, like the regulations are in the existing act. That normal mechanism guarantees that there would be consultation. That is not there any longer. We are left with nothing more than the promise of a minister that she will consult — a promise that is only good until the next cabinet shuffle.

The instructions are not to be subject to review by the standing committee, as I have indicated. The very troubling provision is that any decision under these instructions is not deemed to be a decision from the point of view of any type of review.

Honourable senators, there seems to be a pattern developing here. I mentioned this before, but the more one reviews it, the more one can see the pattern. We see a similar attempt to grant regulation-making power to the Minister of Heritage in Bill C-10 — again, without notice; without the requirement to publish in advance; without parliamentary scrutiny. Other bills contain similar provisions, honourable senators. Parliamentarians of both Houses will have to look at this issue in a much broader context than in this piece of proposed legislation only to determine how to address this pattern of seeking authority to make regulations or instructions completely free from parliamentary oversight.

• (1550)

Honourable senators, with respect to the immigration provisions, I point out that Bill C-50 does not address the existing backlog of applications, although that is one of the stated purposes of this proposed legislation. At committee, we learned that the backlog of applications of would-be new Canadians is nearing 1 million. Nearly 1 million people have applied to come to Canada and their applications are waiting to be processed. However, the bill addresses only those applications that were filed after February 27, 2008. Moreover, the funding announcement of $22 million per year for five years represents little in terms of engaging staff to process the backlog. Rather, that amount would be used to establish the new instructions and how they are to be handled. Bill C-50 does not make a serious attempt to deal with the backlog and, therefore, the provisions on immigration are troubling.

I mentioned to honourable senators earlier that certain observations were attached to the bill when it was returned without amendment. Honourable senators will have had an opportunity to review the observations. A number of senators were hoping that because the committee did not prepare a report on the pre-study of the bill, this would provide some record, in précis form, of the committee's issues and points of concern in respect of the bill.

One point that I had hoped would be included in the observations dealt with the proposed powers to the Governor of the Bank of Canada. I mentioned earlier that we tried to have the Governor of the Bank of Canada appear before the committee, although we heard from officials from Treasury Board and the Department of Justice Canada, who said that the Governor of the Bank of Canada would like to have these powers to be able to act quickly.

Honourable senators, there is nothing in the observations with respect to this, so I would like to go on record as pointing out that this continues to be a matter of serious concern. We should not overlook mentioning this on the record at third reading stage of Bill C-50.

I refer honourable senators now to Part 10 of the bill. The interesting thing about Part 10 parenthetically is that it is the summary of the bill. The summary at the front of the bill, printed

inside the cover of the first reading version, provides an explanation of each part of the bill. However, Part 10, on amendments to the Bank of Canada Act and other acts, states: "Part 10 amends various Acts." That is quite an explanation, honourable senators.

Clause 146(1) is found at page 125 of the bill. Paragraphs 18(*g*) and 18(*g*)(i) of the Bank of Canada Act are to be replaced by the following paragraphs. The introductory words to the replacement paragraph 18(*g*) state, "for the purposes of conducting monetary policy. . . ." That is the work of the Governor of the Bank of Canada. He does it well, and we understand that. However, the other power at 18(*g*) is ". . . promoting the stability of the Canadian financial system." I would love to have had the Governor of the Bank of Canada appear before the committee to explain the parameters of that specific power as provided in the bill.

As proposed paragraph to replace 18(*g*)(i) of the Bank of Canada Act states, the governor may:

> (i) buy and sell from or to any person securities or any other financial instruments — other than instruments that evidence an ownership interest or right in or to an entity—. . .

He can buy and sell to anyone. Clause 147 of the bill suggests that section 19 of the Bank of Canada Act be replaced with proposed section 18.1(2). It states, "The Bank of Canada shall publish the policy and any amendment to it in the *Canada Gazette*. . . . " He cannot act for a period of time until after they have been published so we can determine the provisions under which the governor is acting.

Honourable senators, on the power to promote the stability of the Canadian financial system, Bill C-50 proposes this change to paragraph 18(*g*) of the Bank of Canada Act:

> (ii) if the Governor is of the opinion that there is a severe and unusual stress on a financial market or the financial system, buy and sell from or to any person any securities and other financial instruments, to the extent determined necessary by the Governor.

That is not according to any published guidelines. We do not know what he will be thinking about. The restriction I referred to earlier is "other than instruments that evidence an ownership interest or right in or to an entity." He could buy into any business of his choice and could buy and sell to anyone. His only obligation under section 19 would be not to consult with the government who might have made a policy decision; not to prop up the particular company; not to hold any meetings; and not to follow any published guidelines; that in exercising that authority, he should publish, when he thinks it appropriate to do so, his statement of reasons in the *Canada Gazette*.

Honourable senators can understand why some concern was expressed that we should be dealing with two or three short provisions of an extremely important function in our society tucked into a budget implementation bill. Why could those provisions not have appeared in a separate piece of proposed legislation and been studied by a committee of this chamber that could delve into the broad implications of it? I do not know whether these powers are exercised in the United States or in the U.K., although some senators indicated that they were.

Those are just some of the points on Bill C-50 that I wanted to bring to the attention of honourable senators. I am not certain how this chamber will deal with Bill C-50. I know the political pressures are on all of us to pass the bill, which contains some good provisions. However, in my respectful submission, other provisions require some considerable thought, and others require some amendment.

It would have been helpful to split some of these issues, such as amendments to the Bank of Canada Act and to the Immigration Act, so they could be dealt with separately. Certainly, some honourable senators will want to address some of those issues individually. Therefore, I focused on a broad brushstroke peek into this omnibus budget implementation bill, Bill C-50.

Hon. Lorna Milne: Would the Honourable Senator Day accept a question?

Senator Day: Certainly.

Senator Milne: Senator Day, does the empowerment provision in the bill mean that the Governor of the Bank of Canada could sell the Canadian Centres of Excellence or raise money by selling the Canadian Wheat Board?

• (1600)

Senator Day: If the governor is of the opinion that there is a severe and unusual stress on the financial market or the financial system, he may buy and sell, from or to any person, any securities and any other instruments to the extent determined necessary by the governor.

Senator Milne: That means, in effect, that he could sell the Canadian Wheat Board to these companies that are waiting to pounce on it south of the border.

Senator Day: In fairness to the way the governor would be advised to read it, he would have to form the opinion that there is a severe and unusual stress on the financial market.

We do not know what the guidelines will be in that regard, which is the problem. If there were some guidelines to help us understand what factors would determine that there is a severe and unusual stress on the financial market, then we would be more comfortable knowing how this may possibly be exercised.

Hon. Mobina S. B. Jaffer: I have a question for Senator Day. I was surprised to hear that the Minister of Immigration did not appear before the committee to explain the need for this legislation in the Budget Implementation Act and also how she would exercise her power.

The honourable senator spoke about a promise that the minister gave. I am not clear on that. Can the honourable senator tell us how he received this promise from the minister?

Senator Day: I thank the honourable senator for her question. The promise was in a published statement from the minister. It did not come to us directly. The minister had given the committee times over a three-week period when she was available to see us, but that did not work with our schedule. Therefore, we asked to work out another time when she could come to talk with us. We were not able to find another time during the three weeks when we could meet with the minister.

However, we did hear from the minister's officials. They were able to explain to us much of what I have told the honourable senator.

Hon. Jerahmiel S. Grafstein: I want to thank the honourable senator for that enlightened exposition of the problems he faced before the committee. There are two areas of concern to many honourable senators, that relate to the provisions dealing with the Immigration and Refugee Protection Act.

The honourable senator made the point that the Immigration and Refugee Protection Act has no place in this bill, but it is in the bill. It seems to me as though this is flush time. We are flushing everything through the sewers of this particular legislation with the assumption that no one will be able to correct, siphon or filter it.

I have two questions related to this information. First, in regard to immigration, I want to be clear about what the honourable senator is saying with regard to the Immigration and Refugee Protection Act. Instead of a careful balance of the rule of law in immigration decisions, in effect, this measure will have the rule of law being swept away with respect to individual decisions and we now have the unaccountable, arbitrary discretion of the minister to determine particular cases.

Second, in regard to the Governor of the Bank of Canada, I recall when I first became involved in politics in the early 1960s. There was much dispute over the relationship between the federal government — effectively, the cabinet — and the Bank of Canada. That was the Coyne affair.

If I recall correctly — and I have not looked up the history — essentially, the governor of the bank felt there was unreasonable intrusion into his powers. Therefore, a bargain was struck that was accepted by Parliament. The bargain was that, yes, the governor could act independently of the government, but he was bound by statutory restrictions and he would have to come back and account.

What the honourable senator is saying, if I listened to him carefully, is that these amendments have been plastered into the backside of this bill and have no place in this particular bill. They give the governor of the bank the largest sweeping powers I can remember in living history, all in one flush.

If I look at the transcripts from the other place, from the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on National Finance — I am not criticizing, this is simply factual — less than 10 minutes of thought has been given to this sweeping power. The deal that was made back in the 1960s between Parliament and the role of the Governor of the Bank of Canada has been washed away.

Would the honourable senator say that is a fair analysis of his comments?

Senator Day: I do not have the same history of the Coyne affair that the honourable senator does. Therefore, I am not in a position to compare the current powers with the powers that were brokered between Parliament and the Governor of the Bank of Canada at that time.

I raised the issue of the obvious sweeping powers without any restrictions and I could not find out from any of the witnesses who appeared before us why there is a restriction with respect to proposed clause 146(1) that will amend paragraphs 18(*g*)(i) of the Bank of Canada Act, which says:

> . . . other than instruments that evidence an ownership interest or right in or to an entity. . . .

No one could explain why that restriction does not appear in the proposed amendment to paragraph 18(*g*)(ii). The only answer I could get was that the governor would like to have these powers to be able to react in times of emergency.

I am hopeful that either the Standing Senate Committee on Banking, Trade and Commerce or the Standing Senate Committee on National Finance will follow up and have a better understanding of these powers in the future. We obviously are not able to do so now, but it would be helpful for us to remember these issues and follow up on them.

With respect to immigration, there are two aspects to the powers that are of concern. First, under our Immigration and Refugee Protection Act, we had a previous provision that if someone filled out the form, the application would be received along with the application fee and he or she would have knowledge that it would be reviewed.

The problem has arisen that the number of applications has slowly built up until we have a backlog of almost a million people now. That is not fair. However, there has been no purging of that list to determine how many people have changed their minds, how many people have died, or how many people came in other ways. None of that has occurred. That work must be done and they need to use modern electronic computers to handle this better.

The proposed section 116 amends section 11 of the Immigration and Refugee Protection Act and changes the word "shall" to "may." From February 27, 2008 onward, it does not matter if a would-be Canadian has filled out the application the way he or she has been told; a landed immigrant status document may be issued following an examination or it may not be issued. It is permissive now. That seems to be one of the ways that the minister will handle the growing backlog. This caused those people working in immigration to say that is a discretionary thing. It takes away from the objectivity of our highly respected system internationally. It has changed with one word.

In addition to that, clause 118 would add a new section 87.3(3) of the Immigration and Refugee Protection Act that the minister may give instructions. This is not to say that the minister may generate regulations. It states:

> . . . the Minister may give instructions with respect to the processing of applications and requests, including instructions . . .

Further, at new section 87.3(3)(*c*), it continues:

> . . . setting the number of applications or requests, by category or otherwise, to be processed in any year. . . .

This is not subject to scrutiny. This is instruction. There is another clause that says everyone who works for the minister shall comply with those instructions. This is a very strange way of handling a process that, in the past, has been quite objective including regulations, pre-publication and consultation. People who work in the area had an opportunity to say, "If you pass this, did you consider the effect it will have on that?" That is the pre-consultation process. None of that is left.

• (1610)

The instructions will be published in the *Canada Gazette*, but there is no pre-consultation. It does not say these instructions will be published before they are in effect. That is my concern. If they were to be published before they come into effect, there would be an opportunity for people to point out that there is a problem. There would be an opportunity for someone who was applying to come to Canada to say, "I will not go through this process because they will publish these instructions and I cannot fit the educational standards; I do not have the qualifications they are looking for, or the language standards."

That does not have to be published beforehand. There is the potential for abuse, and that is the problem. The instructions could apply retroactively to move out or to deny certain applications for reasons that would not be in the best interest of Canada.

Hon. Consiglio Di Nino: I have several points of clarification by way of a question to the Chair of the Standing Senate Committee on National Finance.

Could the honourable senator confirm for us that the special powers granted to the Governor of the Bank of Canada, to be used only in emergency situations, are powers that a number of central bank governors, particularly in the Western world, now already have? We heard testimony to that effect.

Senator Day: I do not know that to be the case. I heard that mentioned by other senators, but I do not know that to be the case. Whoever does the study on this should study exactly that. I appreciate that the honourable senator was present at all of the hearings that I was at, and I thank him for the good work that he did on that file.

Senator Di Nino: I thank the honourable senator for that. If the honourable senator checks the record, he will find that testimony to that effect exists.

My main question deals with the observation that the honourable senator said was not appended to the report. Would he verify that comments similar to those the honourable senator made on this issue were actually contained in an observation that was rejected by the majority of the committee, and those who rejected that particular observation contained members of both sides of the chamber, plus an independent?

Senator Day: Honourable senators, I can confirm that a certain motion was made by one of the senators to include observations or to attach observations to the bill.

[*Translation*]

The Hon. the Speaker *pro tempore***:** Honourable senators, Senator Day's speaking time has expired. Does the honourable senator wish to request more time?

Senator Day: With your permission, I would like to finish my answer.

Some Hon. Senators: Five minutes.

The Hon. the Speaker *pro tempore***:** Leave is granted.

[*English*]

Senator Day: Thank you, honourable senators.

I appreciate that I just had a chance to go over much of this quite briefly, and there is so much detail in here. Senator Di Nino is quite right that there was a proposal as part of the motion to include an observation with respect to the Bank of Canada that did not pass. I have already given the indication. I do not think I have to read it again.

Hon. Lillian Eva Dyck: I thank the honourable senator very much for his explanations of Part 6 of Bill C-50 with regard to immigration policies. He was discussing the unprecedented and unaccountable discretionary powers that will be granted to the minister. He also indicated that the witnesses did not feel that these changes were necessary.

There was a poll conducted at the beginning of May by Nanos Research, reported in the June issue of *Policy Options*, which indicated that nearly three quarters of Canadians think that immigration is either important or somewhat important. It is a topic that is very much on the minds of Canadians.

If Part 6 remains in Bill C-50, rather than being removed and dealt with separately, what do we say to Canadians? What do we say to groups like the Chinese Canadian National Council, that has probably written to every senator in the chamber, indicating that it wishes that section to be removed? The council represents 1.6 million Canadians, the second-largest racialized group in Canada, second only, I think, to South Asians. It is obviously an important issue, so why are we keeping this measure in Bill C-50? Why is that the recommendation? What do we say to them?

Senator Day: Honourable senators, that is a question that would be much better answered by the sponsor of the bill. Like the honourable senator, I have a great deal of difficulty answering the many hundreds of letters I have received in relation to this particular aspect of the bill. I can tell the honourable senator that I received a submission from the Chinese community along the lines of why we have this legislation. It is a very difficult question to answer when I have so many concerns myself.

Hon. Serge Joyal: May I ask the honourable senator if, during the course of the study, the committee paid attention to the impact of those sections in relation to the Charter of Rights and Freedoms? The Supreme Court of Canada, in a famous decision, has stated clearly that no one has a right to immigrate to Canada; no one can claim that he or she has a right to immigrate. However, in the treatment of someone requesting immigration to Canada, the principles of the Charter of Rights apply.

Let me give honourable senators an example. Suppose the government decides that they do not want any more people of colour in Canada, for X, Y or Z reason. That decision would probably not be announced on those terms. They would identify X, Y or Z country where a majority of immigrants are people of colour.

The government could decide, on instruction, not to proceed with any request from that group of applicants. I believe that would be totally contrary to section 15 of the Charter of Rights and Freedoms. Once you are charged with a discretion, you have to apply the principles of the Charter. Section 15 is quite clear. It says "every individual." It does not say "a citizen." There are sections of the Charter that apply to citizens; there are sections that apply to persons, whatever the status of the person is, an applicant for immigration or otherwise.

Did the honourable senator question the impact of those sections of Part 6 of the bill in relation to the Charter of Rights and Freedoms?

Senator Day: That is an extremely important question. I want to go on record with an answer.

During one of our meetings the issue arose, however briefly. It was expressed as a concern, but we did not have time to delve into the issue. Part of my submission here today is that there are many aspects of this legislation and other pieces of this bill that need to be looked into. Obviously, the honourable senator raises a very important point.

The Hon. the Speaker *pro tempore***:** Senator Day, your time has expired.

Hon. Vivienne Poy: Honourable senators, I rise today to voice my objection to the inclusion of legislative measures in Bill C-50 that have no direct relationship to budget implementation.

Today, I will only speak to Part 6 of the bill, which deals with the amendments to the Immigration and Refugee Protection Act, which should be introduced as stand-alone legislation. In inserting this section, the government shows contempt for our parliamentary process by not allowing for sufficient public input and parliamentary debate. I may be repeating a few points that have been covered, and I beg honourable senators for your patience.

• (1620)

As a member of the Chinese-Canadian community, a group that has been singled out in the past for exclusionary immigration measures, I am concerned that this legislation gives the minister excessive discretionary power, with a lack of openness, consultation and transparency that removes objectivity from our immigration system. What has happened in history could happen again. Certain groups and those from certain countries can be excluded easily when immigration is dependent upon the discretion of the minister, as was mentioned by the honourable senator earlier.

When the point system was introduced in 1967, racial bias was finally removed when foreign nationals applied for immigration to Canada. Based upon this system, Canada has become the diverse country it is today. The amendments inserted in Part 6 of Bill C-50 will politicize immigration, leaving it open to lobbying by special interest groups and subject to third-party agendas.

I acknowledge that there are problems with Canada's present immigration system, such as the backlog, as well as the need for foreign credentials recognition. The point system should also be re-evaluated. However, changes to the system should not be introduced arbitrarily, buried within a budget implementation bill.

Because of the importance of immigration to Canada's future, with Canada potentially being totally dependent on immigrants for all net labour-force growth by 2011, which is only three years away, we must have a comprehensive strategy and separate legislation for such significant amendments to the Immigration and Refugee Protection Act. Legislation should be drafted only after adequate and appropriate public consultations. Instead, the government introduces measures without proper consultation or debate in Parliament.

Because these changes are so controversial, the government has found it necessary to spend millions of dollars of taxpayers' money in buying advertisements in ethnic media in an attempt to convince ethnic communities that their justifiable fears about the outcomes of these changes are misplaced. The government has created a climate of mistrust and apprehension by not being transparent or accountable and by refusing to consult adequately with stakeholders.

It is no surprise that, at the many events I attend across Canada, organizations and individuals tell me that they are worried about what these changes could mean. One of their fears is the potential for the reduction of the importance of family reunification since the minister can adjust certain immigration categories and abstain from processing applications received even after February 27, 2008, as well as prioritize others. This change is widely expected to mean more emphasis on economic immigrants and temporary foreign workers, and less on other categories such as the family class. In particular, the current trend seems to be towards temporary foreign workers, which serves the needs of the business lobby rather than that of immigrant communities, of labour, and of Canadian society as a whole.

One reason multiculturalism works in Canada is that immigrants have an attachment to this country. This country is where families become established and help to build our future. Those who come in are not just passing through as temporary workers, as they are in many parts of Europe. Emphasis on temporary foreign workers, instead of immigrants of all categories, may change Canadian society, which could easily lead to future social unrest.

The government claims that they will reduce the backlog through these measures, but the backlog, as Senator Day mentioned earlier, can be reduced only by providing more resources and deploying more staff in processing applications in locations where the waits are the longest. These amendments will not reduce the backlog, since they apply only to applications made on or after February 27, 2008. In fact, those in the current system could find themselves waiting even longer, depending on the decisions of the minister.

The minister has said that the process will be transparent because the instructions will be published in the government's paper, the *Canada Gazette*, on the department's website and in its annual report to Parliament, but this publication will be done only after the fact. Therefore, it is of no use to interested parties.

The minister has indicated that one of the groups she will prioritize as immigrants is doctors. However, we all know there are many doctors, as well as other skilled workers, who are already in Canada but not working in their fields because of the restrictions around foreign credentials recognition in the provinces. These issues can be resolved only by working with the provinces and the various professional organizations and not by giving discretionary powers to the minister. In the case of doctors, even those who have passed the test in Canada cannot find residency positions in our hospitals because these positions are so limited, so they are unable to work in their fields. For the present, we do not need more doctors coming to Canada. We first need to help those who are already here to have a chance to use their skills to look after the health of Canadians.

The existing open and transparent criteria have been the secret of Canada's success on immigration. The present amendments in Part 6 of Bill C-50 put too much discretionary power in the hands of the minister who can pick and choose who comes to Canada. This discretionary power will open the door to abuse of that power. It is a recipe for political problems and has the potential to undermine public support for immigration.

In addition, when there is a global competition for the best and the brightest in the world, it will make talented individuals think twice about emigrating to Canada, where the rules are ambiguous. It will also undermine Canada's international reputation as an immigrant-welcoming country, which is so crucial to our future.

Senator Jaffer: Honourable senators, I rise today to speak on Part 6 of Bill C-50. I also rise in support of the comments made yesterday during the speech on third reading of Bill C-50 by our colleague Senator Murray.

I, too, wish the Senate's pre-study of Bill C-50 had occurred earlier. I know the House of Commons would have benefited greatly from the Senate's assistance with this omnibus bill, as we know that it benefited when we conducted a pre-study on the anti-terrorism bill. The last-minute receiving of legislation with little time to do the necessary work has been a problem that has plagued the Senate this parliamentary session. I cite Bill C-3 and Bill S-3 as examples of inadequate study and with no amendments. On Bill S-3, on the matter of security certificates, we are now performing that work as a study in the aftermath of the passage of this legislation, with no guarantee from the minister that he will implement any of the suggestions. I agree with Senator Murray that this situation has happened too often in this session.

Honourable senators, I also believe the Senate should indeed commence its review of important and complex legislation the minute it is given first reading in the House of Commons. The House of Commons should be able to benefit from our assistance on these complex bills. If this approach were the norm, perhaps the House of Commons would be aware of the measures involving film tax credits that arose as an issue when the Senate studied Bill C-10.

• (1630)

At 560 pages of complex legal and financial jargon, how can we expect the members of Parliament to catch everything? Perhaps they may have caught it if they had studied it for more than one day before sending it on to the Senate.

Senator Murray made a valid point about accommodation and compromise that occur often in minority governments. I am pleased this accommodation has occurred on Bill C-21, which provides access for First Nations people to the Canadian human rights.

I believe that the budget implementation bill is not the place to make amendments dealing with immigration policy. Immigrants are the backbone of our country, and our immigration policy should not be in the budget implementation bill.

When debate is stifled and there are no amendments possible, I believe the government has let Canadians down. I will echo Senator Murray's statement that "we have also failed as a revising chamber."

Canada's immigration policy should be about more than short-term fixes to the Canadian economy. That approach is Bill C-50 in a nutshell; it is narrowly focused. With an average of 240,000 to 265,000 new immigrants making Canada their new home every year, the bill will have broad impacts. The legislation pays no attention to how immigration policy transforms a nation. Canada is a country that has been founded, built and sustained by immigrants.

This legislation gives the Minister of Citizenship and Immigration the power to give priority to categories of immigrants whose job skills are demanded in Canada. At the same time, it also provides the minister with the power to refuse applications in other categories. I am greatly concerned about how these measures will affect family reunification.

Critics have questioned why Canada would abandon immigration laws that are clear and transparent in favour of the measures introduced by Bill C-50. I do not agree with giving the minister this type of discretion over immigration files. There is no question that Canada's immigration system should be reevaluated and overhauled. I think we would be hard-pressed to find anyone who believes that it serves our country well. This being said, I do not believe these issues have been adequately addressed this spring by Parliament. Sadly, the minister did not even come to the committee to explain this legislation.

The immigration provisions should have been severed from this bill and placed in a separate, stand-alone bill. In the aftermath of this bill's passage, I hope, honourable senators, that we will create another opportunity to address the issue of immigration because Canadians deserve better.

Honourable senators, I am saddened as I think about the reconciliation we had last week and how we brought our country together. This week, there are many people in our country who feel dejected. Last week, we all worked hard to right a wrong. We worked hard toward reconciliation. This week, we are working hard to make a wrong decision and we are dividing our communities.

As one South Asian mother said to me yesterday on the phone: "I have been waiting for five years for my parents to join me so that my children can enjoy their grandparents. Now with Bill C-50, my children may never see their grandparents in Canada."

This is a game of government committing wrongs against our citizens. We are, again, dividing our communities.

Honourable senators, last week, we worked to create harmony in our country. Let me tell you what I understand as harmony. When I was young, my mother wanted me to learn to play the piano, and she was not very successful. In anger she would often say to me, "You have to play on both the black and white keys to create harmony." To annoy her, sometimes I would play only on the white keys and sometimes only on the black. I encourage you to try that. There is no harmony when we divide communities. To have harmony, honourable senators, as on the piano, the whole community must work together.

Today, with the passage of this bill, we will create disharmony in our country. This, indeed, is a sad day for Canadians.

Hon. Elaine McCoy: Honourable senators, I briefly rise today. I was moved by the eloquence of both Senator Stratton and Senator Day in speaking to Bill C-50. I find myself with so few occasions on which to congratulate the government that I wanted to take this opportunity to do so. As has been said, the bill contains a collection of different provisions, and some of them are good.

The ones in particular that I endorse, for example, are the continuation of the capital cost allowance for manufacturing industries, an excellent provision.

I am delighted to see carbon capture and storage provisions provided for. The University of Calgary receives $5 million; Nova Scotia, $5 million; Saskatchewan, $240 million; all dedicated to moving technology forward on that important path.

Genome Canada receives $140 million; The Mental Health Commission, which owes so much to so many from this chamber, receives another $110 million.

Those provisions are the ones I picked out and thought most worthy of mention.

By the same token, I find myself against some provisions, and I want to be on record in this instance. Most particularly, I wish to record my objection to the broad discretion given in Part 6 to the Minister of Citizenship and Immigration responsible for that entire program. There has been much eloquence by senators today, Senator Jaffer and Senator Day, as to the ultimate consequences of moving to a system of government that has no transparency and no accountability. As mentioned, there is a growing pattern in that direction, which is something to be looked at.

In particular, I want to endorse calls for a further and more extended examination of that phenomenon. In our thousands of years of evolution of government systems, we have moved gradually and ever steadfastly toward a system by which our executives are held accountable. In the past 50 years, the inexorable trend has been toward an executive of the Prime Minister's Office that has become less and less directly accountable.

Another part dear to all our hearts is: What role does the Senate of Canada play in our system of governance? There is no question we are part of the legislative function. There is no question that we have evolved a system of responsible government that prevails in the House of Commons but not in the Senate. Where do we cut the line in our evolution of governance systems? There are many who call for the Senate to stand up and express, on behalf of all Canadians, that which is best in all of us. Do we continue to duck those opportunities when they are presented to us?

It is, I understand, a delicate balance, and Senator Murray yesterday referred to the game of chicken being played in the House of Commons. Today, Senator Day says there are political pressures. What is the role of the Senate? Are we fully cognizant of what that should be in the 21st century? Have we examined that at any great length? I add my voice to those who are urging thoughtful examination of the substance of governance in our country.

• (1640)

I am fond of saying to people that the Senate of Canada is the only government institution in Canada that is paid to think long term and in-depth. Today, I hear that on some of the most important aspects of our policy, such as immigration, the committee and the Senate have been frustrated from doing that very thing. I ask you all: Why? I ask you all: When will we stop acquiescing in this erosion of our role?

It seems to me that the very DNA of our country is being slowly but surely altered, right underneath our noses. One by one, bills come to this place. One by one, honourable senators get up and speak wisely because you are wise. One by one, you speak passionately because you care about this country. One by one, we all acquiesce as the DNA morphs into something that none of us ever wanted.

I share in the sentiments that have been expressed that we will, in the very short future, begin to examine our role and the acquiescence of which we are all guilty.

Hon. Terry M. Mercer: Honourable senators, budgets are not my forte, but this is not just any budget. As we have heard earlier, there are extraordinary powers being given to the Governor of the Bank of Canada. I can see the headlines now: Banff National

Park For Sale; Kejimkujik National Park on the Auction Block; Cape Breton Highlands National Park For Sale; Fundy National Park For Sale; the paintings on the walls here in the Senate up for sale.

Who are the people that dreamed this stuff up? One could not write this stuff for a comedy. This is so bizarre. The main thrust of my speech this afternoon is not about the Governor of the Bank of Canada, although I think it is unbelievable that our committee met and the Governor did not appear. I think that is outlandish. I think that should never happen again.

I speak to the government, and I speak to the government-in-waiting. We are in a situation today, as we have been in many other sessions, where we have a bill that must proceed before we can all go home to our families for the summer. The bill must pass, and the guns are being held to everyone's heads.

We missed the opportunity to have the discussion with the Governor of the Bank of Canada. He should have been here, and we should have been able to quiz him at committee because some of the things in this budget are unbelievable.

However, I want to talk about political courage or the lack thereof. If the goal is to change the immigration process in this country, a major amount of power must be shifted to the minister to be able to say "yea" or "nay" on who comes to Canada. If there are the guts or the political backbone, a bill should be introduced to do just that.

However, when the guts or the backbone do not exist, the changes are wrapped in a budget bill and declared a "confidence motion." That is the leadership of Prime Minister Harper and company. That is the kind of leadership this man demonstrates.

I keep asking who this bill is aimed at. Who is it that they want to keep out of Canada? Is it people like Senator Oliver? People like Senator Poy? People like Senator Jaffer or Senator Merchant? Is it gay people? Is it people from Africa? Is it francophones? Is it people from South Asia? Is it people like me, a White Catholic? Maybe I am on the list. Maybe it is only people of the Muslim faith.

Senator Di Nino: Are we an endangered species?

Senator Mercer: Do they want this place to see the world as they see it? I would not say these people are wearing rose-coloured glasses; I think these glasses have a different tint to them.

It amazes me, honourable senators, that a government in this day and age, a government that was elected on the basis of openness and transparency, who wanted to be fair, who wanted to change things, who saw what they saw was wrong and would correct it, comes in, and this is the first thing that they correct. "We will give the Minister of Citizenship and Immigration the power to say 'no' to this group and to say 'yes' to this group. We like these people, so let us get them in here because they are our kind of people. Do not bring those people in here because we do not think they would fit our image of what the Canada of tomorrow will look like."

That is not the Canada that I know. That is not the Canada that I think the majority of Canadians know.

Senator Tkachuk: I am offended. Why not just say it?

Senator Mercer: Whether those Canadians are from Western, Northern, Eastern or Central Canada, I believe that Canadians understand that this country is made up of people from all over this world, of all colours, races, religions and of all sexual orientation. I think Canadians understand that.

I moved to Toronto in 1987. I spent most of my life in Halifax. Halifax is a city with only two major racial groups: Whites and African Nova Scotians. Seldom when I was young did we see other people. There were a few Asian people, but that was it.

I moved to Toronto as an adult, and I used to take the subway to work when I worked at the YMCA of Greater Toronto. I would look around in the subway car, and guess what? The White Catholic boy from the north end of Halifax was suddenly a minority. In front of me was the new face of Canada.

Senator Tkachuk: Oh, my!

Senator Mercer: All different colours, from all different countries, speaking a multitude of languages that I did not understand.

Senator Cools: That is I.

Senator Mercer: I had a hard enough time with English. I lived in a neighbourhood in the west end of Toronto where the second language was not French; it was Polish. The third language was Ukrainian, the fourth language was Lithuanian and the next language was German. We might have finally gotten to the French language after Portugese.

If one walks down Robson Street in Vancouver, who does one see? If one looks on a bus in Vancouver, the people on that bus are from all over the world, and they speak many different languages. Many people are Asian and South Asian in British Columbia.

If one gets on the train in Calgary, it is the same thing. If one looks at the population, it is totally different than it used to be. This is the new face of Canada.

That new face of Canada is there because, as Senator Poy said, when we introduced the points system, we removed the racial prejudice that was inherent in the system. However, I do not necessarily agree that we removed it. I think we may have shifted it. I think prejudice still exists in the system, but it has shifted to people who, perhaps not intentionally, bring their own prejudices to the table as they process things, which is unfortunate.

It concerns me that this government would have the gall to treat Parliament, this Chamber, the Senate and the House of Commons with so little respect that they would wrap this measure in a budget bill.

More important than the fact that the government does not respect the 105 potential people in this Chamber and the 381 in the other one, but that they do not respect 32 million Canadians because the majority of the Canadians in this country understand that this country will only grow if we are open.

Again, Senator Poy mentioned the fact that by 2011, our only growth as a population will come from immigration.

• (1650)

That will not be the case under this bill. The government will be able to close the door and say, "No thanks. No more. We have enough of that kind; now we want some of these." There are no limitations.

Honourable senators, power corrupts, and absolute power corrupts absolutely. This measure will give absolute power to the Minister of Immigration. As Canadians and senators we should be extremely concerned about what this will do to our laws and how this may affect the future of our country.

I am very disappointed that on June 17 we are under pressure to pass this bill because it is a budget bill, because we have a minority government and because of all the recent political shenanigans by both sides. Nevertheless, here we are.

Honourable senators, I cannot let the opportunity pass to express on the record my disgust with giving this power to a minister, with no restrictions. How do we know what will happen? I know some of the people in this government. I like and trust some of them. However, there will be new governments in the future, and if this power gets into the wrong hands, what will happen? I think power may be in the wrong hands now. What will happen if this law is abused?

Honourable senators, I am disappointed, some of my colleagues are disappointed and, more important, I think that Canadians are disappointed.

[*Translation*]

Hon. Pierrette Ringuette: Honourable senators, I am speaking as a member of the Standing Senate Committee on National Finance, where we have had very interesting proceedings. To follow up on comments made by my colleagues, I would like to thank Senator Stratton for his efforts in putting forward his ideas in French. As a francophone from the East, I appreciate it.

Yesterday Senator Murray mentioned preliminary study of bills. I believe that the Senate must seriously consider this matter. The committee wants to make the effort to listen to testimony and to study bills. We do not have enough time. I fully support preliminary study of bills. I would even say that we need to plan preliminary study of a bill as important as a budget bill at almost exactly the same time as the other House begins to study it. With regard to specific bills, Senate committees very often hear from witnesses and make observations that are useful not only to the Senate, but could also be useful to the House of Commons.

I would like to comment on Bill C-50.

[Senator Mercer]

[*English*]

Most honourable senators know my big concern. I want to express my concern with regard to the new EI management committee that will be composed mainly of financiers. The Employment Insurance program is more than finances. The program belongs to employees and employers, and they should have had serious input into the long-term financing of Employment Insurance.

There is currently only $2 billion in reserve. In a weaker Canadian economy, there will be a need for at least $12 billion more. Under this bill premiums cannot be increased by more than 15 per cent. When the economy is unfavourable in Canada — which is a possibility — there cannot be more than a 15 per cent increase. If requests to the program exceed $2 billion, the government will put in the required money. However, under Bill C-50, the program must reimburse the Crown whatever amount it lends to the program.

With a limit on increases in premiums, in a recession or a faltering economy, the only way for the program to break even will be to reduce the benefits to employees at the time when they will need them the most.

That is a major concern. We must keep an eye on this issue, especially for seasonal employees and employers. They constitute 25 per cent of our economy, but they are resource- and tourism-based. If our resources are not selling well abroad, this provision will cause problems for seasonal employers and employees. They will be told that they will receive reduced benefits. That is alarming to me. I do not like the provisions with regard to that issue.

I wish to highlight the creation of three trust funds exceeding $2 billion. That does not include the community trust fund of $1 billion that was announced in early March.

Two years ago, the Government of Canada had five-page federal/provincial documents signed with each province with regard to child care spaces. However, in this house it was said, "Never mind; these were just deals signed on napkins." That statement stuck in my mind. I could not believe it.

Honourable senators, the trust funds provided for in Bill C-50 and the bill we passed prior to this which provides for the $1 billion community fund have no federal-provincial agreements and are based on a single-page press release — a single-page press release.

Senator Comeau: Say it one more time.

Senator Ringuette: I will say it one more time: A single-page press release.

• (1700)

[*Translation*]

A single page! And not from all the provinces, but only a few, saying that $3 billion of Canadian taxpayers' money will be spent without an agreement having been reached.

[*English*]

That is a concern. It seems to be a trend. We have the duty, if not in the other place, then in this place, to highlight that it is not acceptable to spend billions of dollars of taxpayers' money on a press release. I am sorry, but we should not be operating that way.

Last but not least, we have heard witnesses talking on both sides of the issue in regard to immigration. Some were for and some were against, and I respect all their opinions. Personally, discussion has highlighted an issue that this chamber has a responsibility to look into further. It is one thing to give power to the minister, but when have we looked into what is happening to immigrants and how they are welcomed into Canada? What is the rate of poverty for them once they are here because they cannot get their credentials recognized? What is the state of black-market labour? Most of us say that we have heard such stories. When will we investigate these stories? When will we seriously look at that immigration issue?

One of the items that we must look into is the entire aspect of training. Witnesses have come before us, especially from industry, who say they are in dire need of trades. Representatives from unions came and had to agree that in some parts of this country unions operate a closed shop. In some parts of this country, employers look narrowly to the tradespeople who are available. If not, they just say, "We need immigrants with these skills."

We have federal-provincial agreements for skills, to train people, to train people in our native communities for jobs that they can access easily. Immigration, from my perspective, is a much bigger issue than we see in Bill C-50. As part of our responsibility to represent minorities and people who do not have a big voice in the other place or elsewhere, we must look into the issues that affect their daily lives. I certainly hope that when we return in the fall a committee of the Senate will be looking at every aspect of immigration, not only at the issue of ministerial rubber-stamping. The issue is bigger than that, and so is the Senate.

I have reservations.

[*Translation*]

I have reservations about this bill, but it is our responsibility to examine it thoroughly in the months to come.

[*English*]

Senator McCoy said that we need to look at issues in the long term. On the immigration issue, the Senate would benefit Canadians, immigrants and whichever government might be in power by looking seriously and in depth at the immigration issue.

Hon. Wilfred P. Moore: Honourable senators, I join in the debate with respect to Bill C-50, the budget implementation bill, particularly with regard to Bank of Canada Act amendments.

I listened closely to what Senator Grafstein and Senator Day had to say earlier this afternoon.

Here is a little history. In May 2007, our Standing Senate Committee on Banking, Trade and Commerce was conducting a study on the financial system in Canada on hedge funds, under the chairmanship of Senator Grafstein. At that time, managers of all the banks and leading pension funds came before us. They were very convincing and told us that there were 7,000 hedge funds in the world, but that they only dealt with 100 and that they knew all the managers of those hedge funds. They personally dealt with those managers. Those funds all did due diligence and so on, and the witnesses were very comfortable with the investments that they were making, contrary to what was happening in the United States. There was a meltdown happening there at that time.

Within 10 days, those same banks and pension funds in Canada were running for the high hills because they had invested in subprime mortgages. I do not know what sort of due diligence they did or the managers of the funds they were dealing with did, but it is clear that they were not doing enough, so much so that when the credit crunch happened, they turned to the Bank of Canada to bail them out.

I am concerned with regard to the amendments to the Bank of Canada Act that we may be unwittingly rewarding risky behaviour by our chartered banks and other financial institutions. We must guard against creating a moral hazard that encourages financial institutions to take excessive risk based on expectations that they will reap all the profit, while the federal government, the embodiment of the people of Canada, through the Bank of Canada, stands ready to cover any losses if they fail.

On April 30 of this year, Mr. Mark Carney, the new Governor of the Bank of Canada, appeared before the House of Commons Finance Committee. Up to this point, our central bank's monetary policy was such that it could not accept riskier assets such as corporate debt and asset-backed commercial paper as collateral for short-term loans to private lenders. In his comments, Mr. Carney said that the restrictions impeded the bank's ability to target corners of the financial system that have seized up because lenders could not find buyers for securities they were holding on their books. He said conditions are tight at present in large part because market players are uncertain about how exposed lenders are to securities linked to U.S. subprime mortgages and other complex assets. That is the whole point.

• (1710)

Last fall, when our chartered banks gradually revealed their exposure and went running to the Bank of Canada for billions of dollars to support them, the Bank of Canada obliged and provided the funding. The governor says he needs this authority now. If so, then under what authority was he operating last fall? Was the bank overstepping its mandate? Were they operating legally?

Why, all of a sudden, do we need this mandate now? He says he needs it now, but what authority did he have before that permitted his actions?

I am concerned about that. Nothing has been said about it. Our Standing Senate Committee on Banking, Trade and Commerce has not looked at it. We have urged it. Nothing has happened. Honourable senators heard the Chair of our Standing Senate Committee on National Finance. Three times, I think, he asked

the governor of the bank to appear. He could not come. No one in all of the Bank of Canada could come to our committee to answer questions. That response is preposterous.

That is the whole point. We are now asked to approve legislation that, on first blush, may expose the Bank of Canada to political pressure to use these new powers to fix anything that ails the financial marketplace. It is hard to feel much sympathy for the bankers who rake in the fortunes during the boom and require taxpayers to help them out in the bust. I am concerned that we do not create a climate whereby risky practices by our financial industry threaten the overall financial stability of Canada.

In closing, an efficient financial sector is vital for a modern economy. However, trading securities, arguably, has achieved too much importance in today's world. Winston Churchill once said he would rather see finance less proud and industry more content. That is not a bad motto for those leading our financial sector.

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?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

[*Translation*]

NATIONAL DEFENCE ACT

BILL TO AMEND—SECOND READING

Hon. Pierre Claude Nolin moved second reading of Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act.

He said: Honourable senators, I would like to provide some clarifications concerning the content of Bill C-60 and how it is meant to work. As the late Justice Lamer noted in his 2003 report on the review of the military justice system:

> . . . Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence.

This bill is designed to strengthen the military justice framework. Honourable senators, the uniqueness of the military justice system has been recognized by the Supreme Court of Canada, and the existence of a system of military tribunals with jurisdiction over cases governed by military law has been constitutionally recognized in the Canadian Charter of Rights and Freedoms.

The National Defence Act established the Code of Service Discipline, which provides for a two-tiered tribunal structure: summary trials and courts martial. Summary trials are presided over by officers in the chain of command, whose cognizance of certain types of offences and authority to sentence are limited. Summary trials, as their name indicates, are short and expeditious.

While the majority of military offences only go to summary trial, it is clear that some infractions must go through by the more formal court martial system. Serious military infractions can be referred directly to a court martial, which is similar to a civilian criminal trial. There are currently four types of courts martial. However, Bill C-60 would simplify the court martial structure and would reduce the number from four to two. Military judges would preside at courts martial. A court martial could consist of a lone military judge or of a military judge and a panel, similar to a civilian trial with a judge and jury. Such trials would involve the presence of an independent prosecutor and the accused, represented by a military or civilian defence lawyer.

Courts martial fulfil another vital function in the military justice system. Choosing to proceed with a court martial means that an essential mechanism is in place to ensure fairness for the accused and also to protect the broader interests of the Canadian Forces and Canadian society.

Court martial decisions can be appealed to the Court Martial Appeal Court, which is composed of civilian Federal Court and superior court judges with jurisdiction in criminal matters. Decisions of the Court Martial Appeal Court can be appealed to the Supreme Court of Canada.

One essential element of the military justice system is fairness. Once again, I will quote the late Chief Justice Lamer, who said:

[*English*]

We "must strive to offer a better system than merely that which cannot be constitutionally denied."

[*Translation*]

In order to ensure that members of the Canadian Forces can continue to be judged fairly, it is necessary to make adjustments to the military justice system from time to time, in response to rulings made by the appeal courts.

Honourable senators, on April 24, 2008, in *R. v. Trépanier*, the Court Martial Appeal Court found that the exclusive power of the Director of Military prosecutions to determine the type of court martial violates the constitutional rights of the accused under the Charter. The court also found that the provision allowing the court martial administrator to convene courts martial was inoperative. Convening a court martial is an essential step in bringing a case to trial. More important, the court found these provisions under the National Defence Act to be invalid and inoperative.

The court was not prepared to stay the effect of its ruling. That is why this bill is being given priority. It was intended to respond to the urgency of the situation that was created by the cancellation of the effects of these provisions of the National Defence Act.

Although efforts have been made to continue with court martial cases that had already been convened, no new court has been convened in the past seven weeks. The lack of response to the inability to conduct trials by court martial will unduly hinder the administration of the military justice system and the maintenance of discipline, good organization and morale that the operational effectiveness of the Canadian Forces depends on.

• (1720)

What is more, major societal interests are at stake since the accused will not enjoy the right to be tried within a reasonable time, a constitutional right he or she is entitled to like any other Canadian. Accordingly, serious offences may go unpunished and in those cases, the victims and society will not see that justice has been served.

Leave to appeal the *Trépanier* ruling was requested of the Supreme Court of Canada on May 30, as was a stay of execution. The courts are the institutions through which significant constitutional questions can be answered. However, it should be noted that it is unlikely that an appeal would provide a timely response to a number of the questions raised by the Trépanier ruling. The legislative response will give the certainty required in a more timely fashion.

In short, Bill C-60 will add clarity, certainty and stability to the process of convening courts martial which, right now, is essentially frozen.

I want to give a brief outline of the impact of this bill. It simplifies the court martial structure, establishes a detailed framework for selecting the type of court martial that will judge an accused, and improves the effectiveness and safety of the decision-making process. When I use the term "safety," I should add the word "legitimacy", which would, in my opinion, be a better translation of a text that was obviously written in English.

More specifically, the bill will, as I indicated, reduce the number of types of courts martial from four to two. It will expand the jurisdiction of the standing court martial to include all those who are liable to be charged and tried under the Code of Service Discipline. It will increase the power to impose jail terms ranging from less than two years to imprisonment for life. It will restrict the punishment a court martial can impose when judging a civilian to imprisonment or a fine, or both.

As regards the type of court martial that can judge an accused, the bill sets out serious charges that must be judged by the general court martial and relatively minor charges that must be judged by the standing court martial and, in all other cases, it will allow the accused to choose between a trial before a judge alone, or before a panel of the court martial, as is the case with civilian criminal courts.

As for the court martial's decision-making process, the bill will give military judges the power to rule on preliminary proceedings at an earlier stage, and it will improve the legitimacy of the verdicts by requiring the panel of a general court martial to issue unanimous verdicts of guilt or acquittal, as is the case with civilian criminal courts.

Honourable senators, the proposed changes seek to provide a clear and decisive response to the concerns expressed by the Court Martial Appeal Court.

The court martial process within the military justice system is an indispensable tool for achieving the system's fundamental goals. I believe it is necessary and urgent to amend the National Defence Act so as to provide clarity, certainty and stability to this process.

Honourable senators, the bill will make the military justice system fairer for both the accused and the Canadian public. By providing legislation that would make it possible to convene a court martial, we will ensure that justice continues to be served for the accused and for victims.

Before we get to questions, to put this as simply as possible, the Court Martial Appeal Court handed down a decision on April 24, 2008, declaring that some provisions of the National Defence Act were invalid. These provisions limited the powers of the accused, or prevented them, as is the case with civilian criminal courts, from choosing how they will be judged. Depending on the type of offence, the accused can choose to be judged by a judge and jury or by a judge alone. That can have a serious impact on a person's defence strategy. The Court Martial Appeal Court found that not permitting such a choice was a violation of the accused's rights, and it found the provisions of the National Defence Act to be invalid.

What I understand — and we can ask the minister for all the details — is that the department started by looking at the possibility of amending a bill that was already before the House of Commons, Bill C-45, which has to do with military justice. Department officials advised against doing so because the amendments that were needed to satisfy the Trépanier decision would have changed the essence of Bill C-45. So that idea was abandoned.

The Department of National Defence prepared a document for cabinet, authorizing the drafting of a bill, the one now before us, which was introduced in the House of Commons on June 5. In the meantime, the Director of Military Prosecutions filed an application for leave to appeal and an application for the stay of the decision with the Supreme Court of Canada.

All honourable senators have received a copy of the original bill, the bill as amended by the committee, and the bill as passed by the House of Commons. As senators read through the documents, they will see how the bill has evolved. I would first like to draw everyone's attention to the amendments passed in committee in the other place. There is a series of transitional clauses in clause 28. The House of Commons decided — we might want to ask the minister why — to eliminate these transitional clauses that affect trials already underway. It added a mandatory clause for a review by a House, Senate or joint committee within two years of the passage of Bill C-60, to assess its effectiveness and ensure that the goals of this bill are being met.

There are currently 50 pending cases, which means that 50 members of the military and civilians have been charged, but their trials are not yet underway. These cases include a homicide, two sexual assault cases and a series of lesser offences. None of the accused is being detained. I do not need to convince senators that a military justice system must exist and be effective if we want the process to be credible, and there are experts who can provide full explanations.

This matter is an urgent, and I would ask everyone to support Bill C-60. If anyone has any questions, I will gladly answer them.

Hon. Pierrette Ringuette: Honourable senators, I have two questions. Have I understood correctly that what used to be a two-year maximum sentence could now become a life sentence? If that is the case, does the bill have a parole provision?

If those accused and tried by court martial can now choose between trial by judge alone or trial by judge and jury, is the jury selection process covered in the bill? Will the juries be composed of members of the military or civilians?

• (1730)

Senator Nolin: The process may seem complex. You raise a very good question. The bill does not provide for any increases in the sentences. It provides for the reorganization of jurisdictions or changes to the types of tribunals within the military process.

At present, there are four types of judicial processes and these will be reduced to two. Consequently, the jurisdiction of the two remaining processes or courts will have to be expanded. The courts with jurisdiction for offences punishable by imprisonment of less than two years will also deal with offences punishable by anything up to imprisonment for life.

As for juries, there will be a panel of court martial composed of five, rather than twelve, military officers. The procedure remains the same. However, one important nuance is that, currently, until Bill C-60 is adopted, the decisions need not be unanimous, as is the case with a traditional jury, but are based on a majority ruling. This aspect will be eliminated. That is why I spoke earlier of the legitimacy rather than the safety of the process. In criminal law, and particularly in civilian courts, when a jury unanimously finds an individual to be guilty, the accused is deprived of his freedom. This practice seems to be the norm and that is what the Court of Military Appeal decided. Thus, this practice will be applied in the military.

We must make the necessary amendments in order to adapt existing practices to courts martial and the military sector.

[*English*]

Hon. Joan Fraser: Honourable senators, my question is for Senator Nolin.

[*Translation*]

My question concerns the coordinating amendments set out in clause 31 of the bill. It refers generally to Bill C-45, which is still before the House of Commons. Five separate provisions state that, if section 14 of this act which is before us comes into force before the other act which is still before the House of Commons is passed, a given section of that other act will be repealed.

It seems to me that such an approach has already been criticized in this place. It would be so much simpler and natural to state in the other bill, which is still before the other place, that if the bill currently before us comes into force before the other one, which is coming after this one in the process, the other bill will be amended accordingly. Why use Bill C-60 to amend another bill that is still before the House of Commons and could be properly amended, if necessary?

Senator Nolin: I recall us having such a discussion. Subclause 31(8) states that, if section 14 of this act comes into force before section 52 of Bill C-45 — assuming it becomes law — that section 52 will be repealed. That provision seems pretty clear and respectful of the rights of Parliament. The first bill to pass can set the standard, as stated in subclause 31(8), and the next one to pass will be subject to a previous decision of Parliament.

Senator Fraser: With all due respect, I disagree. In my opinion, it would be simpler, more natural and clearer to amend the other bill when it comes before us. However, I understand your answer. We simply disagree.

Senator Nolin: Nothing prevents the sponsor of the other bill and this one from proposing an amendment in due course. As for the legal wording of the bill, we have to assume that a bill will be passed and that provisions will be affected. We may disagree on how to reach the goal, but I believe we agree on the ultimate goal.

Hon. Roméo Antonius Dallaire: What bothers me is how quickly we are moving. I am all for efficiency, but this feeling of urgency borders on panic. Was the hounourable senator told that the Supreme Court would not grant the requested stay? Was he told whether it would take a year to obtain it? Is it not possible that the cases that are currently pending could suffer as a result of this delay in the process?

Senator Nolin: There is always a risk that justice will be denied if the process drags on. Time is a factor in the judicial process. The longer the process, the greater the risk that individuals' rights will be denied, which goes against the values recognized by the courts.

When I was given the task of sponsoring this bill in the Senate, my first question was whether extending the study of the bill could affect inmates' rights. The answer was no.

That said, I believe that there is certainly some urgency. With the hounourable senator's experience in this field, he will know that it is important that the chain of command have a judicial process at its disposal whereby it can enforce military discipline. However, it is far from certain that the Supreme Court, regardless of when it makes its decision, will answer all the questions and deal with all the uncertainties that Bill C-60 is trying to address. Moreover, we do not know when this will happen.

Senator Joyal will no doubt raise this point, but if the bill is passed, the appeal to the Supreme Court will become moot. In my opinion, it would be useful to ask a representative of the government. Unless there is something about the Trépanier decision I am not aware of, I understand that the appeal would be redundant if Bill C-60 were passed. I sincerely believe that there is some urgency. It seems clear to me.

Senator Dallaire: It is too bad this same government does not have the same sense of urgency for a child soldier who has been held for six years while his case drags on. Nevertheless, I suppose that some Canadians are not on the same wavelength on this issue.

Let us come back to the sense of urgency. The system has been in place for a very long time. This process was reviewed in 1998 by Justice Dickson. The argument then was that the chain of command would make the decision on whether or not there would be a court martial.

• (1740)

After all these years, all of a sudden we are trying to figure out why this case, which makes use of this mechanism, ends up in appeal. I find it hard to understand.

Is there a delay in the procedure because the method takes too long in making a decision to go to court martial? We have soldiers on the battlefield and justice has to be served more quickly in this context to set an example for them? Is that why all of a sudden it should no longer be the chain of command but the individual who decides?

Senator Nolin: When we studied the new military justice system in the late 1990s, the Senate committee raised many concerns about the differences between the military and civilian systems. The purpose of Bill C-60 was one of our concerns. Why would the right to choose, which an accused is normally entitled to, not be available in a court martial? We let ourselves be convinced, for the efficiency of the process, that it was better to allow the court martial administrator to decide which type of court to convene. We were wrong. The military appeal court reminded us of that in the *Trépanier* ruling, in April, when it said, in essence, "You are wrong. All Canadians, whether in the military or not, have the same right. The choice of trial is theirs, not yours." I think that is what prompted this urgency.

I told you that the government tried to amend Bill C-45. For reasons I mentioned earlier, that could not be done, hence the appeal and Bill C-60. The one will not cancel the other but make it moot.

Hon. Maria Chaput: When an accused appears before a court martial, what are his or her linguistic rights?

Senator Nolin: He or she has the same rights enjoyed by all Canadians under the Charter.

[*English*]

Hon. Serge Joyal: Honourable senators, I will share my first comments with the Honourable Senator Nolin. We are both veterans of the Standing Senate Committee on Legal and Constitutional Affairs on the study of the National Defence Act and the incapacity of the act to respond clearly to the needs of any active military personnel who find themselves under the constraint of a court martial. These individuals should be duly protected according to the Canadian Charter of Rights and Freedoms.

As Senator Dallaire has stated, I say humbly that the court martial system of Canada is sick. I say that not because I am a doctor and I have diagnosed that the system needs a revamping but because over the last 15 years, collectively as a government and as a system of government, we have been unable to implement the basic principle of the Charter of Rights in the court martial system. Essentially, that is the problem. We cannot ensure that the court martial system in Canada respects section 7 to section 11 of the Charter of Rights and Freedoms.

The government, some 15 years ago, appointed Justice Dickson to study the court martial system and come back with recommendations. I have them here. Look at the thickness of the recommendations. I want to quote one of those recommendations from the second Dickson report. There have been many reports — emergency reports to respond immediately to matters and other reports in the context of normal times. Here is recommendation 17(b):

> We recommend that an independent review of the legislation that governs the Department of National Defence and the Canadian Forces be undertaken every five years following the enactment of the legislation changes required to implement the recommendations contained in this report and in our 1997 report.

What does it mean? It means that even Justice Dickson could not conclude that what he was recommending would be sufficient to meet the obligation of the Canadian Charter of Rights and Freedoms in relation to the Department of National Defence and the court martial system.

As Senator Nolin has stated, five years later there is another report, this time by former Justice Lamer, studying the same system and coming back with recommendations. My only qualification to the Honourable Senator Nolin is that we were not asleep at the switch — if I may use that common expression — when we considered the report following the recommendations of Justice Lamer. Senator Nolin, Senator Grafstein, Senator Andreychuk and I were all there. We were of the opinion that the bill we were considering did not meet the smell test of the Charter regarding the rights of an accused to be tried fairly under the principles of the Charter.

However, we were told that there were already major changes made to the system and that they will learn from practice. At a point in time, they will finally come to a reasonable, functioning system.

Therefore, we introduced the amendment to the bill for a compulsory review after five years. What happened? Honourable senators, there is a review after five years. It is Bill C-45. It is in the other place. It has not been studied yet in this place and has not been adopted.

However, the other place is considering this bill following an obligation that the Honourable Senator Nolin and all of us put in the bill at that time to review it because we were sure that something was wrong with the changes that were brought forward.

Meanwhile, Mr. Trépanier, a member of the Canadian Armed Forces, was subject to a court martial. He contested the constitutionality of the authority that decides the kind of trial to which he will be submitted.

In simple criminal terms, any person brought into the court under the Criminal Code of Canada can decide what kind of trial he or she will be submitted to: judge or jury. It is a formal, fundamental principle of natural justice in the criminal traditional common-law system.

What did the National Defence Act provide? It provides section 165.14.

Senator Grafstein: Put it on the record.

Senator Joyal: It says that the prosecutor decides for the accused what kind of trial the accused will be submitted to.

This provision is totally contrary to the fundamental principle of criminal law. It is the accused who decides by whom he or she will be judged. The accused must have what they call, in procedural terms, the right to elect the kind of trial to which he or she will be submitted.

What happened when Mr. Trépanier, a member of the Armed Forces, contested section 165.14 and section 165.19 and following of the act? The military appeal court unanimously — three judges — ruled that section 165.14 was unconstitutional, contrary to section 7 and 11(*d*) of the Charter of Rights and Freedoms.

• (1750)

What are sections 7 and 11(*d*)? Section 7 gives the principles of fundamental justice under the heading of "Legal Rights" and section 11(*d*) is the right to have an independent and impartial tribunal. Thus, if someone chooses for you, you are not before an independent tribunal because someone has decided for you which court it will be and someone else will decide who will sit on the court. You are brought there and you just have to plead guilty or not guilty, contrary to the fundamental principles of justice.

The decision of the Court Martial Appeal Court was given on April 24 of this year. The bill before us was tabled in the other place on June 6. We are now at June 17. The other place will adjourn on June 19. If we decide today to have an emergency debate, pass this bill at third reading and send it back to the other place, there is no time to fill the gap because the other place is under a compulsory order to adjourn on Friday for the summer recess.

Maybe we can take our time and study this bill for a week. Honourable senators, there are problems because this bill deals with an issue that is pending before the Supreme Court of Canada because of permission to seek leave to appeal dated May 30 — 18 days earlier. In other words, the military authority decided to go to the Supreme Court of Canada on May 30, seven days after the decision was rendered, to overturn the decision that was given by the Court Martial Appeal Court on the right of a member of the military forces to elect trial.

We are now asked to vote for this bill on an emergency basis. The reason is because the Governor General will not be able to give Royal Assent except this week. After this week she will not be available before June 30.

I must tell honourable senators, respectfully, that to me the Parliament of Canada is composed, according to the Constitution, of three elements: the Queen, the Senate and the House of Commons. The Crown has a constitutional duty in Parliament. This is the foremost duty of the Crown. Respectfully, we cannot ask for a puisne judge of the Supreme Court of Canada to give Royal Assent to a bill whose object is contested before the Supreme Court of Canada. Try to imagine that scenario. It is an impossible situation for a judge of the Supreme Court of Canada to sanction a bill like this one when the very subject of this bill is under appeal or where leave to appeal to the Supreme Court of Canada is being sought.

We are being asked to rubber-stamp odious work that this chamber should never pronounce upon. We are asked to rubber-stamp a bill. Why? It is because the Court Martial Appeal Court has refused to grant a stay of one year for the changes to be brought to the National Defence Act.

As a matter of fact, I think it is paragraph 108 of the decision of the court from April 28. The court refused to give a stay of a year for the effectiveness of the conclusion to apply. That means, as Senator Nolin has properly stated, that the next day Mr. Trépanier was entitled to have his trial the way he elected to have it. Hence, the rush to say that we cannot be in front of a void. We must legislate to reinstate the system whereby amendments to the National Defence Act, section 165 and following, will be answered in a proper way so that any person who wants to be tried under the court martial system is tried properly according to his or her rights under the Canadian Charter of Rights and Freedoms.

Honourable senators, as a former Prime Minister would say, "We are trapped." The court on page 50, in paragraph 116 of the decision, stated this about Bill C-45, the answer to the review that we have commissioned ourselves:

> Yet, Bill C-45 has been tabled before Parliament and it contains no remedial provision.

This goes to the very point that was raised:

> The authorities have been given more than four and a half (4½) years to address the problem. The Bill already pending before Parliament can be used to quickly remedy the situation.

What did the court state in this decision? They say they have waited four and a half years. The mistakes have not been corrected, the violation of the Charter, so you should rush and add this to Bill C-45. The government has decided that instead of trying to amend Bill C-45 and push Bill C-45, they will use Bill C-60, which addresses those specific issues. That is the way I understand the situation.

Honourable senators, in all fairness, we have a constitutional duty here to study Bill C-60. According to the briefing notes that I read yesterday — when I came back at six o'clock everyone was running to give documents so that we could read this quickly — I noted that Bill C-60 does not only deal with the decision in the

Trépanier case. Bill C-60 also deals in an unanticipated matter with the Court Martial Appeal Court in *R. v. Grant*. In other words, this bill deals not only with the emergency situation but with other issues.

Honourable senators, have you ever read the National Defence Act? Have any of you wanted to read the National Defence Act?

Some Hon. Senators: Yes.

Senator Joyal: Some senators have said yes. It is double this size, honourable senators.

Senator Grafstein: We read it, to our chagrin.

Senator Joyal: It is hundreds and hundreds of paragraphs and even I, a humble lawyer, have had to read it many times to understand the correspondence of one section to the other.

I challenge any senator to read Bill C-60 and understand to which part of the bill those amendments pertain.

What should we do, honourable senators? The other place has done something that seems to be fair, which is to shorten the review to two years instead of five years if the bill is adopted as it is. However, I think there is more. I am looking again at our colleagues Senator Nolin and Senator Andreychuk, who happened to sit on the Special Senate Committee on Anti-terrorism when we found ourselves some months ago in more or less the same conundrum with the security certificates. Honourable senators will remember the scenario of the security certificate. The Supreme Court of Canada decision struck down the provisions of the Immigration and Refugee Protection Act in relation to security certificates, but at that time they gave a year to Parliament to make the corrections. What did the other place do?

Senator Nolin: They used the year.

Senator Joyal: They used the year and they sent us the bill a week before one year had lapsed. Here we are, once again, caught in a similar situation, more or less.

What did we do? We were concerned in our conscience as senators that we should give due study and a thorough examination to a bill that does not only answer an issue but also deals with other issues.

Frankly, honourable senators, I think that suspicion is the beginning of wisdom in those issues. Read this bill and tell me, in your solemn conscience, that you are of the conviction that it deals only with the issue raised in the *Trépanier* case and that the National Defence and Justice Departments have not used the opportunity at 11:59 to stick a provision in the bill that seems innocuous but that changes something. I am not in a position to say yes or no tonight on this bill.

If we are to perform our constitutional duties, in fairness, we would take time to study this bill. If we have no time to study this bill, we have to ensure, as a house, that we will use the opportunity to outline some terms of reference.

• (1800)

[*Translation*]

The Hon. the Speaker *pro tempore*: Honourable senators, the time is now 6 p.m. Pursuant to rule 13(1), I must leave the chair until 8 p.m., unless the honourable senators agree not to see the clock.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, there is unanimous consent to see the clock. However, notwithstanding rule 13(1), the sitting will resume at 7 p.m., rather than 8 p.m.

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

Hon. Senators: Agreed.

The sitting was suspended.

• (1900)

[*English*]

The sitting was resumed.

CANADA ELECTIONS 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-29, An Act to amend the Canada Elections Act (accountability with respect to loans).

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.

[*Translation*]

TSAWWASSEN FIRST NATION FINAL AGREEMENT BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-34, An Act to give effect to the Tsawwassen First Nation Final Agreement and to make consequential amendments to other Acts.

Bill read the 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*]

NATIONAL DEFENCE ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Gustafson, for the second reading of Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act.

Hon. Serge Joyal: Honourable senators, I was concluding my remarks when the clock struck six o'clock.

I wish to bring honourable senators' attention to the fact that Bill C-60 is a partial answer to the recommendation of former Justice Lamer in his review of the courts martial system report of 2003, and especially recommendation 23 of the report.

Senator Nolin will remember that former Justice Lamer, in his report, studied and recommended the decision to determine the type of court martial that should be established. He reviewed the five types of court martial, and he made recommendations. Former Justice Lamer wrote the following in his report on page 35:

> When one scrutinizes the above-noted types of courts martial, it becomes apparent that two individuals charged with the same offence have different rights under the current regime based on their respective ranks and the discretion of the DMP.

Former Justice Lamer identified this major defect in his report, and used recommendation 23 to simplify the number of courts. Hence, Bill C-60 in its summary states:

> . . . the amendments, among other things, reduce the number of types of courts martial from four to two and permit an accused person, in certain circumstances, to choose the type of court martial that will be convened.

In other words, honourable senators, if Mr. Trépanier had not challenged his right to elect the trial he would be submitted to, Bill C-45, in the other place and part of the review on the recommendation of Justice Lamer's report, would not have dealt with that recommendation.

Honourable senators, if we are to pay proper attention and due study to this bill, we should have proper time to study it, not because I want to impute motive to the author or sponsor of the bill, but there is no doubt that the bill is complex. This bill even amends the Geneva Convention, as one will note in reading clause 30 of the bill. There are clauses of this bill that deal with a variety of issues that would be raised during normal study at the Standing Senate Committee on Legal and Constitutional Affairs. Many standing members of the committee have gone through a previous study of the Dickson and Lamer reports, of the 1998 amendments to the National Defence Act and this act. Our committee has an institutional memory to scrutinize the bill in a more efficient and objective manner. Honourable senators will remember that we conduct those studies on a non-partisan basis. We try to raise the right questions and obtain satisfactory answers on both sides of the committee.

With that in mind, honourable senators, I think it is fair to give this bill the scrutiny it deserves in committee. It would be fair to expect that our chamber would give terms of reference to the Standing Senate Committee on Legal and Constitutional Affairs to review the various clauses of this bill in the months to come and report before the end of the year. In that way, honourable senators, if there are important elements that stem from our study of this bill, and of course Justice Lamer's report, we would be in a position to inform the honourable members of this chamber that there is further improvement to be brought to the system.

We should seek concurrence from the Minister of National Defence to further study this bill, considering the special circumstances in which we find ourselves, a bill that is in fact a kind of answer to a challenge that is still pending in the Supreme Court. We are waiting a decision if it will stand as is or will be reviewed by the Supreme Court of Canada.

We are in a very particular circumstance that, in my recollection of the last 11 years I have been in this chamber, we have not been in before. With that in mind, honourable senators, I think it is a fair submission to propose that due to the rushed context into which our approval is sought of this bill, and the important elements there are, that we further study this bill under terms of reference. I submit that the government would concur that our committee should devote priority and come back before the end of the year with proper recommendations on how this bill meets some of the objectives. Perhaps in one year we might find some other aspects that would need further improvement if we are to meet the test that former Justice Lamer expressed in his recommendations in 2003.

[*Translation*]

The Hon. the Speaker: Honourable senators, are there any questions or comments?

Hon. Pierre Claude Nolin: Honourable senators, I have a question. Am I to understand that Senator Joyal would like us to study the bill further, but that since it is an urgent matter, we should pass it and give ourselves the rest of the year or a short period of time to review how this bill, which we will have passed, would blend with the military justice system? Am I reading his proposal correctly?

• (1910)

[*English*]

Senator Joyal: That is essentially the spirit of the proposal I raised. I am not irresponsible. I understand the context in which the system must operate. The honourable senator mentioned that 50 potential cases are pending. This provision deals with the rights of an accused to elect the trial that the accused will be submitted to. I also understand that there is a pending permission to appeal across the fence. With that in mind, I do not think we can take too many days and weeks to study this bill and give it the proper scrutiny that the bill deserves.

We have done this before, honourable senators. The honourable senator is a member of the Special Senate Committee on Anti-terrorism that reviewed the security certificate system. I am not raising an issue that is not on the agenda today, but honourable senators who have attended the various meetings of the Special Senate Committee on Anti-terrorism will concur with me that the questions raised on both sides of the committee are important for the system of the security certificate and the rights of persons who are in more or less the same situation as we have here. As the honourable senator will recognize, one of the persons subject to a security certificate has a case pending in the Supreme Court, which is more or less the same situation as this. Mr. Trépanier is the respondent in a case seeking permission to appeal to the Supreme Court. His status has changed from the decision of the Court Martial Appeal Court.

If we are to perform our duties diligently, I recommend to honourable senators that we study this bill in the context of the Parliament we are sitting in now, with the fact that the other place is under an order to adjourn by the end of the week. On the other hand, as senators, we can do the scrutiny that we would normally perform at the Standing Senate Committee on Legal and Constitutional Affairs on such an important bill that deals with the Charter of Rights. That is the sense of the decision we received from the Court Martial Appeal Court.

I think Senator Nolin will share with me the expressions of obligation that were stated in this chamber in relation to the security certificate bill, now act, that it be studied carefully by the Special Senate Committee on Anti-terrorism. We will report by the end of the year, as I understand, considering the number of witnesses and experts we have already heard. We will be in a position to report to this chamber diligently.

Although the chair is here, I can say that I have a general knowledge of the agenda of the Standing Senate Committee on Legal and Constitutional Affairs. We are dealing with a private member's bill. We can continue our study of the private member's bill and conduct a further study of this bill before the end of the year so that senators are reassured that the blind decision we are asked to make today will receive better scrutiny in the months ahead of us. We will be able to report before the end of the year to this chamber and make the proper recommendation.

Hon. Jerahmiel S. Grafstein: Honourable senators, the evening is late and I will not try your patience. I listened with great care to our colleague Senator Joyal. Honourable senators must understand that Senator Joyal and I found ourselves in an invidious position 24 hours ago. We were told by our leadership 24 hours ago that the government of the day was asking for a fast-track for this particular bill, and to go to Committee of the Whole, which is contrary to our normal rules and procedures. Obviously, we immediately asked for the background information. This morning, I received information, thanks to the Clerk, about the *Trépanier* case. We spent the last 24 hours trying to bring ourselves up to date about the nature and essence of this particular bill and how we found ourselves here in this emergency debate.

There is a lesson to be learned here, honourable senators, and the lesson is simple. Rushing to judgment is always wrong. Whenever we are told in this Senate by any government that it must be done right away, we know that the government is wrong. It might be a national catastrophe; that is different. It might be an act of war; that is different. However, in the normal course, if we are asked to rush to judgment and the government on both sides insists it must be done, take caution, honourable senators.

We are a chamber of sober second thought, and I disagree with my learned colleague Senator Day. I do not believe in pre-studies. When I first came here, this place was pre-studied to death. As a result, we bound our hands behind our backs when it came to amending legislation that should have been amended because we had pre-studied it, and we slipped the information over to the other side so they could give us a clear deck. They must do their business, and then we must do our business, and hopefully we can conduct our business properly. I am not in favour of pre-studies. I am in favour of legislation that comes in on time so that we have an adequate opportunity to pursue our process of sober second thought under the Constitution.

What is the lesson to be learned by this hurried legislation? The lesson, as Senator Joyal pointed out, is clear, and it is a lesson of benign neglect. In 1998, the National Defence Act was reviewed. I was on that committee, as were Senator Nolin, Senator Andreychuk, Senator Bryden, and Senator Milne, who was the chair at the time. At the end of the day, there was a general conclusion about the flaws of the bill. I agree with Senator Nolin. By the way, I want to congratulate Senator Nolin. He prepared us well for this discussion tonight. He outlined the contours of the bill fairly, and I want to add some colour to his discussion. Essentially, we were told at that earlier time that we had to get the predecessor of this bill through the Senate in a hurry. Senators should know that the reason we had to move this earlier bill through in a hurry was that there had been benign neglect for the military. It had not been done for years. Proper attention had not been given to military justice. The Dickson report had not been studied carefully. There was no appetite in the Senate or the House of Commons. Our defence forces received the short end of the stick. Then, all of a sudden, we were confronted with a massive reform to the military justice system to conform to the Charter and modern practice.

Senator Nolin: The minister was pushing.

Senator Grafstein: We were confronted with a new reform. When we looked at it, most of us on both sides agreed that the bill was seriously flawed and that it had constitutional problems. Senator Nolin, Senator Andreychuk and Senator Joyal also raised those problems. This opinion was not on one side or the other. We all agreed that there were serious problems with the National Defence Act. Pressured as we were on both sides to push the bill through, we came up with a formula: Since it was a new process, let us give it five years, put in a sunset clause and do a review. The review was Lamer's review of the 1998 bill, which was completed in 2003. His report was filed in the *Trépanier* case. We are here tonight because that Court of Appeal, the appellate court of our military justice system, is frustrated that the reforms outlined to Parliament in the Lamer report were never implemented. We have a former Minister of Defence, now a senator, and he will recall this matter. We were pressured by him too. Everyone gave us pressure. The Chair of the Standing Senate Committee on Legal and Constitutional Affairs, the Minister of Justice and the prime ministers all pressured us to move forward. We said, "Wait a second; let us think about this carefully."

There was an independent review. The first independent review was done of Bill C-25 of the day, and it was completed on September 3, 2003, as Senator Joyal pointed out. It is reported and referred to in the *Trépanier* case. Justice Lamer said that it

was his belief that an accused charged with a serious offence should be granted the option to choose between trial by military judge alone or military judge and a panel prior to the convening of martial court. As Senator Joyal pointed out, that goes to the essence of criminal law.

Here is the complexity. The military has a problem with this principle. The military wants its own military form of justice, but when the Charter came in, we said, "Wait a second. You cannot have two types of justice in Canada. We can have a constitutionally approved type of military justice, and a Criminal Code domestic type of justice, but the two must be principled the same way. We cannot treat people differently inside and outside the military. They must be treated equally under the Constitution."

After 1980, the criminal justice landscape changed. Up until that time, the military went its way, the Criminal Code went its way and now they are compelled to merge on the same constitutional principles, and that is the essence of this case. The essence of this case is that it is not the civil criminal courts that say this now; it is the military court that says this. It was an appellate court of the military tribunal that says the two systems must be compatible and consonant. They can be different, but they both have to adjust to the rule of law: equality before the law.

• (1920)

Justice Lamer says that there must be a choice, in effect an option between a military judge alone and a military judge with a panel. As Senator Joyal carefully pointed out, that is the essence of the rule of law: social justice and criminal justice. The accused has the right to choose or to elect, as he said, his or her modality of defense, as opposed to the prosecutor deciding on behalf of the accused as to what he should follow. If the accused could not choose, he would be bereft and his rights would be stolen from him. The appellate military court said this.

We now find ourselves in this situation. By the way, many times I have been critical of the Supreme Court of Canada and the courts of this country in this chamber, but on this occasion, I want to congratulate the military court of justice because they have done their homework. This is a careful, cogent and clear decision. I commend all senators to read it. One can obtain it from the Internet. It is interesting. *Trépanier v. Her Majesty the Queen* is an excellent well considered decision.

We are now left in this emergency situation. Have we learned our lesson? I do not think so. At least from this time forward, let us proceed with some care. There is a way through this particular trap, as Senator Joyal has put it, in terms of the time frame and the lateness of the hour.

By the way, I am not unduly critical of the government because, in this instance, the government received the decision from *Trépanier* on April 24, 2008 and the court gave the government no period of time to introduce legislation. The government introduced the bill on June 8. It moved it forward and here we are. That is not an unreasonable delay.

However, my point is what happened between September 2003 and April 2008, in that period of four and a half years. The military court was frustrated because they said the problem was there and Parliament never acted. The court said it would put them in a bigger trap. They would not allow this case to be stayed. Move Parliament. Deal with the question of the constitutional principles of this country.

Here we are tonight in this situation. Again, I want to congratulate Senator Nolin. He brought to our attention why this matter is pressing and why we are so trapped. We are trapped because there are 50 cases pending, some very serious. Of course, that number will increase if there is no legislation because, essentially, as of today, there is no criminal justice system for the military in Canada. It is gone.

Therefore, as Senator Nolin pointed out, there are 50 cases pending. There is no question at all that if we allow this to continue in the public interest, and public safety and security, the dangers will increase. Many of the cases are serious, as Senator Nolin pointed out. I have done some of my own homework on this subject. Pending cases include manslaughter, sexual assault, sexual exploitation, aggravated assault and trafficking, which are all serious offences. Therefore, we have a public interest now, having been trapped by the government with benign neglect to deal with this in an expeditious fashion, but we are not satisfied. We cannot be satisfied with a few hours of testimony in Committee of the Whole.

I read this bill last night, and I read it again this morning. Senator Joyal pointed out in his speech, and I caught it, that it is not just about fixing up the fix-it situation that we find ourselves in, such as with the *Trépanier* case, but it goes beyond that. It deals with the Geneva Convention. We have continually heard about how we must comply with the Geneva Convention, and there are provisions in the legislation about the Geneva Convention. Quite frankly, I cannot figure them out without doing an independent study of what that means.

I do not trust this government. Excuse me — I do not trust government. That is our role. We have to be suspicious of government in this chamber. Our constitutional role is to be suspicious of government. When government tells us something, we must double-check the facts. Most governments are honest, but many times they are not in terms of giving us facts and information.

What can we do? Early this morning, before I went to our leadership, I decided I would call — I rarely do this — the leadership on the other side. I told them about the invidious box they had placed us in, and we had to make a decision within 24 hours or else the public interest and public security might be challenged because there is no military criminal justice system in place. I urged them to please do something about their legislation. Quite frankly, they did, today. There was an amendment introduced today, and I will read it.

The amendment says, in section 27.1, that within two years of the date on which this act receives Royal Assent, a comprehensive review of the provisions and operations of this act will be undertaken by a committee of either the Senate, the House of Commons or both Houses of Parliament that is designated by the Senate, the House of Commons or both Houses of Parliament, as the case may be; that within a year, after a review is undertaken or within a longer period that the Senate, the House of Commons or both Houses may authorize, the committee shall submit a report on review to Parliament, including a statement of any changes that the committee recommends.

The answer is that we will not leave this matter in limbo any longer. It will be two years. Senator Joyal pointed out that is not satisfactory. What I think we need, as Senator Joyal pointed out, is some urgency. If we let this bill go, it will be a stopgap measure only. It is a bridge that leads nowhere. Therefore, at the end of the bridge, rather than jump off, we must ensure that we have another bridge. The only other bridge that can make us comfortable in this place is a full study to see whether or not these complicated provisions as drafted by the government do indeed meet the requirements of the *Trépanier* case, Justice Lamer's study and constitutional principles.

We are where we are. The hour is late. Sometimes history repeats itself. The problem in this chamber, honourable senators, is that history has repeated itself over and over and over again. For example, with respect to the extradition bill, the government had to get it done and get it through quickly. We held it up for three months in this chamber. Senator Nolin will recall that. Finally, we said it was unconstitutional. The government did not listen. The chairman of the committee did not listen. The opposition was benignly neglectful. This is true; it is on the record.

What happened in that case is, ultimately, the Supreme Court of Canada came down and said the legislation was unconstitutional, and several years later, the government amended it. By the way, I do not think even that amendment is a proper, fail-safe provision.

Let us learn our lesson this time. If the bill comes up and we deem it unconstitutional, let us stand up and say it is unconstitutional and throw it back to the other place with all the consequences.

On that happy note, I will conclude this rant and say good evening.

Hon. Roméo Antonius Dallaire: Honourable senators, I will address this legislation not from a legal perspective but more as a practitioner who has served for 36 years under the National Defence Act. I was also caught up in the Somalia affair, which was the impetus for modernizing the National Defence Act, and I was the assistant deputy minister in 1998 when former Chief Justice Dickson was working with General Belzile to bring in significant changes.

I wish to say a few words only to set a balanced tone. I agree totally and vehemently with the fact that there are elements within the National Defence Act that still do not meet the Charter. As one of the most conservative bastions of our society, I am surprised at times that the forces have actually moved as far as they have. However, they have not moved far enough.

I want to balance that out with something that my colleague said. The impression is that the National Defence Act is very sick, the court martial system is hyper sick and the system is possibly in serious demise.

I want to read from the Right Honourable Antonio Lamer's review of the military justice system in 2003:

> . . . Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence.

Fifty-seven recommendations were brought forward to significantly modernize and bring in line the National Defence Act. Out of those 57 recommendations, 52 were implemented. Two in particular related to courts martial, which is the essence of what we are doing here. Number 23 and number 25 were not so, as it was felt that the system was responsive to both the operational requirements of the military and meeting, within reason, an effectiveness of the judicial system, the Constitution and particularly the Charter of Rights.

• (1930)

We are now suffering the consequences of not having those recommendations with regard to courts martial implemented. Now we are being asked to act quickly to ensure that good order and discipline is maintained in the forces, particularly since we have troops in the field now. The reason we have a military justice system is to be able to respond in the field in order to ensure that justice, good order and discipline is maintained. The system has been emasculated and needs an immediate solution, however flawed the proposed solution may be perceived to be.

The Judge Advocate General's testimony before the committee yesterday was interesting. The bill was given first reading on June 6, and second reading debate began on June 16. There were 10 days in there in which the process could have been accelerated in order that we would have a bit more time. Time is a significant factor in the *Charter of Rights and Freedoms* and people's lives. Justice must be done not only transparently but also expeditiously.

I agree that we need to take a second look at this bill and how it will be implemented. Perhaps Bill C-45, which will make its way here, will ultimately solve the dichotomy between the Charter of Rights and the National Defence Act. However, in the interim, I find it most disconcerting that on a subject of this nature and significance we are given such little time for proper assessment.

The National Defence Act is essential. It meets the requirements of our Constitution; it meets the necessity of keeping an operational military in the field to fulfil the government's requirements. It still has deficiencies after nearly 15 years of significant reform.

Honourable senators, I agree with Senator Joyal that legislation is either in compliance with the Charter of Rights and Freedoms or it is not. If it is not, let us bring it into line to meet the operational requirements of the military and ensure that individuals get justice and due process in a timely fashion.

Hon. Joseph A. Day: Will the Honourable Senator Dallaire accept a question?

Senator Dallaire: Yes.

Senator Day: As indicated, we just received this bill and I have not had a chance to do any research on it. I, like Senator Dallaire, am concerned about being asked to move quickly, because haste makes waste.

Clause 2 of the bill would replace section 69 of the act with the following:

> A person who is subject to the Code of Service Discipline at the time of the alleged commission of a service offence may be charged. . .

Does that imply that, if the offence is contrary to the Criminal Code, the accused may also be charged in a civilian court for the offence?

Senator Dallaire: The National Defence Act does cover the criminal dimension of justice. A person cannot be tried twice. If the civilian courts accept that a trial can take place in a court martial, the military will respond to that. Conversely, there may be a charge that the military court prefers to have dealt with in a civilian court. There could be a variety of reasons for that, such as optics or the nature of the crime.

The court martial has the full breadth of criminal capabilities, but the decision on whether an offence will be dealt with by a court martial or a civilian court is often based on where the offence occurred, that is, in a city or on a military base.

Senator Day: Does the accused have a choice between civilian court and a court martial, or is that decision made apart from the accused?

Senator Dallaire: I do not remember that the individual can choose between civilian court or court martial. However, the individual does have the choice of having a military lawyer or a civilian lawyer to defend him. That assessment is made by the administrator of the judicial system when the charges are laid.

Senator Day: The ruling in *Trépanier* was in favour of the accused having a choice, but not a choice at that stage. It is a choice about the type of court before which he will be tried. Senator Dallaire has clarified that for me.

The charges here include manslaughter, sexual assault, sexual exploitation, and so on. They are serious charges that could be dealt with in a civilian court. I am concerned with the issue of urgency. Senator Nolin said that there are 50 cases pending. The reason given for passing this law in haste is that there will be a buildup of these serious cases. However, these cases can be handled in another court system, can they not?

Senator Stratton: No.

Senator Nolin: No.

Senator Dallaire: Six or seven months ago, I was informally made aware that there is a backlog in the court martial process, that it was creating significant concerns. I heard that the appeal court was saying that the process is too slow and complex and that people were not appearing in court within the appropriate time in order that the process be judicious.

It may be significant to say that the National Defence Act and the judicial system that implements it was based on an operational requirement of the military to be more effective in accomplishing its duties in the field. In garrison it responds, of course, because all individuals who are in the military are subject to the National Defence Act. However, it is not always chosen as the preferred option in cases like rape, manslaughter, drug offences and so on, which can be remanded to a civilian court that may be able to deal with the matter faster than a court martial.

From reading the proposed amendments and reading the Judge Advocate General's testimony yesterday in the other place, I think that perhaps bringing the types of courts martial to two from four will result in much faster decisions and in the time lag being held to one year. It may not be as clean as one would like it, but there is significant improvement with this bill.

Hon. Terry M. Mercer: Honourable senators, I want to again emphasize my disappointment in having this bill sent to us at this point in time with the expectation that we will act on it.

I understand that the legal process happened fairly quickly, but it does not require a rocket scientist to figure out that this needed to happen quickly. It did not take a rocket scientist to figure out that it needed to happen before we left here to allow the military justice to continue, and that the laws needed to be followed.

• (1940)

I want to ensure that we put on the record one more time that this is bad management by governments — not only this government, but the previous government as well — where we continue to be asked at the eleventh hour to pass legislation that we have not had enough time to duly examine, hear witnesses or debate, and we are expected to put what is extremely important legislation in place that will affect the lives of certain Canadians. Certain people will be affected by this legislation. At the end of the day, we always must ask ourselves in this place: Have we given the bill its due hearing?

While I recognize we will proceed with this bill, why do we continually find ourselves in this situation in June and in December every year? When will we learn?

The Hon. the Speaker: Further debate?

Senator Comeau: Question!

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

Senator Comeau: Question!

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

Some Hon. Senator: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE OF THE WHOLE

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

Hon. Gerald J. Comeau: Honourable senators, I move that the bill be referred to Committee of the Whole, and that the Senate do now resolve itself into a Committee of the Whole to deal with that reference.

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

Motion agreed to.

• (1950)

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Senator Losier-Cool in the chair.

The Chair: Honourable senators, rule 83 of the *Rules of the Senate of Canada* states:

> When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it agreed that rule 83 be waived?

Hon. Senators: Agreed.

The Chair: I now ask the witnesses to enter.

Pursuant to rule 21 of the *Rules of the Senate*, the Honourable Peter MacKay, Minister of National Defence; Brigadier-General Ken Watkin, Judge Advocate General; and Lieutenant-Colonel Mike Gibson were escorted to seats in the Senate chamber.

The Chair: Minister, welcome to the Senate. I ask that you make your opening remarks.

• (2000)

I understand that Brigadier-General Watkin and Lieutenant-Colonel Gibson are then available to answer questions.

After your remarks, senators will ask questions and those who accompany you will be available to answer questions. Please proceed.

Peter MacKay, Minister of National Defence: Honourable senators, I wish to begin by thanking you for providing me with the opportunity to appear before you in this esteemed chamber to speak to this important bill that will amend the National Defence Act.

Bill C-60, as I am sure honourable senators are aware, has important and urgent implications to the National Defence Act and the functioning of the military justice system.

As honourable senators have already been made aware, I am joined here in the chamber by Brigadier-General Ken Watkin, the Judge Advocate General for Canada. He is accompanied by Lieutenant-Colonel Mike Gibson.

Senators, this bill is necessary because of an impasse that was created by a decision out of the Court Martial Appeal Court known as *R. v. Trépanier*. I will come to the implications and the impact of that decision in a moment.

Briefly, this decision found that the exclusive power of the Director of Military Prosecutions to choose the type of court martial that will try an accused person and the duty of the Court Martial Administrator to convene the type of court martial thus selected violates the accused person's constitutional right to make full answer and defence and to control the conduct of that defence, contrary to sections 7 and 11(*d*) of the Canadian Charter of Rights and Freedoms.

The court held that the provisions of the National Defence Act thus violate the Charter of Rights and are, therefore, found to be of no force and effect.

Importantly, the court refused to stay its decision, effectively removing the authority to convene courts martial, an essential step in bringing a matter to trial. It would also deny the ability to suspend the impact pending the legislative amendment which is the formation of the bill before you.

As honourable senators are no doubt aware, leave to appeal the decision in *Trépanier* has been sought to the Supreme Court of Canada along with a stay of execution of the decision.

However, neither the appeal nor the stay will provide a clear, timely or certain solution to the problems that are created by the *Trépanier* decision. It is also, I should note, unknown at this time as to when that appeal will be heard or the stay itself.

Left unaddressed, trials by court martial cannot be convened. Again, for senators' information, there are approximately 58 cases — I checked on the number with the Judge Advocate General prior to coming here — that we would describe as being in the queue or in process that would be affected were the legislation not to proceed. Serious offences could therefore go unpunished and victims would not see justice done. This is a circumstance that we all wish to avoid, I am sure.

I understand that Senator Nolin has provided the Senate with a synopsis on how the military justice system works, so I will move directly to the amendments to the National Defence Act provided for in Bill C-60.

Bill C-60 is a legislative response to ensure that our military justice system remains one in which Canadians can trust and feel confident. It will ensure the fairness of the military justice system both from the perspective of an accused person and the Canadian public; and, honourable senators, it will also ensure that members of the Canadian Forces enjoy the right to choose how they will be tried that will parallel the rights found in the Canadian civilian criminal justice system — that is, the mode of trial, where in the civilian system we have a judge or a judge and jury selection. This provides for a military judge and military tribunal.

The proposed amendments found in Bill C-60 that are before the chamber are designed to bring clarity and stability to the court martial convening process and allow the process to continue to function.

First, this bill will simplify the court martial structure by reducing the number of types of court martial from four to two. It is also of interest to senators that this was one of the recommendations in a report by the former Chief Justice of the

Supreme Court of Canada, the Right Honourable Antonio Lamer. That report was comprehensive and touched on many aspects of the military justice system.

The remaining types of court martial will be the standing court martial, with a military judge sitting alone, and the general court martial, with a military judge sitting with a panel of five.

Second, this bill will establish a comprehensive framework for the selection of the type of court martial. It sets out that serious offences must be tried by general court martial and the relatively minor offences must be tried by standing court martial. In all cases, however, it permits that the accused person choose one of the two processes, so, again, it is similar to the processes of summary and indictable offences in the civilian system and electing the mode of trial.

Finally, honourable senators, the bill will strengthen court martial decision-making by providing military judges with the authority to deal with pretrial matters at an earlier stage in the process. I note that this is of great utility in any justice system in that it allows for trial counsel to come together in the presence of a judge to discuss certain procedural matters and, in some instances, may lead to the resolution of the case prior to trial.

This bill would also enhance the reliability of verdicts by requiring key decisions of the panel at a general court martial to be made by unanimous vote. That is to say, the panel must come to a unanimous decision in handing down its decision rather than by majority vote, which was previously the case.

[*Translation*]

Madam Chair, the proposed amendments respond clearly and unequivocally to the concerns raised by the Court Martial Appeal Court. The amendments establish a legal framework governing the selection of the type of court martial, parallel to the provisions of the Criminal Code.

Furthermore, they specify the circumstances in which it is appropriate to offer the accused the choice of the kind of court martial he or she will appear before. The bill also clarifies certain provisions of the National Defence Act that were interpreted in an unexpected manner by the Court Martial Appeal Court in *R. v. Grant*.

In particular, the bill clearly establishes that the rules must be obeyed when it comes to the deadline for holding summary trials. When the Court Martial Appeal Court orders that a new trial be held following an appeal, it must be considered a court martial. The authorities must act as promptly as possible under the Code of Service Discipline as soon as charges are laid.

[*English*]

Honourable senators, at the House committee, with respect to the bill, members voted to add clause 27.1, which is a new review clause, to the bill, which calls upon the House, the Senate or a committee of both Houses to review this bill two years after it comes into force and to provide a report to Parliament.

In addition, the House of Commons committee voted to remove clause 28 of the bill. Clause 28 of this bill was a transitional provision that would have ensured that any court martial that had commenced but was not completed when the act came into force and effect would be conducted under the old law. It would essentially grandfather cases that were already in process.

In conclusion, honourable senators, let me say that the reform of the military justice system, as with any justice system, is ongoing. Simply put, the bill that we see before us today will move to more closely align the military justice system with the processes found in our current civilian justice system, while preserving the system's capacity to meet essential military requirements, which is, again, a decision taken by the Supreme Court of Canada previously that upheld the necessity and the constitutionality of having a separate military justice system.

• (2010)

The bill will also respond to the concerns expressed by the Court Martial Appeal Court and provide Charter values and enhance the fairness of the military justice system in the eyes of accused persons, victims most importantly, and members of the Canadian public.

These amendments to the National Defence Act will ensure that Canada's military justice system continues, as I said before, to have the trust and confidence of Canadians. As well, I believe that these amendments will preserve the key role of the military justice system in the maintenance of discipline, cohesion and morale that is so fundamentally important to the Canadian Forces.

I believe, finally, honourable senators, that these amendments will further modernize and strengthen the Canadian Forces as a vital national institution.

The Chair: Thank you, Mr. Minister.

Honourable senators will now have a chance to ask questions. Please identify yourself. I remind senators that our rules allow 10 minutes for each questioner.

[*Translation*]

Senator Nolin: Mr. Minister, good evening and thank you for accepting our invitation. I would also like to thank your officers, especially the Judge Advocate General, whom we are always pleased to meet, much like his predecessors.

I would like to begin by expressing just how much this chamber cares about all matters of military justice. Over the past 10 years, the Canadian military justice system has had to work extremely hard to adapt to the new Canadian constitutional reality. In the end, the Canadian military justice system was able to adapt or has tried to adapt to this reality.

[*English*]

We received the bill today and obviously it is urgent. Of course, this chamber does not want to be part of the problem but definitely wants to be part of the solution. We started this process 10 years ago. We still do not understand why important issues such as a fair trial and rights under the Charter of Rights and

Freedoms are dealt with in such a hurry. Obviously we cannot say that we do not accept it; we will have to deal with it. However, we still do not understand why, every time, these matters are late in coming. Obviously, we do not like that. Minister, I think it is fair for me to ask you that question and it is fair for you to give us some kind of reassurance.

[*Translation*]

Could you reassure us? You understand our problems, but you also have your own problems.

Mr. MacKay: There are many reasons why this bill is being introduced at this time.

[*English*]

As you may know, there is another bill, Bill C-45, pending in the House of Commons. That particular piece of legislation contains a good number — in fact, 52 or 57, I believe — of recommendations that were identified in the report with recommendations from Mr. Justice Lamer. The reason I am pointing this out is that there are two separate bills that, in reality, should be one.

What occurred, senators, was that the decision in the *R. v. Trépanier* case arrived at the end of April, after the legislation that was to put in place the recommendations of the Lamer report had already been tabled and had begun its process. The Department of National Defence attempted to have that bill amended to include these particular amendments, and it was determined by the Clerk of the House of Commons that that was not appropriate because it went outside the scope of the bill.

To your question as to why this took 10 years, the short answer is that there was never a court decision that specifically struck down the constitutionality of the modes of trial and the prerogative, if you will, of the chief prosecutor in the military justice system to make these elections as to mode of trial.

Having said that, the recommendation was there; it was made some time ago. It simply was not deemed to be of urgency. It is urgent now because, without a doubt, if this anomaly is not fixed our court system can literally grind to a halt. That is to say, the almost 60 cases that are waiting in the queue cannot proceed because of this gap that currently exists that says it is unconstitutional until such time as we have this amendment that brings these provisions more in line with both the Charter and the civilian justice system.

I would also point out that when these court decisions are handed down, as they were in the case of *R. v. Trépanier*, oftentimes a judge will, within his or her discretion, allow for a delay. That is, delay the implementation of the effect of the particular case until such time as the government has the opportunity to make legislative amendments such as the one found in Bill C-60. The reason the judge did not do that, in all honesty, may have something to do with the very fact that you are raising; namely, that previous recommendations had been made and not acted upon.

In simple terms, senators, we are here doing now what could have been done previously, but we are doing so out of a sense of urgency because of the case law and the demand that falls to the Department of National Defence. Most importantly, it falls to the Judge Advocate General, in his capacity; and the necessity to ensure that there are no miscarriages of justice, and victims see that the system is functioning and that their rights are being taken into account; and that individuals who have a right to full answer and defence and a speedy trial have those provisions honoured and respected.

[*Translation*]

Senator Nolin: I am sure that many of my colleagues will be interested in talking about this 10-year period with you.

On May 30, the Director of Military Prosecutions filed an application for leave to appeal and an application for the stay of the decision with the clerk of the Supreme Court of Canada. Mr. Minister, if the bill is passed, does the government plan not to follow through with the application for leave to appeal?

Mr. MacKay: No. The government plans to continue the appeal.

[*English*]

There are two separate issues here. The first deals with the constitutional matters that form the subject of the decision of the judge in *R. v. Trépanier*; that is, the identified invalidity, if you will, of the provisions of the National Defence Act because they were found to be outside the Charter. Second, there are process issues that stem directly from the way in which the judge has worded his decision. There are issues that turn more on policy matters that we feel are worthy of appeal.

Having said that, the crux of the issue will be addressed by the passage of Bill C-60. As far as proceeding with the appeal, we still believe that there is legal merit in having that matter adjudicated upon by the Supreme Court of Canada, which is the reason we have proceeded.

In regard to the subject matter on which I anticipate there will be a question, as to the application for a suspension of the application of the decision, the final decision should be and will be made by the independent director of prosecutions.

• (2020)

That is the appropriate place for it to be made. It is an arm's-length decision that would be made within the department. I am talking about the stay here, as opposed to the actual merits of the case. That subject would be best addressed by the prosecutor who is handling the case.

Senator Carstairs: Welcome, minister.

The Senate does not like getting bills in June. There is a House order in the other place which directs that the House of Commons will rise on June 20. We do not have a similar house order here but, if we followed our normal practice, we would not have even dealt with this bill at second reading until Thursday. The earliest it could have gone to committee would have been Thursday. The earliest it would have come back would have been next week, which would have meant that, should we want to introduce an amendment, we would not be able to do so because your House is not sitting.

The Senate agreed to speed this process up. We do not get much credit from this government for anything that we do, but I would like to get a little credit for that.

In terms of the bill, I am led to believe that it actually goes beyond *Trépanier* and it includes other aspects that would, in and of themselves, not be necessary in order to address the *Trépanier* decision. Why has the government decided to, if you will, gild the lily?

Mr. MacKay: First, honourable senator, I respect your work ethic with respect to this bill because I recognize that it is coming very late in the process. As I mentioned earlier to Senator Nolin, the reason for that is the timing in which the decision in *R. v. Trépanier* was received.

Having said that, there have been efforts made to bring this bill forward, as I mentioned earlier, by coupling it with Bill C-45. We were unable to do that for procedural reasons, which I have mentioned.

As far as your question with respect to this going outside the scope of the *Trépanier* decision, I am not aware of any additional scope that you are referring to. This bill is very specific in its intent, and that is to address solely the concerns around the constitutionality that were addressed by the court. It is specifically about ensuring that the mode of trial and election of trial mirrors the system of the civilian justice system and modernizes the way in which trials and pretrial hearings are conducted.

The addition that you may be referring to, if I might, is allowing for counsel, prosecution and defence to meet with the judge — which is also a relatively new process in our civilian system — in the hopes of working out, pretrial, certain procedural or jurisdictional issues that might become contentious and time consuming in the trial. This is a particular concern when juries are sitting. As we know, the jury system requires people to take time out of their lives; it is a civic duty, of course. It can often be quite time consuming when disputes arise mid-trial.

Pretrial hearings are meant to allow for these discussions to occur in the presence of a judge. I believe that this is a sensible and modernizing process that should be included in our military justice system. It is not meant to go beyond the scope of the bill; it is meant to enhance the military justice system and also, again, marry it with a system that is now in place in our civilian system.

Senator Carstairs: Let me put a simple question.

Clause 30 of Bill C-60 reads as follows:

> The definition "court" in section 4 of the *Geneva Conventions Act* is replaced by the following: . . .

Why did your government think it was necessary to amend the Geneva Conventions Act in order to address the *Trépanier* case?

Mr. MacKay: Would you repeat that?

Senator Carstairs: Clause 30:

> The definition "court" in section 4 of the *Geneva Conventions Act* is replaced by the following:

Why would your government think it was necessary to amend the Geneva Conventions Act as part of this bill in order to address *Trépanier*?

Mr. MacKay: Senator, this is simply making the wording consistent. In the military justice system the modes of trial are referred to by their proper names, which are the general court martial and standing court martial. This is consistent with the wording in the National Defence Act. That is separate from the word "court" because it refers to the wording in the National Defence Act, which is not to be confused with the civilian court system.

It is a matter of consistency. It is not meant in any way to mislead; in fact, it is meant to bring greater specificity to the language contained in the Geneva Convention.

Senator Carstairs: That does not answer my question. This clause is not necessary in order to address the *Trépanier* decision. That is the substance of my overall question. Why did your government feel it was necessary to gild the lily?

Mr. MacKay: With respect, I disagree. It is not gilding the lily; it is making the language consistent. It is what is often described as a consequential amendment which is meant to provide consistency in legislation.

I am sure your experience here goes beyond my own, but when bills are introduced often there are consequential amendments made to a whole range of other bills. This is meant to provide for a consequential amendment in language to clarify and provide greater specificity in referencing another bill, another piece of legislation, namely the Geneva Conventions Act.

The Chair: I would like to remind the two other witnesses that should you wish to intervene and respond to a question, please feel free to do so.

Senator Grafstein: Welcome, minister. Thank you very much for coming here this evening.

This is an unusual situation for us because, as Senator Nolin alluded, several of us here have been dealing with the National Defence Act for over 15 years. We are part of the original committee that raised the constitutional issues in 1998. We were told we had to push through with that legislation by the government of the day. At the time we did, and the only thing we could do is ask for a five-year review. We got the five-year review, and it was very clear at that time that the last bill second reading was unconstitutional.

The Senate said it, the former Chief Justice of the Supreme Court of Canada said it and governments ignored it — not just yours. You are quite right; the *Trépanier* case is clear that the appellate provisions of the section of the military justice system were frustrated by this. That is why they did not give Parliament any leeway. I think they are amply justified in calling for amendments, and here we are.

Our problem is this: Is it that urgent now? I wish to explore that with you. If the situation is so urgent, why the provision in the House that gives us another three years before we return to look at this question? When you look at legislation as amended today, it will be another three years before another report will come down with no binding effect, so we are back to pre-Lamer under that legislation.

Let me take you through the steps for the moment. I do not deny what we have been told about this bill. I have done some research. It is true there are a number of outstanding cases. We were told 50; you have now said it is 56 or 58. Why would that press the Senate to pass this legislation tonight if, in fact, those people are charged with offences that the military could choose to proceed with under the Criminal Code rather than the military code of criminal justice? Why is there such pressure on you, the government and the Senate to pass this bill when the more serious cases could proceed under the civilian court process?

• (2030)

Mr. MacKay: If I may, I acknowledge, as the honourable senator has pointed out, that there is a long and tortured history with respect to amendments that were called for by Mr. Justice Lamer, former Chief Justice Dickson and the Senate. The reality is that this entire package of amendments is overdue. I reference the fact that with Bill C-45 we will have more of the substantive recommendations.

Bill C-60 is a stand-alone bill because of the timing of the handing down of the *Trépanier* case. You asked: Why now and why the urgency? In no uncertain terms, there is real jeopardy for the 58 cases that I referenced, some of which have very serious implications. A Supreme Court case that you would be aware of, *R. v. Askov*, allowed for the dismissal of cases on the basis of undue delay. You are aware of the old maxim that justice delayed is justice denied. The deadliest form of denial is something that can jeopardize people's faith in our justice system.

First, some of these cases cannot be tried in the civilian justice system because some charges do not necessarily exist in the civilian justice system. For example, offences such as leaving a rifle in a vehicle, mishandling a piece of military equipment or disrespecting a senior officer simply do not exist in the Criminal Code.

Second, in some instances, these offences are alleged to have occurred in another jurisdiction, for example, in theatre in Afghanistan. To try the matters in a civil justice system would mean submitting our soldiers to the justice system of a foreign jurisdiction.

Those are two reasons with respect to the backlog of cases where we do not have an option to proceed by way of a civilian court system. I return to the fact that this caseload will only increase. If it were determined at some future date that these amendments were to be granted and more cases were underway before the courts, the potential would exist for stopping those trials and restarting them or facing the prospect of a future tribunal to say, "That would be double jeopardy because you cannot stop and restart a case." That is a long-standing legal maxim that might be argued by defence counsel.

If I may, I will turn to Brigadier-General Watkin so that he might add to that.

Brigadier-General Ken Watkin, Judge Advocate General, Department of National Defence: Honourable senators, it is a privilege and an honour to be here. I have the privilege of superintending a world-class military justice system. That was clearly set out by late Chief Justice Lamer in his 2003 report where he indicated not only that it is a justice system in which Canadians can have trust and confidence but he quite rightly noted that it is also a justice system that other parts of the world are studying and have modelled in terms of reforms that they have chosen to make.

There are two aspects to your question, senator: First, what is the effect of the judgment; and, second, what options are there in terms of dealing with the judgment to try to mitigate that effect. As a superintendent of the justice system, I must look at the effect of the judgment, which happened seven weeks ago, to put it in context. In particular, as the Judge Advocate General, I am interested in certainty, predictability and timeliness in a justice system that is fair, meets the needs of the accused, of society, and, importantly, of victims.

The Court Martial Appeal Court clearly ruled that the section providing for the convening of courts martial, which is a condition precedent to the beginning of the court martial, was of no force and effect. The Director of Military Prosecutions and other actors in the military justice system since that time have continued to endeavour to make the military justice system work. That has included continuing with the courts martial that were already convened and, where the accused raised issues in terms of wanting to choose the type of trial, those matters have been referred back. I wish to outline some of the uncertainty that the present void is creating within the military justice system.

The Court Martial Administrator, who is the authority who convenes courts martial and whose powers were struck down in the legislation, has returned all the preferred cases to the Director of Military Prosecutions. There is no provision available in the National Defence Act for that to happen, and it is not clear what the legal authority is to do that.

The Court Martial Appeal Court suggested to the Director of Military Prosecutions that it be the Director of Military Prosecutions who offers the right to elect the type of court. There is no provision in the National Defence Act stating that. In terms of the types of court system we have and the punishments currently in place, the general court martial has a military judge and a panel and can give sentences up to life imprisonment. This would be recognized as a civilian criminal court with a jury. As well, we have the standing court martial, which has a military judge alone. Each type of court martial has different powers of punishment.

A general court martial can give up to life imprisonment and the standing court martial can give imprisonment up to two years less a day. Therefore, if an accused is charged with an offence that can attract more than two years less a day and they are given the choice of the type of trial, they can self-limit the punishment that a court can give them. That is extremely problematic from a superintendent's point of view, from a systemic point of view, and in terms of how victims would view the military justice system.

In the cases that have gone forward, different approaches have been taken by the military judges because of the existing void in terms of dealing with these offences. Even if the Director of Military Prosecutions were to offer an accused the choice of trial, nothing is set out in the law to deal with an accused who chooses not to choose, which is clearly set out in the Criminal Code and would be mirrored. Of course, this is problematic in terms of the points I started out with in respect of clarity.

The issue was raised with respect to transfer of cases to civilian authorities, which falls under section 273 of the National Defence Act, and, in certain cases, that is an option. However, it is not clear that busy civilian courts will want to be burdened with such trials, in particular if those courts involve offences that occur outside of Canada.

The other point that I would raise stems from a decision in *Généreux,* a 1992 drug trial case of the Supreme Court of Canada. Such a case would be incorporated into the military justice system as an offence under Canada's drug laws. The Supreme Court said that recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular needs of the military.

Further, as has been noted by the minister, we might have specifically enumerated offences, such as disobedience of a lawful command, conduct to the prejudice of good order and discipline, and abuse of subordinates. However, in our justice system we incorporate the criminal laws of Canada. That is done for a variety of reasons, in part to ensure that when we go overseas, we are able to deal with a broad range of criminal offences. In addition, Canadian values are instilled in our troops, and they understand that they must follow those values wherever they are in the world.

The problem with proceeding to the civilian criminal courts, if the civilian authorities will take the charges with those types of offences, is that we might still have, out of the same incident, other offences that might attract life imprisonment under the enumerated offences. Then, we have a multiplicity of proceedings in terms of proceeding in that way.

• (2040)

The way to deal with this situation is to find a means that provides certainty and clarity, removes the present problems that the actors within the system are trying to address and meets the needs of the accused. Clearly, this legislation is broadening the rights of the accused and it also meets the needs of the system.

In terms of broadening the rights of the accused, it is clear, as Chief Justice Lamer noted in his report, not all rights have to be constitutionally based. As he indicated, we should not strive only for a system that cannot be constitutionally denied. This point is the crux of the difference of the appeal versus the difference of the legislation.

The question of the scope of the Charter and the scope of the constitutional rights is clearly one that should be before the courts. From a policy perspective, wanting to extend a right that has been the policy recommendation trend in the last five years is a separate issue. That is the focus in which the legislation is offered.

[Brig.-Gen. Watkin]

Lieutenant-Colonel Michael Gibson, Director of Law, Military Justice Policy and Research, Department of National Defence: I may be of assistance to the house in understanding the previous question regarding the providence of clause 30 of the Geneva Conventions Act. The explanation is simple.

I was the instructing counsel in the drafting of this bill. When one sits down with the legislative drafters of the Department of Justice as instructing counsel, part of their responsibility and duty as Department of Justice counsel is to examine the corpus of federal legislation to ensure the coherence and consistency of that legislation.

This is simply a consequential amendment. In section 4 of the Geneva Conventions Act, there is a definition of what "court" means. It enumerates the four types of courts martial — standing court martial, general court martial, disciplinary and special general. You will recall that one of the provisions of Bill C-60 is to reduce the number of types of courts martial from four to two. Therefore, to ensure that the Geneva Conventions Act is accurate, all that amendment does is reduce the number of courts martial listed there from four to two, to ensure its consistency.

Senator Fraser: Minister, as I am sure you are aware, we heard interventions this afternoon in this chamber in the debate to the effect that, while we understand the valid reasons for wishing to pass this bill expeditiously, there was significant distress that the Senate was not able to conduct its usual due diligence — particularly on bills of this importance — and suggestions for some mechanism that would allow us such due diligence even after the bill is passed.

In that context, colleagues may wish to know that I received a letter from the minister earlier this evening, which struck me as being constructive in tone. He said that he looked forward to my response; but since it was addressed to me as Chair of the Standing Senate Committee on Legal and Constitutional Affairs, and the committee has not had a chance to consider the letter, I was not in a position to give the minister a response.

Minister, I wonder if you would mind if I read that letter into the record to inform the proceedings here this evening. It is dated today's date, June 17, 2008, and it is addressed to me, as chair of the committee.

The body of the letter reads:

> I am very appreciative of the Senate agreeing to consider Bill C-60 on an expeditious manner. It is important that our military justice system can continue to operate.
>
> I would ask, however, that your committee consider studying the provisions and operations of Bill C-60 and provide me with a report on your findings and any recommendations the committee may choose to make by December 31, 2008. The government will review these recommendations and provide the committee with a written response that could include proposed amendments within 90 calendar days.

Thank you for your kind consideration of this request, and I look forward to your response.

Yours sincerely,

Peter G. MacKay.

It is on the letterhead of the Minister of National Defence.

Minister, I found this letter to be extremely constructive. I will undertake to raise it with the committee at the earliest opportunity, and the committee will decide whether it wishes to seek an order of reference to conduct such a study.

I would like you to expand a little bit on the undertaking that you provide here, that "The government will review these recommendations and provide the committee with a written response that could include proposed amendments within 90 calendar days."

I assume that we should understand that the proposed amendments would reflect the recommendations of the committee. Obviously, you cannot give me an ironclad guarantee of anything right now, because you do not know exactly what the committee would recommend. We might take leave of our collective senses and recommend something utterly impossible. Absent that, I assume what we have here is an undertaking from you that if this committee provided a reasoned, reasonable argument for specific recommendations, you would be prepared to act on those recommendations.

Mr. MacKay: That is entirely correct, Senator Fraser. First, I should express my appreciation for putting that letter into the record. I am prepared to seek leave to table this particular letter. I did endeavour to see that all senators were given a copy of the letter to which you have referred, that was provided today.

With respect to the spirit of the letter, that is exactly what I have sought to do — to be constructive in allaying any fears due to the expedited nature in which this bill appears before you and the process we are undertaking here this evening. Were there to be a necessity to revisit the provisions and the impact that this legislation is to have, should the matter lead to this chamber or the House of Commons necessitating amendments to the National Defence Act that impact directly on the subject matter here, we would certainly receive those recommendations and endeavour to embody the spirit of those recommendations into amendments into the National Defence Act.

It is, for lack of a better word, an insurance policy to provide you with some level of comfort that the normal due diligence and the time required to look at the subject matter of great importance, as you have stated, will not be forsaken and that we will have the opportunity to bring the subject matter back.

As I referenced earlier, the body and the bulk of the recommendations contained in the report of Mr. Justice Lamer will, in good time, appear before this chamber. I suggest that you will have a lot more to work with than the limited provisions that are affected by this particular bill.

The Chair: The minister has asked leave for this letter to be tabled. Is leave granted?

Hon. Senators: Agreed.

Mr. MacKay: I also have the clause-by-clause analysis of the bill, which I think was also provided to honourable senators. No? I am prepared to table that information as well.

The Chair: Is leave granted to table clause-by-clause information on the bill?

Hon. Senators: Agreed.

Senator Fraser: I also note that the minister properly wrote his letter to me in both official languages, and I think we should table both versions. I can provide them to the page if the minister has not already done so.

Senator Mercer: Minister, general and colonel, welcome to the Senate. We are happy to have you here, although I will not ask substantive questions about the bill itself; it is the process that I have complained about for some time. Justice delayed is, indeed, justice denied. However, speeding up the process does not allow for good legislation or the good participation of parliamentarians in the debate.

• (2050)

Minister MacKay, you have stated that it is important and urgent. My colleague Senator Carstairs has indicated that we do not like receiving bills in June. That is true, especially when it is June 17 and, by all reports, we may be out of here on June 18 or maybe as late as early next week, after Saint-Jean-Baptiste Day. Regardless, that does not leave us much time to study this bill.

I am concerned that we are receiving the bill today and, under the gun of legislative timetables or traditional legislative timetables, we are expected to rush this through. We are meeting tonight in Committee of the Whole. It has not been referred to the Standing Senate Committee on Legal and Constitutional Affairs, which it would normally be.

I would like some explanation from you as to why this has happened. This is really not a question of 10 years, as you referred earlier to Senator Grafstein's or Senator Nolin's mention of 10 years. This is not a question of 10 years but rather of two or three months. That is from the time the decision came down, from the time it was obvious that amendments needed to be made, and until the time the bill arrived here.

I know it may go to management of the other place that you may not have control over. However, you put us in a position where some of us do not feel comfortable dealing with what is obviously very important legislation within a time frame that we cannot give it the due study that it deserves.

Mr. MacKay: Thank you for the question, senator. There is no denying that and I would be the last person to suggest that this is not an unusual circumstance that was brought about largely because of the handing down of the *Trépanier* decision, which, in effect, nullified the process by which modes of trial were to be elected. As a result, we did endeavour, as I recounted earlier, to amend Bill C-45, which was already before the House of Commons. Upon being blocked procedurally, we introduced this stand-alone legislation.

I would point out the obvious here: This is a very narrow bill and it deals in very specific and very — I would suggest — non-controversial terms to remedy the system to allow for the continued administration of justice in our military courts. Having said that, I recognize your question is about process and the process most notably in the other place which, to say the least, can be acrimonious. When you put a bill into the queue, so to speak — to have it presented, tabled and to go through the procedure in the House of Commons with which you are very familiar — there is a selection process that very often depends, as it did in this case, on the goodwill of the opposition. They need to recognize the non-partisan and practical reality that there is serious delay and serious harm that could stem from the anomaly that has been created by the *Trépanier* decision. That anomaly is a void in our justice system.

It is for those reasons that we have taken this extraordinary step of expediting this bill. I do not want to say the word "bypassing" because we have procedurally followed the path which any legislation would follow. However, we have done so at breakneck speed.

That is where we find ourselves now in the process that leads legislation, whether it originated in the House of Commons or in this chamber; we are following that process and doing so out of necessity, I would suggest. However, it does rely on the participation and the proactive goodwill of all members and all senators to see that this matter is addressed.

If the process were to stop at this point, I will not say, "The sky will fall." However, serious harm can flow from that decision. Therefore, I would urge all senators to continue this process, with the proviso that I have put forward through this letter; on the understanding that, should there be a requirement for further examination, amendments or a revisiting of this matter, I will certainly undertake — and I have undertaken in that letter — to bring the matter back for future amendments.

Senator Dallaire: Minister MacKay, I would like to ask a direct question and give a bit of mitigating information before you give your response.

How is it possible that we have been caught out? We have been in operational theatres now since 1991. We have had the massive reforms by Judge Dickson. General Watkin was intimately involved with that reform. We have had the five-year review by another justice of the Supreme Court. Both of these gentlemen are ex-colonels and familiar with the military system, also. There are recommendations to be implemented. We know that 52 out of 57 recommendations were implemented. These were not. They are sitting there.

Why did we not implement these recommendations? The Judge Advocate General in the other place said that the current system of four courts martial met our requirement. However, obviously, at one point, it did not meet it anymore.

Is it because we have had so many courts martial, we do not have enough judges or lawyers to handle them? Is it because we have an increased tempo or increased size of force and maybe that section or organization is not built up enough? Is it because you have a massive backlog and that backlog has created a momentum in which, all of a sudden, this objection by a judge in the appeal has come forward?

Is there an inability by the Judge Advocate General branch to handle what is coming through the system, as courts martial? Is it changing or seeking to change the National Defence Act because of these courts martial and the appeals on its own, without suddenly being caught by this appeal court more than five years after Justice Antonio Lamer's report said that we should be looking at these?

Mr. MacKay: Senator, first, there was, you may recall, a difference of opinion on this issue between Justice Lamer and Justice Dickson. That is to say that Justice Lamer was of the view then that there was a breach of constitutionality, if you will, in this mode of election. Justice Dickson was not of the same view and, therefore, did not make the recommendation. Therefore, there was not that urgency at the time. Some might view that as normal. Judges very often sitting on the same case disagree, which is why we have dissents. There was also a policy issue in addition to constitutional issues when it came to adapting and adjusting the justice system.

Your points regarding the backlog in the normal course of events is a question above and beyond this particular subject matter. I think I would prefer to refer the question to the Judge Advocate General himself, who can speak to the capacity of our current Office of Judge Advocate General and directorate to handle the caseload before them.

Senator Dallaire: You have indicated that this is not within the context of the bill. Referring to the Judge Advocate General, I would just like to bring your attention to the fact that, when this bill was proposed, we are also talking about the Court Martial Appeal Court of *Queen v. Grant*. In that case, we mentioned it is not a breach of the Charter. However, the matter that was statutorily required to be tried by court martial was due to the passage of time, to be retried by a summary trial. There was a need to clean up the timeliness aspect also. Am I not correct?

Mr. MacKay: You are correct. Yes, there were implications subsequent to *Trépanier* in the case of the *Queen v. Grant*. Yes, there is an issue that is also being addressed in this particular legislation that stems from the decision in the *Queen v. Grant* decision.

Brig.-Gen. Watkin: You have raised two issues and one is the whole question of the delay in the four and a half years. I might set that aside for a second to address the other question that you raised in terms of backlog and resources.

• (2100)

It is true that the *Grant* case was related to that issue. We have a two-tiered system in the military justice system of summary trials, which happens at the unit level and that the legislation clearly sets outside. It was one recommendation of the late Chief Justice Lamer that there be a one-year limitation on trial at the unit level. Then the matter would be sent to court martial if it did not happen within the year. That is clearly there to emphasize the need to deal with matters summarily. It is called the summary trial for a purpose; it is meant to be exactly that.

That has happened in the system. The military justice system, like the Canadian justice system writ large, has challenges of trial delay. I included the issue of trial delay in the military justice system in my annual report as one of my main concerns.

A number of initiatives are ongoing. Last year, we were in the process of receiving a final copy of a review from the Director of Military Prosecutions on its handling of cases. It examined its processing of files and its resourcing to determine what, if any, additional procedures or bodies would be put in place to make that part of the process more efficient.

We are in the process of looking at the Directorate of Defence Counsel Services. As you are aware, every member of the Canadian Forces has the right to be represented by a lawyer at trial. This is unique to justice systems in Canada. We have a fully-funded legal aid system whether it is a military lawyer, fully-qualified and called to the bar in a province of Canada, or a civilian lawyer. The accused has the right to be represented by civilian counsel.

In addition, in my office, I have a review ongoing by a working group with representatives from the military chain of command and from various parts of my office. The working group looks at ways to streamline the system to determine how to maintain the necessary fairness for individual soldiers. We also want to see where we can be 10 years down the road from the reforms that were introduced following Chief Justice Dickson's report. Internally, we want to determine what recommendations can be made in statute, in regulation or as matter of policy to address the trial delay issues.

Therefore, as an organization, we are looking at the issue of trial delays. As the superintendent of the military justice system, I am concerned and we are addressing the issue.

Senator Dallaire: What about the delay of four and a half years?

Brig.-Gen. Watkin: I would like to address that issue, senator. The four and a half years arises counting back from the report of the late Chief Justice Lamer. That report was referenced here tonight.

The Senate is well aware of the significant reviews that took place at the end of the late 1990s that included the Somalia Commission of Inquiry and two reports by the late Chief Justice Dickson. Those two reports had a number of recommendations, the vast majority, although not all, of which were followed. That resulted in Bill C-25 and the significant amendments.

As the minister has mentioned, the reason why it was set out in the legislation — I was not involved in that part — is that it appears there is a part of the second report prepared by Chief Justice Dickson stating that it would be the Director of Military Prosecutions who would inform the individual convening the courts what type of trial would occur. At that point, he was recommending that it would be the chief military judge.

Five years later, the Right Honourable Antonio Lamer looked at the situation as mandated by the review process. He raised the issue of whether there should be two types of trials and whether there should be a right to choose given to the accused. However, with respect to the issue that it raised at the constitutional level, that was a matter left in the policy realm regarding the approach taken.

It was in that context in which the report was reviewed and it was reviewed very seriously in terms of what options were available. The other piece that is not clear to the public was that there had been previous Court Martial Appeal Court decisions. This is the same level of court that there was in *Trépanier* and *Nystrom*, which I will talk about shortly. These cases held that it was not a problem having a member of the chain of command who could choose the type of court. That was the old convening authority of which you would be aware. There was already binding case law that said this was not problematic.

In 2005, in the *Nystrom* case, the Court Martial Appeal Court of Canada addressed this issue for the first time. They indicated that they would not comment on it from a constitutional perspective, but they had serious concern that we were not paralleling the civilian justice system. That matter was examined at that time and the Director of Military Prosecutions changed her policy in May 2006. The policy allowed an individual accused, if they wished, to request the type of trial they would have, that she would then pass on to the convening authority.

That request was made seven times at the level of the Director of Military Prosecutions and, in each case, the accused was given his or her choice.

The other piece, which is not clear from the factual record, is that the *Trépanier* case was relying in part on the information in Chief Justice Lamer's report. In fact, at that time, there were standing courts martial being convened.

Chief Justice Lamer identified one of the concerns the system had was the lack of a unanimous verdict. That was part of his understanding why courts were not proceeding to have panel courts because of concerns that it did not mirror the civilian system and because of administrative concerns.

Two years ago was the start, again, of disciplinary courts martial, which is a panel court. Last year, 20 per cent of the courts martial in the Canadian Forces involved the equivalent of a judge and jury.

I have tried to determine the statistics in the civilian system. I know there are many lawyers in the Senate. I certainly cannot put my hand on my heart and say with 100 per cent certainty, but the best statistics I can find are that approximately two per cent of trials in the civilian justice system are jury trials. We are at 20 per cent. Therefore, in terms of the accused and their ability to go before panel courts, we are certainly there.

About seven weeks ago, the Court Martial Appeal Court determined that this was a constitutional issue. We have reacted in that time and have focused on putting before Parliament a bill that addresses *Trépanier*, which also referenced the Lamer report. We have focused on those issues and those parts of the unanimous vote that would solidify this form of trial in our system and provide extra rights to the accused.

Senator Dallaire: I fully recognize the urgency of this bill.

Senator Andreychuk: Mr. Minister, I do not know if you want to answer this question or the Judge Advocate General.

I am looking at the proposed section 18, which would change clause 202.12(1) and then continues in section 19 to change subparagraph (3).

I understand this is a consequential amendment. However, I am more concerned on the issue of fitness to stand trial. Recently, we have become more and more acquainted with the consequences of sending troops overseas. The government has responded with new programs to assist the troops.

It seems that this section does not quite mirror what we do with charges in the civilian courts. That would be a policy concern to me. Are you factoring in the new understandings of "fitness"?

Brig.-Gen. Watkin: The provision to determine if someone is unfit to stand trial was brought in a number of years ago to ensure that we did as much as possible to mirror the civilian justice system.

As I have mentioned, each of our accused is represented by qualified lawyers and defence counsel. There is a process in place in the legislation that allows those issues to be raised. We have had past cases where the issues that you mentioned had been raised before courts martial. The judge will listen to the evidence in terms of doing that and make a determination as to fitness to stand trial.

From my perspective, we have a system which is very much attuned to this issue. Like the civilian justice system, it has a process to enable an accused person to put this before the court and have a court rule on this issue.

• (2110)

Any justice system is capable of further review and analysis. Interestingly enough, as part of the court process, the accused can challenge any of the provisions and come before the Court Martial Appeal Court and may, like the *Trépanier* case, end up before this house as a result of recommended changes to the legislation.

We are attuned to the issue and the problem and very concerned that accused persons' rights are met at courts martial.

Senator Andreychuk: Am I correct in saying that if we were to study and review we could look at this entire area, but within this bill, all you have done in touching the fitness to stand trial is the consequential amendment of the court?

Brig.-Gen. Watkin: Yes, that is correct. The purpose of this bill is simply to be a consequential amendment. The focus of the bill is to have the system avoid the uncertainty which I already mentioned and to provide the rights to the accused framed by *Trépanier* and by reference to Chief Justice Lamer's report. The result of that is expanded rights to the accused. A number of consequential amendments flow from that, but they are truly consequential amendments.

Senator Andreychuk: To confirm with you, clause 18, which changes 202.12(1), is a consequential amendment and does not change in substance how we would look at the fitness to stand trial and the process; is that correct?

Lt.-Col. Gibson: Senator, the answer is yes. To provide a slight degree of specificity to that, when we were drafting that provision, as I mentioned before, the drafters went through and did a word search. Since we were reducing the number of trials to two, we knew that the only type of judge-alone trial that would be in our system henceforth would be a standing court martial. That is why it was decided to include the words "standing court martial." In essence, it is a consequential amendment in light of the change in the number of courts proposed in the bill. There was no substantive change.

Senator Milne: Minister, I believe your preliminary remarks stated that this bill addressed the problems because of the *Trépanier* decision and nothing else. However, Senator Dallaire has pointed out clearly that it does address something else. It adds at least three clauses that amend the National Defence Act because of the *Grant* decision.

Was there some urgency in that? Why did you put them in this bill rather than leave them to the second bill that you intend to bring in?

Mr. MacKay: I believe I answered this question earlier. The *Grant* decision had similar concerns expressed: that is, the constitutionality of the election of mode of trial and the denial of the accused to have a say in the mode of trial.

The *Trépanier* amendments similarly cover the concerns raised by *R. v. Grant*.

Senator Milne: "Similarly cover" them? I am sorry; I do not follow you there, sir.

Mr. MacKay: I am sorry; what is your question?

Senator Milne: I do not follow what you mean when you say "similarly cover" them.

Mr. MacKay: Senator, the issues with respect to the very specific amendments contained in this bill are aimed at changing the mode of trial and moving from four to two modes of trial. That was also the subject matter of the case *R. v. Grant*. This bill speaks specifically to those concerns around changing the mode of trial.

There is an additional change in the system in that it also allows for counsel to have pretrial consultations with a judge.

Senator Milne: Turning to Senator Andreychuk's question on clause 18 of this bill, we are simplifying everything; we are moving to two modes of trial. However, if someone is found unfit in the first court martial to stand trial, the military judge shall cause the Court Martial Administrator to convene a standing court martial, the second court martial, to hold an inquiry and determine whether sufficient admissible evidence can be adduced at that time to put the accused person on trial again, the third court martial. This is not particularly simplifying matters.

Mr. MacKay: It is, in fact.

Lt.-Col. Gibson: Minister, I might be of some assistance on that point. As I pointed out earlier, we were not engaging in any substantive change to that particular provision. We indicated that we would have one type of court.

In order that honourable senators understand the operation of that provision, it is meant to take place after the passage of time. In the event of an initial finding of unfitness to stand trial of court martial, the act provides for a subsequent review at periodic intervals to see if there is still sufficient evidence.

The clause states that when it comes time, two years down the road, to see whether the person is still unfit and whether there is still sufficient evidence to put the accused on trial if they were subsequently to become fit, the mechanism to accomplish that will be a standing court martial.

Senator Joyal: Welcome, Mr. Minister. I must tell you that I appreciate the courtesy of your opening remarks to the Senate. Sometimes your colleagues testify here and do not show the same kind of appreciation of Senate work. Personally, I appreciate the cooperation you have shown us tonight.

Returning to the question put by Senator Nolin, I am not sure that I understand the logic of the position you have given as an answer.

It is my understanding that if this bill is adopted then the Department of National Defence would accept the principle of election of trial by an accused as serving section 7 and 11(*d*) of the Charter. I thought that this bill settled that question in relation to election of trial. However, we find ourselves in the bizarre position whereby tonight you suggest that we do that. Personally, I think that is the right thing to do.

Tomorrow evening, if the bill receives Royal Assent, you will run to the Supreme Court and try to convince the Supreme Court that this is wrong and that we should return to the status prior to Bill C-60 where, in fact, an accused within the army should not have the right to elect trial under section 7 and 11(*d*) of the Charter.

It seems that you have a double interpretation of the same principle. I would rather concur with this bill to satisfy the principle of the decision. On the other hand, I can understand that there might be some, to take your words, policy issues that need to be addressed. However, the principle should stand.

Mr. MacKay: That is the intention, senator. I can assure all honourable senators that were an appeal to be granted by the Supreme Court that was to in any way determine that the decision in *R. v. Trépanier* was incorrect and that the constitutional violation that was pointed out by the judge was not the case, we will not then revoke this bill or change the law or go about putting in place a military justice system that would reinstitute the four modes of trial and then uncouple or unlink the military system from the civilian justice system. We have every intention of following through on the full application of the law here.

I would, however, submit to you that there are still elements of the decision which are worthy of review by the Supreme Court.

I might again call on Brigadier-General Watkin to expand on that for your edification.

Senator Joyal: It would be helpful for us to satisfy that we are not undoing with one hand what the other hand is trying to accomplish.

Mr. MacKay: No, and I very much appreciate your question. This is somewhat of an anomaly where we would continue with the appeal should the legislation be passed. There are valid reasons for doing so. I will ask Brigadier-General Watkin to expand on that explanation.

• (2120)

Brig.-Gen. Watkin: The issues before the Supreme Court of Canada are those of a constitutional, legal nature. The *Trépanier* decision itself identified one of the fundamental principles of the Canadian military justice system, which is constitutionally recognized in the Charter.

The provision, section 11(*f*), particularly recognizes that offences under Canadian law dealt with by military tribunals basically have an exemption from the constitutional recommendation of the right to a jury trial for civil trials. It is in the context of first addressing that. Then the court went on to say that it falls under another provision of the Charter, whether it is section 7 or section 11(*b*). That is one of many legal issues that arise in the *Trépanier* case.

The Director of Military Prosecutions at this stage is seeking leave to appeal, so that issue is not settled yet. They are also seeking a stay of execution as well as an expedited hearing.

The issue of the appeal is in its initial forms of seeking leave. If and when leave is granted, then the constitutional issues would be put before the court.

I think it is important to identify that having legislation and going before an appellate court is neither shocking nor necessarily unique. The example that I provide in that case is *R. v. Genereux*, which was the 1992 case of the Supreme Court of Canada involving the military justice system where there was an appeal to the Supreme Court of Canada. In the intervening period, Queen's Regulations and Orders were amended, and the Supreme Court of Canada in that case commented favourably on what the amendments were. There are other examples under Canadian law.

There is the question, by policy, of what is the best thing to do in terms of meeting the rights of Canadian men and women serving in uniform. Clearly, there has been an indication by both Chief Justice Lamer and by the Court Martial Appeal Court in *Trépanier*, and in *Nystrom* previous to that, in terms of the direction they would like to see. There is the separate issue of the scope of the Constitution and the scope of the decision from a legal constitutional perspective, which equally is the position being put forward by the government, and would benefit analysis at the next level of appeal court.

As the minister has indicated, it has not been my experience to remove soldiers' rights under the military justice system. Our focus is to have the best system possible for the men and women in uniform.

Senator Joyal: However, as much as I understand it for the military justice system, the principle — and I think Senator Nolin, in his opening remarks, stated it in better terms than I can express — is that the system must operate as closely as possible to the common law criminal court system. In my opinion, it is only

when there are elements of policies that would command some specific arrangement that the military justice system could detract from the principles of the common law system.

If they go to the court, would the court give them permission as to what level of this decision they will argue that the principles of the *Trépanier* case went beyond or did not satisfy the means of the military justice system to the point where they seek a redress?

Brig.-Gen. Watkin: Of course, the matter is before the courts. In my mind, it is not a question. The issues and arguments are properly before the courts. The question, in terms of this legislation, is: Does it provide, from a policy perspective, increased rights to the accused that allows the system to function in terms of meeting the requirements of the military justice system?

I concur fully that a fundamental requirement of our justice system is to meet Canadian values. As I mentioned from Chief Justice Lamer's report, it is not only those values prescribed in the Constitution. The question of whether it is a constitutional right is different from the issue of whether it should be a right in terms of individuals to be able to have this choice.

Something that has also been mentioned here tonight is that one of the reasons the military was not in favour of going down this road was the concerns that they were from an administrative perspective.

In 1994, there was a unanimous decision of the court with a court martial appeal in the *Graveline* case, which said they fully understood why one would want to have the option of the convening authority in order to pick the type of trial. The danger would be in having a general court martial in a remote location. Of course, our justice system operates across Canada and worldwide.

In the intervening time and even in the last couple of years, I mentioned that we are at 20 per cent now in terms of panel courts. We will see if that changes when the accused has the ability to choose. We do not yet know whether they will have a preference for standing courts martial or for general courts martial in terms of the type of trial they want. We have a greater comfort level in terms of our ability to have a court martial system, which is at the 20-per-cent level in terms of the number of panel courts we deal with.

From a policy perspective, some concerns that we have had through experience and the changes that were made by the Director of Military Prosecutions have put us in a better position to address these issues in light of the *Trépanier* decision.

Senator Joyal: Do you think that with this bill, the court would presume the system you propose is operational in the context of the mandate of the Canadian Armed Forces in that you will be able to, with this bill that will have become an act of Parliament by that time — that is, if they grant you permission to argue your case — you will be in a better position to convince the court this is not the proper system to follow?

Brig.-Gen. Watkin: I would never presume what a court would presume. I am in a difficult position in trying to answer your question. That is the nature of the court process. The judges truly are independent, and they will come down with the decision they think is best framed for the military justice system. I will react to that decision in the course of my duties, and we will see whether other people will react as well in terms of the decision to be made.

Senator Grafstein: This is only a mechanical question. I want to be clear to you and to the military that we in no way, shape or form in the Senate have been critical of the military system, of the officers that serve so nobly in the system or their concern for social justice. On the contrary, in my speech earlier today I complimented the military court of appeal for bringing this matter to a halt, which we commended them for.

I do not want anyone to leave this Chamber with the impression that any of us, certainly not myself, who are critical of Parliament would be critical of the military and its efforts to provide a social justice system that, as you say, is admired around the world.

With that said, I am now concerned with the legislation again because time is of the essence. Justice delayed is justice denied. Why does it take, essentially, 90 days from the time the decision came down to implement this bill after the legislation? If I read the legislation carefully, it says that we started on April 24; May 24 and June 24 passes us by. Let us assume for the moment that the bill passes within the next few days; there is still another 30 days after Royal Assent to implement this bill.

Why does it take so long, keeping in mind that you have been working at this for all these many hours and days, if time is of the essence?

Mr. MacKay: In your preamble, you referenced the respectful deliberations, discussions and speeches that have taken place in this chamber. I follow the deliberations of your chamber.

• (2130)

I commend the tenor, the tone and the attention to detail on matters related to our justice system and our military system. I commend all honourable senators for the way in which you conduct yourselves, in particular on matters of national importance such as this where there is a great deal at stake. I would even go so far as to say that in the House chamber we could probably learn from your decorum and the way in which you deal with these matters.

To your point on the 90 days, from the time this decision was handed down, there was an immediate recognition of the necessity to move quickly. We looked at a number of options, including appealing to the Supreme Court. That option was pursued, and there was some hope that the Supreme Court would find it necessary to suspend the application of *Trépanier* to allow this process to occur.

When it became clear that we would not get leave to seek a stay, we looked at bootstrapping this bill, with amendments, into Bill C-45. We attempted to do that. That was denied by the Clerk of the House of Commons based on procedure, so we found ourselves in this dilemma. We then moved post-haste to deal with it in a stand-alone fashion and went about the sometimes very arduous task, to which you can relate, of seeking unanimity

among all parties in the House. We briefed the defence critics and justice critics of the opposition parties in an effort to seek their consent, and that took some time.

On a personal note, I was away for much of last week and previous to that because of repatriations and my attendance at a NATO summit in Brussels last week.

Senator Joyal: Minister MacKay, you alluded to recommendation 23 of Justice Lamer. I have that recommendation in front of me. I will ask the clerk to provide you with a copy. You might want to read it quickly to refresh your memory.

In your opening remarks, you mentioned Bill C-45. Its summary lists the subjects that are covered by Bill C-45. As I understand it, all but two of Justice Lamer's recommendations would have been covered by Bill C-45. Am I correct?

Mr. MacKay: Fifty-two of fifty-seven recommendations were included.

Senator Joyal: That means that there are still recommendations to be acted upon. Is Bill C-60 your complete answer to recommendation 23?

Mr. MacKay: This recommendation deals with the anomaly of having a court martial that could try minor offences versus serious offences. It is that dividing line in the sand, if you will, between what, in our criminal justice system, would be indictable for summary offences or hybrid offences where there is an election.

Yes, this is an attempt to have the military justice system mirror the civil criminal justice system by allowing the accused to elect trial by judge or by judge accompanied by another body, which is commonly known as a jury in the civilian system.

Senator Joyal: Which other recommendations are left for the department to act upon that are not covered by Bill C-45 and Bill C-60?

Mr. MacKay: I do not have Bill C-45 in front of me.

Are you are asking me which recommendations we are not proceeding with that are contained in this other bill?

Senator Joyal: If Bill C-60 and Bill C-45 are enacted, which recommendations of Justice Lamer would remain for the department to deal with?

Mr. MacKay: As you know, Bill C-45 has not been to committee. The committee, in its wisdom, may choose to refuse to accept all of the amendments contained therein or to add amendments with regard to the remaining recommendations of Mr. Justice Lamer.

Bill C-45, as we discussed earlier, has a much broader scope. The breadth of that bill could very well, at the end of that much more involved process, incorporate all, some, or fewer of the recommendations made by Mr. Justice Lamer.

Senator Joyal: In other words, there is still space for additions to Bill C-45 and Bill C-60 with regard to the remaining recommendations that the former Justice Lamer put forward in his report of 2003?

Mr. MacKay: That is correct. The drafters of Bill C-45 drafted with the direction and advice of the Department of National Defence, and the Office of Judge Advocate General would have been intimately involved. Those recommendations made their way into Bill C-45.

Again, at the risk of repeating myself, our preference would have been to have a single bill. We would never have the audacity to try to pass a bill as comprehensive as Bill C-45 through both chambers in 72 hours or less. There is a great deal of information contained in Bill C-45 that will require the scrutiny and the committees of both Houses.

The short answer is yes. It is still possible to amend Bill C-45 by removing amendments or adding amendments with regard to recommendations of Justice Lamer that are not currently contained in it.

Did you wish to add anything to that, Brigadier-General Watkin?

Brig.-Gen. Watkin: Not all of the recommendations of Chief Justice Lamer went to the heart of the military justice system. I do not have the full list in front of me. For example, one recommendation was that the court martial administrator should be a deputy head. Some of the recommendations are policy choices in terms of what is required for the administration of the public service.

Fifty-two of the fifty-seven recommendations were accepted in whole or in part. We clearly want to put forward that it was the late Chief Justice Lamer who made these recommendations, and they were seriously studied within the department and within the office of the Judge Advocate General. The question is about taking those recommendations, assessing them against the needs of the military justice system and making recommendations, putting them into legislation and making it go forward.

• (2140)

One recommendation which was not accepted in whole was the notion of a permanent court. However, Chief Justice Lamer had recommended an interim approach, which was looking to put in place amendments that would allow you to give the powers that a judge at a permanent court would have and setting up a working group to look at what he acknowledged was a very complicated issue in terms of creating another court under the Canadian justice system. That review did take place. The view was that the amendments could be put in place in terms of putting forward the powers for the judge, so the judge would have the powers set out under the legislative scheme to allow them to deal with the issues before them, meet the needs of the military justice system so that the system would be fair and efficient and maintain its character, which it has always had, as a court being convened to deal with a specific issue.

That is an example of one of the issues that was put forward. That is why you will find in Bill C-45 specific references to the authority of judges, and particularly pretrial, in terms of the authority they have.

Senator Nolin: If I may, minister, I will ask my question to the Judge Advocate General.

I understand the reason you want to maintain the appeal. The Constitution's interpretation of the appeal court is probably not the one you want to keep, and you want the Supreme Court to clarify that situation. That is what I am reading from the answer of the minister and your answer.

What about the stay? Why do you maintain in regard to the request to the court to stay the decision of the appeal court?

Brig.-Gen. Watkin: Just to clarify, one of the questions that is put before the court in leave to appeal is this: Is there a matter of national importance which the Supreme Court should hear? That is the first issue they will deal with. Then the constitutional arguments will be put before the court, and they will make their determination. That is what is being suggested to the court; namely, that there are arguments of national importance that should rise to the Supreme Court level.

Senator Nolin: That is exactly what we want to hear. That is the question we are asking you.

Brig.-Gen. Watkin: The question with respect to a stay is simply that. At the court martial level, a request was made for a stay of the effect of the judgment, and the Court Martial Appeal Court refused to grant that.

The next level, in terms of being able to address that, is at the Supreme Court level. As it stands today, we have a system that, as I have already identified, is not functioning in terms of courts being preferred and convened because of a lack of legislative basis and the problems that the existing courts are running into as they try to operate. That is the effect of a stay of execution at the Supreme Court of Canada level.

Senator Nolin: We understand that. What is not in Bill C-60 that the court will stay? What is so important for the national interest? That is what I want to hear. What is so important?

Mr. MacKay: If I could, in short order, we did not want to be presumptuous. That is the short answer. If this particular bill is to pass, the necessity of a stay no longer exists.

Having said that, we do not want to pre-empt the vested right and the decision-making authority of the prosecutor who is handling this case. It is more a question of the appropriateness of this Senate, this body, this legislation or anyone other than the prosecutor who is handling that file to make the decision to withdraw the necessity of seeking a stay from the Supreme Court.

I suspect strongly, and, again, I would not prejudice that decision, that were this legislation to pass, were this issue then to be addressed as far as the constitutionality, there would be no necessity for a stay.

Senator Grafstein: I did not quite hear your answer. There was some consideration by Mr. Justice Lamer about a permanent court. I believe you have indicated in your answer that you discarded that option. Is that correct?

Just before you complete that, I recall there was some discussion way back when we discussed that, if my recall is correct, 10 years ago. I see Senator Nolin is nodding his head. We were looking at other systems, for example, the United States and other military systems, where they had established some sort of permanent establishment, and we felt that perhaps that would develop a school or a team of professionals who were focused on the issues as opposed to seriatim selections.

Am I right that you have discarded that, or has that been incorporated into the system?

Lt.-Col. Gibson: We looked carefully at that recommendation as it was one of the more prominent ones made by Chief Justice Lamer. The way we have characterized their response is we have accepted it in part. It is not amongst the five we have clearly indicated were not initially accepted following the assessment of Justice Lamer's report.

I say we accepted it in part because Justice Lamer in that recommendation made an assessment of a number of functional or independence deficiencies in the system, but he did not identify with any particularity how a permanent court could remedy those, nor did he delineate in any detail what he meant by that. He rather indicated that a working group be struck to study it, and so we did.

We concluded from that that even some of the concerns that Chief Justice Lamer expressed would not, in fact, be addressed by a permanent court. For example, regarding the independence of military judges, their security of tenure would have to be addressed by separate provisions, and that is addressed in Bill C-45. We focused on specific functional attributes where he identified a deficiency that he thought might be remedied by a permanent court and put those provisions into Bill C-7, ultimately Bill C-45. A couple of them have manifested in this bill because they are necessary as part of the package for making recommendation 23 work.

The short answer to your question is that we consider that we have accepted it in part, senator.

Senator Grafstein: We will see some of the responses more clearly in Bill C-45 that deal with the question of tenure, independence, and so on. We should see them in that provision and read the two of them together.

Lt.-Col. Gibson: Absolutely; Bill C-45 is meant to be the legislative response to the Lamer report.

Senator Joyal: I bring to the attention of the witnesses and the minister that there are small mistakes in the decision of the court.

In paragraph 7, the court read the relevant provision, and it read section 165.15 in the English version of the act and 165.14 in the French version of the act. They conclude in section 165.14. If you want to take the decision, you can call it a clerical mistake, but they chose a paragraph in the French version and a paragraph in the English version, and they are not similar paragraphs at all in the decisions.

Mr. MacKay: You have demonstrated the value of the upper chamber in demonstrating the meticulous nature that occurs in the examination of bills that come before you. I appreciate that, and we will ensure that the final approved copy, were it to be approved, would reflect that amendment.

The Chair: Mr. Minister, on behalf of all senators, I want to thank you for joining us today to assist with our work on this bill.

• (2150)

I also thank Brigadier-General Watkin and Lieutenant-Colonel Gibson.

Mr. MacKay: It was a real honour. This situation in which we found ourselves, and I as minister found myself, was unusual. I greatly appreciate your indulgence and your respectful acceptance of this request to bring this bill forward. On behalf of the Canadian Forces and the men and women in uniform on whom this will have an effect, we are eternally grateful.

[*Translation*]

The Chair: Honourable senators, shall we proceed to clause-by-clause study of Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act?

Hon. Senators: Agreed.

The Chair: Shall the title be postponed?

Hon. Senators: Agreed.

The Chair: Shall clause 1 carry?

Hon. Senators: Agreed.

[*English*]

The Chair: Shall clause 2 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 3 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 4 carry?

Hon. Senators: Agreed.

[*Translation*]

The Chair: Shall clause 5 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 6 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 7 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 8 carry?

Hon. Senators: Agreed.

[*English*]

The Chair: Shall clause 9 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 10 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 11 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 12 carry?

Hon. Senators: Agreed.

[*Translation*]

The Chair: Shall clause 13 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 14 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 15 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 16 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 17 carry?

Hon. Senators: Agreed.

[*English*]

The Chair: Shall clause 18 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 19 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 20 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 21 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 22 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 23 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall clause 24 carry?

Hon. Senators: Agreed.

[*Translation*]

The Chair: Shall clause 25 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 26 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 27 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 28 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 29 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 30 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 31 carry?

Hon. Senators: Agreed.

The Chair: Shall clause 32 carry?

Hon. Senators: Agreed.

The Chair: Shall the title carry?

Hon. Senators: Agreed.

[*English*]

The Chair: Shall the bill carry without amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Chair: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

[*Translation*]

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rose-Marie Losier-Cool: Honourable senators, the Committee of the Whole, to which was referred Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act, has examined the said bill and has directed me to report the same to the Senate without amendment.

THIRD READING

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

Hon. Pierre Claude Nolin: Honourable senators, with leave of the Senate and notwithstanding rule 28(1)(b), I move that the bill be read the third time now.

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

[*English*]

Honourable Senator Nolin has moved third reading of the bill now. I will put the question in English. It requires unanimous consent.

Hon. Sharon Carstairs: I would like to know why the urgency to do it now and why it could not be done tomorrow.

Hon. Gerald J. Comeau (Deputy Leader of the Government): My understanding is that tomorrow would be the last day whereby we could get into the Royal Assent line. The Senate will sit at 1:30 p.m. tomorrow. Generally speaking, when we go through our Senators' Statements, Routine Proceedings and Question Period, we are close to 3 p.m. That means we would have to do everything right after Question Period, when the Senate must rise to receive the Governor General. At that point, if we have not passed the bill, we must wait for the Governor General, and my understanding is that the Governor General will be away for a period of time. We would need to come back possibly next week or the week after.

However, if we were to proceed with this bill tonight, we would be in a position, if the bill were to pass, for Royal Assent tomorrow.

My understanding, as well, is that this bill is not one where the judges are in agreement to sign, so we need the Governor General's assent. I urge the Senate to proceed with this bill tonight while we have the chance.

Senator Carstairs: Honourable senators, I will not put an obstacle in the way of this bill, but I would have preferred to have changed the order tomorrow so that we could at least have done this over two days and not one. We could have had unanimous agreement to change the order tomorrow and to have started with government bills at 1:30 p.m. That would have been my preference. Having said that, I will not deny leave.

The Hon. the Speaker: Honourable senators, I take it there is unanimous agreement that we have third reading now.

Are honourable senators ready for the question?

An Hon. Senator: Question!

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—THIRD READING

Hon. Consiglio Di Nino moved third reading of Bill C-21, An Act to amend the Canadian Human Rights Act.

He said: Honourable senators, I will add a few words to the comments I made on second reading.

I thank all who participated in the study and analysis of this bill. I thank you all for your contributions. This is not a particularly complex bill, but it is a bill that deals with a complex issue that impacts a large number of Canadians.

• (2200)

Honourable senators, the time has come to move forward on Bill C-21, An Act to Amend the Canadian Human Rights Act. The legislation proposes to repeal the exemption granted in section 67 of the Canadian Human Rights Act. Once this exemption is eliminated, all Canadians, including those residing in First Nations communities, will have full access to human rights protection mechanisms.

When Parliament endorsed the Canadian Human Rights Act some 30 years ago, section 67 was considered a temporary measure. Its inclusion was something of a compromise, needed to establish a regime that granted unprecedented levels of rights and protection to the vast majority of citizens. Unfortunately, subsequent attempts to repeal section 67 failed. Today, decisions taken under the terms of the Indian Act remain exempt from the provisions of the Canadian Human Rights Act. This effectively means that the rights of one group of Canadians are not afforded the same legal protection as those of other citizens. It is discrimination, pure and simple.

The injustice of the situation has been well-documented by a long list of authoritative groups — two parliamentary committees, including the Standing Senate Committee on Human Rights, which studied and reported on Bill C-21 without amendment — who have called repeatedly for the repeal of section 67. Eight years ago, Parliament's statutory review of the Canadian Human Rights Act made the same recommendation. Numerous international groups, including the United Nations Human Rights Committee, have gone so far as to censure Canada for keeping section 67 on the books.

The legislation now before us is the product of a lengthy process of collaboration, review and refinement. An initial version of the bill was introduced into Parliament two years ago. A committee in the other place suggested significant changes to a subsequent version. This government, in the interests of moving the legislation forward, agreed to most of these changes. Bill C-21 now enjoys all-party support in the other place.

Last week's remarkable events provided further impetus to approve the proposed legislation. The Prime Minister, on behalf of all Canadians, has issued a full apology to former students of Indian residential schools. As honourable senators will appreciate, the apology represents an important step in the ongoing journey towards healing and reconciliation. Bringing resolution to a legacy of Indian residential schools lies at the heart of reconciliation and a renewal of relationship with former residents, their families and communities.

The repeal of section 67 also paves the way for a stronger and more respectful relationship between Canada and the residents of First Nation communities. Bill C-21 honours the commitment made by this government on numerous occasions and reiterated in the Speech from the Throne. Last week in this chamber we heard Aboriginal leaders express their support for the repeal of section 67 and call upon us to pass the bill.

Honourable senators, today we can show Canadians and the international community that we believe in justice for all, that all citizens should be equal before the law and that the rights of the most vulnerable members of society must be protected. Bill C-21 offers a practical and careful approach to the repeal of section 67 — an approach that enjoys widespread support and finally, after 30 years, we will close this legal loophole.

I urge honourable senators to support Bill C-21.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak at third reading of Bill C-21. This legislation will repeal section 67 of the Human Rights Act. The section 67 exemption prevented complaints of discrimination if the alleged discrimination action involved matters covered by the Indian Act or was done under authority pursuant to the Indian Act for the last 31 years. Today, we will close this human rights gap so that First Nations people can enjoy human rights protection afforded other Canadian citizens.

Aboriginal Peoples Congress Chief Brazeau has informed us that:

> . . . your duty is to complete the work that needs to be done on Bill C-21. As leaders, we have important work that will follow from this piece of legislation. The reality today is that Inuit and Metis people enjoy full access to Canadian human rights. It is time for us to move beyond partisan politics on the issue of human rights and bring justice to myself, my children and the hundreds of thousands of First Nations peoples across Canada who are still being denied their basic fundamental human rights.

This is what he said to the committee when he was present at the committee hearings.

At the committee there was a recurring concern about this legislation during the committee stage of this bill that I feel compelled to bring to the attention of honourable senators. This is the issue of providing enough resources to the Canadian Human Rights Commission and to the individual complainants. When asked if there were enough resources, the Chief Human Rights Commissioner, Jennifer Lynch, testified:

> The sufficiency of resources will define the success of implementation, and an insufficiency of resources is its greatest risk.

The Human Rights Commission has estimated it will need approximately $5 million over three years to build the capacity necessary with the passage of Bill C-31. This funding would include an education component of $1.7 million per year. Given that the commission is not able to gauge how many complaints it will receive after the repeal of section 67, we must approach funding the commission with flexibility.

The Human Rights Commission should be commended on the groundwork it has already done regarding the repeal of section 67. It has already created a national Aboriginal initiative headquartered in Winnipeg. It merely waits for funding. Commissioner Lynch said:

> . . . as soon as we have funding . . . it will become a permanent program, at which point we will be able to launch even more activities than we have right now.

The commission's plans are ambitious and it requires funding for more than just processing complaints before it. Chief Commissioner Lynch said:

> There is some perception that our mandate is restricted to complaint processing, and we do have a history of that, but one of the key aspects of our implementation strategy is to work with First Nations to build community-level redress systems and strengthen existing ones.

The chief commissioner sees enormous potential to develop a whole system that starts with a dispute resolution structure and supported by other processes and practices that will shift the emphasis toward the front-end prevention of discrimination and education.

Honourable senators, what was particularly encouraging when the commissioner presented her testimony to the committee was that she was going to be including traditional ways of resolving conflicts in the Aboriginal communities. According to the chief commissioner, the core principles of its programming:

> . . . should have as their goal the fostering of a culture that treats conflict resolution as a building block to creating inclusive and productive communities and workplaces. In short, the building of this culture takes time and resources, as well, of course, developing our dispute resolution structure.

Chief Commissioner Lynch made a compelling statement last night. She said:

> What suffers when a new activity is taken on by the Canadian Human Rights Commission without additional funding? We are conscious of our legislative mandate, and we do our best to fulfil it, but something has to give. If we have no funding, if I tell you here that we can therefore not meet this mandate, it will mean we will have to do a lesser job on another mandate that is equally important to us and is legislated. It is very hard for us.

Another witness to the committee was Ellen Gabriel of the Native Women's Association. She spoke of the requirements for a new system of dealing with human rights. She said:

> ...there must be an appropriate and adequate implementation plan in place before repeal occurs; the plan must contain clear time frames, identifying principles, criteria and standards, include definitions and roles and responsibilities for all actors in the process; and the plan should specify how the unique needs of individuals who speak an Aboriginal language or who live in a rural or remote area will be met.

Ms. Gabriel further stated:

> There should also be means identified by which those First Nations who are currently using the alternative dispute resolution or other traditional or customary criteria or approaches to dispute resolution to manage human rights complaints are facilitated to retain these approaches and engage them prior to individuals entering the formal Canadian human rights complaint process.

• (2210)

On the issue of funding, Ms. Gabriel echoed testimony by the Chief Human Rights Commissioner and said:

> ..there must be adequate funding resources and capacity in place to respond prior to the repeal taking effect. Resources will be necessary before and after the repeal, including means of providing redress for complaints. Resources will also be needed to evaluate the implementation plan, analyze outcomes and identify best practices or concerns both during implementation and after repeal takes effect.

Honourable senators, on the issue of accessing human rights, my concerns about providing a method whereby First Nations people can access legal aid has only intensified after hearing from witnesses yesterday. It is true that legal aid is not normally given to any claimant before the Canadian Human Right Commission. In this regard, the minister stated, when asked, that First Nations people will be treated the same as any other citizen.

On the face of this statement, it must be seen like "equal treatment," but we all know the principles of equality. When we treat people equally at times, we do not give them equal treatment. We know that the First Nations people face obstacles that other Canadians do not. Therefore, it is not equal treatment. We need to do more.

After section 67 is repealed, I know there will be some Aboriginal people who will encounter some difficulty accessing their rights. Chief Commissioner Lynch has said:

> I expect there will be some highly complex cases brought forward that may address issues, almost what you would call class-action type things.

Honourable senators, we must ensure that the issue of legal aid be looked at during the 36-month grace period. There is a 36-month grace period for the Government of Canada and the Aboriginal authorities to make the necessary changes to comply with Bill C-21.

Honourable senators, I state to you today that our work on this issue is not over. Reports will be submitted to both Houses of Parliament. The government must report back its findings before the grace period of 36 months. There is also a five-year review by Parliament. These requirements are set out in Bill C-21. These reports are opportunities for us to ensure there is proper programming and funding in place to assist First Nations communities to become compliant with the Human Rights Act. It is also an opportunity for us to review programming and learn what we need to do better to ensure the best access for Aboriginal people to their human rights. I know we, as a chamber, will be vigilant as, to a great degree, success of this bill depends on this vigilance.

Before I conclude my remarks, today I also want to acknowledge the work of Senator Kinsella, who has taken leadership on this issue by introducing a private member's bill a few years ago to repeal section 67. I also want to thank the Human Rights Committee under the leadership of Senator Andreychuk who, also a number of years ago, asked to repeal section 67.

In the words of the Aboriginal Congress Chief Patrick Brazeau:

> Let us get on with it; let us make it right; and, let us restore the pride in the hearts of Canada's First Nations people by according us the same rights that every other Canadian citizen enjoys in this country today.

Hon. A. Raynell Andreychuk: Honourable senators, I want to add a few words with respect to Bill C-21. Perhaps I have been somewhat pre-empted by Senator Jaffer, and I thank her for her words.

The Standing Senate Committee on Human Rights looked at this issue, as well as Senator Kinsella, in his bill. Therefore, the subject matter of the deletion of section 67 was well known by our committee.

Yesterday, I think the committee did due diligence in hearing from all parties who have an interest and responsibility to ensure that Bill C-21 follows the road map that is placed within the bill. I would have preferred that the deletion of the section and full implementation of the rights were afforded all people.

However, in the spirit of compromise, in the other place and in this chamber, we have understood that perhaps there is a role for more consultation and an effective implementation strategy.

I hope that when we come to the point of review we can come to a full and complete study and indicate that all peoples have access to the Human Rights Act, as it was contemplated.

The exemption was put in the act as a temporary measure. Nothing has been as temporary as that measure, because 30 years have passed. I think this effective timetable that has been put into Bill C-21 and the elements of putting together a plan that will put the onus on the Government of Canada and on the Aboriginal leadership to bring this matter to a closure.

I believe that, as Chief Brazeau said, if we had the opportunity to go across Canada, we would have heard from individuals who wanted the exemption to be deleted from the Human Rights Act. In fact, that is what the Standing Senate Committee on Human Rights did previously: listened to individuals. I think that today we can close this chapter and look to a better day for the implementation of human rights in a more fair and just manner for all Canadians.

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 third time and passed.

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Céline Hervieux-Payette (Leader of the Opposition) moved third reading of Bill S-209, An Act to amend the Criminal Code (protection of children), as amended.—(*Honourable Senator Fraser*)

[*English*]

Hon. Ethel Cochrane: Honourable senators, I wish to speak on this matter.

I am pleased to rise once again on the matter of Bill S-209, Senator Hervieux-Payette's bill regarding the protection of children. As my concerns with this bill have been stated many times before, I will try to keep my remarks as concise as possible.

Please allow me to begin by stating that violence against children is abhorrent. As I have said before, I believe that each one of us here will state unequivocally that violence against children is wrong. It is wrong anytime, anywhere. It is as simple as that.

This bill is not about violence against children. As originally drafted, it is about removing a defence — section 43 of the Criminal Code — which permits teachers, parents and those standing in the place of parents to use force as a means of correction toward a child in their care, without being charged with assault.

Section 43 provides a balance between children's need for protection and their need for, as the Supreme Court of Canada stated in its landmark 2004 decision:

> . . . guidance and discipline to protect them from harm and to promote their healthy development within society.

Repealing section 43 repeals that balance. As honourable senators are aware, the use of force permitted by section 43 is restrictive. This section itself states that:

> . . . the force is not to exceed what is reasonable under the circumstances.

• (2220)

From the court's 2004 decision, we know that the correction must not be the result of the caregiver's frustration, loss of temper or abusive personality; the correction must not be punitive and must not focus on the gravity of the child's wrongdoing; the child must not be incapable of learning because of a disability or some other contextual factor; the force must not be used against a child under the age of 2 or over the age of 12; the force must not involve the use of objects, or slaps or blows to the head; and the force must not cause bodily harm or raise the reasonable prospect of bodily harm and must be of a minor, transitory and trifling nature. These guidelines make it clear that only very limited use of force is permissible under section 43.

Notwithstanding these facts, our colleague, Senator Hervieux-Payette, is resolute in her belief that our children would be better off without this section in place. So intense is her wish to repeal section 43 that she told the Standing Senate Committee on Legal and Constitutional Affairs on May 14:

> If this bill is not adopted, I will spend the rest of my career in Ottawa bringing it back. Perhaps we have to get used to that idea.

However, there is a serious problem with repealing section 43 without providing additional defences in its place. It risks exposing parents, teachers and those standing in the place of parents to the likelihood of being charged under the assault sections of the Criminal Code. This concern was also expressed by the Supreme Court of Canada in its 2004 decision, which states:

> Without section 43, Canada's broad assault law would criminalize force falling far short of what we think of as corporal punishment. The decision not to criminalize such conduct is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families — a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process.

Honourable senators, in my opinion, this is a valid and fundamental concern. According to our law, a person commits an assault when he or she applies force intentionally to someone else without consent, either directly or indirectly, or when he or she attempts or threatens to do so, or causes the other person to believe that he or she could do so. Consent is the difficult component when looking at the roles of parents and teachers in relation to children.

The reality is that consent may not all be there. For example, can we say an out-of-control, non-compliant child is giving consent while being forcibly dragged off for a time out, where he or she must sit for 10 minutes to contemplate the consequences of mouthing off to father and mother? Without the defence that section 43 affords, the child's consent may be necessary, even for something as simple as a correctional tool like a time out. I think we need to ask ourselves whether this is the standard that we truly want to set. The problem, honourable senators, is that there is no balance. Providing guidance and discipline to a child sometimes requires the use of non-consensual touching, but it is difficult to allow for that in the absence of section 43.

During our committee hearings, there was a great deal of debate as to whether common-law defences or other Criminal Code defences could be used should section 43 be repealed. In particular, much was made of the common-law defence *de minimis* as the solution for all the problems that would flow without the protection offered by section 43. Other provisions of the Criminal Code were also discussed, including self-defence, preventing assaults against others and the defence of property.

The argument put forth was that these would be sufficient to protect parents, teachers and those standing in the place of parents in the absence of section 43, but legal professionals disagreed.

Mr. Lapowich, from the Canadian Council of Criminal Defence Lawyers, spoke to the committee about these defences. He said:

> In our respectful submission, however, they would not be available in many situations. That is the danger that you run into when you change the Criminal Code. If you repeal section 43, you run that risk. Self-defence, defence of others and defence of property would not have applicability to many of the situations that we are discussing here.

Mr. Boxall, from the Criminal Lawyers Association, said:

> However, defence of "necessary" only applies to imminent harm. That will not protect a parent who thinks his or her child should go to bed, come home from the playground, turn off the pornography channel, not use the Internet, stop being cruel to the cat, et cetera. It will not cover any of those situations.
>
> Assuming the concept of *de minimis non curat lex* exists in law — and I like to think it does — success in advancing it is limited. I have been in front of judges that say it does not apply in domestic concepts. It is far from clear there is such a concept in law, let alone rely on it.

We were also warned about the danger to families and peoples' reputations if we were to rely on the courts to resolve this issue of non-consensual touching of children by parents and teachers. Mr. Lapowich also spoke to this matter. He said:

> The damage to our clients can be done by the simple charge itself, especially if it is publicized. People always remember the front-page article about being charged with sexual assault. No one remembers an acquittal two years down the road after a trial.

Mr. Boxall, once again, said:

> By the time the court sorts out the case six months to one year later, someone has been removed from their home, denied access to their children, and denied contact with their spouse. The damage is done. Yes, children need to be protected from violence but children also need parents.

Mr. Del Bigio, from the Canadian Bar Association, told the committee:

> There is a disruption to the family. There is the criminal charge itself. Then, if there is a trial, it creates a situation where family members, including the child, will be testifying against the parent who has been charged. There are the penalty consequences of a conviction and the further consequences that might impact the family such as, for example, loss of employment. The potential consequences are far-reaching and in many ways quite dramatic. They need to be thought of carefully.

Mr. Eric Roher, a partner with Borden Ladner Gervais, explained to the committee:

> Charges against educators — as I am sure you know — are well publicized in the media. Teachers' reputations, positions and professional status are at stake. As a matter of practice, they are suspended from their positions, often with pay, pending the outcome of their investigations, sometimes without pay. If they are acquitted or the charge is withdrawn, teachers accused of assault are usually transferred to another school. There is a stigma attached to this criminal charge, which is significant, even if the charge has no merit.
>
> Significant stigma is attached to this criminal charge, even if the charge has no merit. Mr. Justice Westman pointed out in a 2005 case that men and women who have been charged who are educators may have their lives — private and public — destroyed; families may be broken up. He is talking about the emotional well-being of these individuals.

He is talking about the emotional well-being of these individuals. The risk to families and the risk to reputation are real and must be taken seriously.

• (2230)

Last year, New Zealand repealed its counterpart to our section 43, replacing it with legislation that no longer permitted the use of force for the purpose of correction. However, during their debates, they deemed it necessary to provide some allowance for parents and those standing in the place of a parent.

Mr. John Hancock, senior solicitor with Youth Law in Auckland, New Zealand, reminded us that his is the only common-law nation to have removed this defence. Even then, it saw fit to put back into law a list of exemptions to allow for the use of reasonable force, recognizing that it is no longer permitted for correction. This was done because it was determined that balance was required between the need to protect children and the need to ensure they have the guidance and discipline they need.

Fortunately, the committee members learned from the lessons of New Zealand. They recognized that in the absence of section 43, parents, teachers and those standing in the place of parents require some kind of protection against the assault provisions of the Criminal Code. The amendment that was passed by the committee, with abstentions, allows the use of reasonable force other than corporal punishment. It also specifies that it may be used only for certain purposes, including preventing or minimizing harm to a child, criminal behaviour and excessively offensive or disruptive behaviour.

Honourable senators, I continue to support the inclusion of section 43 of the Criminal Code and I continue to oppose this bill. However, I recognize, in the game of numbers, I am losing here. With all of that in mind, if section 43 is to be repealed with passage of this bill, at least it will happen in such a way that families will not be harmed.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, I will respond to some of the concerns raised by Senator Cochrane. I would like to take this opportunity to thank the many witnesses who shared their expertise, experience and knowledge to help senators examine this bill.

I would like to give a bit of a background. More than 200 associations that work with young people in Canada support the repeal of section 43. Within these associations are pediatricians, psychologists, psychiatrists and sociologists. I realize that people working in the legal field may have slightly less experience with human behaviour, and worry more about enforcing the law than about children's futures.

I remind honourable senators that studies by Statistics Canada show that children who receive physical punishment are generally between the ages of three and six, and the vast majority of them are hit regularly. One study showed that children who are hit regularly over a period of six to eight years can suffer from effects that range from depression to suicide, and that they often drop out of school and later have difficulties finding a job.

I agree with Senator Cochrane's view that children need protection. Protection against violence also means protection against immoderate actions and actions that do not help discipline a child, but rather show impatience and a loss of self-control. I agree that children can be disciplined, but they can be disciplined using other means. The experts have all proven that children are very intelligent and can be corrected without having to use physical force.

I would also like to reiterate that this bill is very important to me given that I worked on the first bill to address youth protection in Quebec. I also worked on reforming the legislation here in Ottawa the first time the Young Offenders Act was amended. Many years of experience have shown that young people who are in trouble with the law have generally been subjected to corporal punishment.

I would like to remind honourable senators that the Supreme Court decision included two important dissenting opinions, by Justice Arbour and Justice Deschamps, who considered children's rights in light of the fact that, in 2009, Canada would have to

grant children their full rights and regard children as persons who have rights equal to those of adults. Children are entitled to their full physical integrity.

Continued violence threatens the lives of children.

I would remind you that today, June 17, the Council of Europe begins its work to abolish physical punishment permanently. The aim of that European institution is to reform the legislation of the council's 47 member countries. However, I should tell Senator Cochrane that 18 of those countries have already prohibited corporal punishment at school and at home.

The Council of Europe prefers to focus on the need to change people's thinking, primarily by promoting more positive education methods that are in keeping with scientific research into humankind. According to the Council of Europe, legislative reform does not mean that parents who spank their child will be taken to court, but hitting a child is perhaps more serious than a light spanking.

Human apply to everyone. "Children are not minipeople with minirights," says Deputy Secretary General Maud de Boer Buquicchio.

Canada is far from being a leader in this area. Sweden, which passed legislation 20 years ago, has one of the lowest youth crime rates, and children there are generally treated very well, as a result of parental education.

This bill will make it possible to implement the amendments that were adopted by the honourable senators — and which I support — and will give the government one year to introduce information programs on how to discipline children without using violence, so that Canada does not lag behind other OECD countries.

I thank you, honourable senators, and I would especially like to thank the Chair and Deputy-Chair of the Committee on Legal and Constitutional Affairs for working so hard on this bill. I hope that honourable senators will support the amendments made in this chamber and the comments of the Honourable Senator Fraser, who explained them.

[*English*]

Hon. A. Raynell Andreychuk: Honourable senators, I want to add a few words with respect to this bill.

Two Senate committees have studied the issue of corporal punishment and the rights of the child and what is in the best interests of a child. First, the Standing Senate Committee on Human Rights spent nearly three years looking at the international Convention on the Rights of the Child.

I want to put on the record that the Convention on the Rights of the Child was ratified by all countries, except two. However, when one looks at the issue of corporal punishment, the issue is defined differently in all of these countries. Despite the fact of adherence to the Convention on the Rights of the Child, there are many countries that are silent as to what is appropriate interaction with a child, with a view to control or restraint, and what is not.

The UN specialist on children said violence has no place with children. I believe that is an appropriate approach.

Corporal punishment, as we knew it many years ago, is not an issue in Canada. The Supreme Court, in its excellent decision in 2004, indicated that corporal punishment cannot be used in any way for children under 2 or over 12. They limited the understanding that societies are in transition. They limited some aspects between the ages of 2 to 12.

• (2240)

Honourable senators, my own point of view — and not the view of my colleagues — is that the decision was fair in the fact that it recognized we had a different approach to disciplining children 50 years ago or 100 years ago. The court recognized that we are in something of a transition. They pointed out that no corporal punishment should be used on young children; it would have no affect under age 2. Over 12, it might have a counter-productive effect.

Therefore, they pointed out how and when some application of force can be used for children between 2 and 12. While it has not led to that many cases in the courts, it is still, I think, a little confusing. My previous role was as a family court judge. How do we tell a parent that they cannot physically discipline a child under 2 but at the age of 2 plus one day, parents can use certain disciplines? I think that provision is confusing in some ways.

I understood why the court did not want to go the full extent. However, the court said in the majority judgment that society was evolving and that violence — hitting and striking — was not acceptable.

I think the issue of corporal punishment is over in Canada. It is not advocated by anyone.

Three governments — the present government and the previous two governments — indicated that they did not advocate corporal punishment. They looked to alternate ways of punishing children as more appropriate — time outs and all of the other alternatives — and that education was absolutely necessary.

The debate should not be about hitting or striking a child. I do not think that is where the debate lies. The debate is that the UN Convention on the Rights of the Child is a transforming type of legislation. It points out the needs and rights of children. One of those rights is the right to grow without corporal punishment and being struck; in other words, to live without violence. However, they put it in context of a world that is violent and they say our children should be protected. Senator Dallaire is one of the people in this chamber who has joined forces with others to say that child soldiers should not be utilized. That practice is violence against children.

It is not only what parents do with children; it is that violence should not be tolerated.

However, we live in a violent society and we have different kinds of children. The UN Convention on the Rights of the Child says that violence should not be utilized but it also says a child has the right to a family and the right to grow up with guidance and education. Children cannot become responsible citizens if adults do not play a part in their lives.

We graphically heard in the apology last week, which all parties joined into, about parents who lost control of their children and children were put into Indian residential schools. Not only did this treatment sever the cultural, linguistic and appropriate parenting for those children; we are suffering decades and generations later from that act.

Honourable senators, when we talk to parents, we should say that it is appropriate to discipline children, and that some touching and force may be necessary. If they have a child who is out of control and attacking another child, how do they talk to that child? Perhaps some movement to disengage those two children is necessary.

That is what section 43 is all about.

The case law has moved dramatically to say that the force must be reasonable; "no more force than is reasonably necessary" is the phrase that riddles all the cases. Also, the Supreme Court of Canada said that any touching in a corrective manner should be trivial and transient. In other words, parents cannot lash out against their children. They must use and exercise judgment.

The onus will be on them because, after all, section 43 was a defence after assault charges are laid. It is to allow a parent or teacher to come to a court and say: I did it because it was necessary and in the best interests of the child. It is not to exempt the behaviour of the parent. It is a heavy onus to put on parents to have to defend themselves.

In fact, we should be guided by the rule of law, not by the rule of discretion. If we take out section 43, some people say that police and prosecutors will not go after parents who acted appropriately. However, the police told us they did not want that discretion and I believe that discretion should lie with parents, not with the police. The rule of law is where we marry the assault sections with the defence section, section 43. Therefore, some form of section 43 needs to remain.

I would have preferred that some defences stayed as they were because then the case law could follow uniformly. However, in our discussions, it came to the point that we asked: What are other countries doing? It was pointed out to us that other countries, particularly European colleagues, have banned corporal punishment. I agree.

However, if one searches in their criminal law, there are exemptions and there are defences. The provisions are structured differently because many of the countries are not common-law countries. For example, Scotland has put in defences. In France, I know that parents have more discretion in their homes than even I would advocate, yet they have subscribed to banning corporal punishment.

Our committee looked to New Zealand, which is closest to our legislation, having an identical section. Due to the fact we worked on the UN Convention on the Rights of the Child, I had great interaction with New Zealand. They were thinking of deleting their section — section 59, if I recall — which is similar to section 43. Then good parliamentarians said: We have to let parents have some discretion. They built back some defences. I think that is what we did.

The committee did an admirable job in beginning to understand how, in today's violent society, we no longer control children in the way we did before. We have the Internet that gives them all kinds of ideas, and reinforces them. People touch out, travel miles and travel countries to interact with our children.

We know that children today have access to drugs, which causes violence. We know there is bullying in the school and we need to ensure that we help children and we do not just say, hands off. Children need some guidance and some transient force, whether it is for control, restraint or other methods.

I hope, if this bill passes with the amendments, that there will be a good look by the Government of Canada and the House of Commons to see whether we have the best Canadian answer. I think we have started the proper and appropriate debate for parliamentarians and Canadians. That is the signal. I wanted those words "no more corporal punishment" in the report on the Standing Senate Committee on Human Rights and in the Standing Senate Committee on Legal and Constitutional Affairs. However, I think we must modernize how we give reasonable tools to parents and children.

Honourable senators can hear my comments; the committee was riddled with them. I want to acknowledge the hard work that the Standing Senate Committee on Human Rights embarked on when they conducted their study on the UN Convention on the Rights of the Child. We looked at all the things children need and I ask you to read that report. There was some hard work from the senators here.

I also think it would be appropriate that all of us who come into contact with children should read the minutes, the debates and the testimony of the witnesses who came forward. I was impressed that the legal witnesses talked about defences but, for the first time, I heard from lawyers talking about what it is like to be part of a family.

• (2250)

That brings me to my final points. I think we did not do the job well in two areas.

When we studied the Convention on the Rights of the Child, we said never again should we pass legislation that affects young people without consulting them, and we did not consult them. I think that in this day and age, we should be going to a broad spectrum of youth and saying, "What world do you live in and how does parenting help you?"

We should not reach back to what we think is correct and what we think we should be correcting today; we should be asking the youth what kind of tools would help them. There are children afraid in classrooms, in their homes and on the streets. They need to tell us what would help them grow and prosper.

I regret that we did not consult fully with youth. We talked to adults. That we talk to youth was one of our recommendations in our Convention on the Rights of the Child report. Even more important, we were in the Standing Senate Committee on Aboriginal Peoples the day that the apology was made in the other place. Aboriginal people are oversubscribed in our courts. Aboriginal people are oversubscribed in the child welfare system

where families have been torn apart. We did not consult with the Aboriginal community in a way that I think would have been thoughtful and respectful of their place in Canada.

If this bill passes, I appeal that there be an undertaking and an understanding that the Government of Canada do a full and adequate consultation with Aboriginal people. The defences and the changes in this bill will affect Aboriginal families and Aboriginal children more than the other cross-sections. They are already the subject of too much scrutiny. It is time that they were full partners when we make changes that so dramatically will affect them. Regrettably, we moved on in the bill and we did not stop to do the consultations. I understand that. We have taken a long time with this bill. I thank the proponent of the bill for having gone through two phases with us. However, I still believe the other phase needs to be done. The reflection and full participation of youth and Aboriginals is absolutely essential if we are serious about working with the Aboriginal communities as partners. We need to hear them.

We need to have enough time for education. My concern is that while there is a one-year lead time before implementation, we heard tonight that they needed 36 months to consult the Aboriginal community on the deletion of one clause in the Human Rights Act after 30 years. Thirty years was the transition period and still 36 months was needed to consult.

I am not sure that one year is sufficient to consult with that delicate balance of Aboriginal parenting, because Aboriginal parenting is different; it involves the whole community. I believe that we need to give serious thought to this. I appeal that this be done before full implementation is considered.

We owe that to the youth so that we do not have to stand apologizing here once more to the Aboriginal people for what was good intention. I have no doubt that previous governments had good intentions toward all citizens, but time has proven that it was not. In this case, I hope we understand that we need their consultation and their cooperation and that we do not act precipitously.

Honourable senators, I want to thank both committees for their due diligence in shedding light on this very important matter. Having been a family court judge, I know what it is like when a parent has to defend him-or herself in court. I also know what happens when you try to put that family together again after the court has intruded. We should deal with education first and give parents the tools to act appropriately so that our children have a better future than perhaps some of those in the past had.

I reiterate that there is no place for hitting, striking or violence by parents, teachers or anyone else. However, true discipline and some corrective measures are appropriate. They may be different in different societies. We have a diverse Canada and we should understand we have diverse parenting and diverse youth development.

I thank all members for listening.

Hon. Joan Fraser: I would like to speak and I believe Senator Carstairs also wished to speak.

[Senator Andreychuk]

The Hon. the Speaker: We are continuing debate and not taking questions and comments.

Senator Fraser: I wanted to respond to a couple points that Senator Andreychuk made. She has an almost unique experience with this bill. I think she has been part of every study of it in every incarnation in every committee.

I would like to note that in this round of study of this bill, the Standing Senate Committee on Legal and Constitutional Affairs took on board all the work that had been done by previous committees. That includes the work done by the Standing Senate Committee on Human Rights and their thoughtful and careful work that was done to hear from non-legal experts of various kinds in matters of child care. It is not that the Standing Senate Committee on Legal and Constitutional Affairs did not have access to that body of thought; we did.

However, the decision was made that since the Human Rights Committee had done such excellent work on the bill in its previous incarnation and before that — as we have been reminded — on the rights of the child generally, it was decided that this year the Committee on Legal and Constitutional Affairs would focus on what the Human Rights Committee had not focused on previously. That was the legal implications of this bill and, particularly, the matter of defences available to those accused of criminal offences.

This is what the committee did and the outcome, as honourable senators know, was an amendment to the bill to set out explicit defences. I stood and talked about those defences at some length last night.

On the matter of Aboriginal input, it is true that we did not make any particular effort to bring in the Aboriginal community. However, we did invite representatives of Aboriginal legal associations that declined the invitation.

I recall the witnesses from New Zealand telling us that their Aboriginal community had done a reasonable amount of consultation on their bill and was in favour of it. New Zealand has a significant Aboriginal population. That support in New Zealand does not, of course, speak to what our Aboriginal peoples may say, but it is interesting to note.

The final point I would note about this bill is that it does build in, as Senator Andreychuk indicated, a year for education, communication and planning. It is not as if this legislation were coming as a surprise; this bill has been around for a long time. Everyone has known that it was on the agenda.

Finally, as you can tell from what has been said here, the New Zealanders were very influential in their testimony. It is worth saying that they did not build in any delay before their bill took effect. It took effect like a clap of thunder the day it received Royal Assent. While it may have been like a clap of thunder, the sky did not fall. Indeed, one witness from New Zealand said to us: You have nothing to fear.

In fact, in New Zealand, there has not been an upsurge in frivolous prosecutions of parents or teachers. The system is working as it should.

• (2300)

It is, therefore, in my view a measure of extra prudence — advisable prudence — and caution but sufficient to build a one-year delay into this bill for all those concerned to become fully informed about its consequences.

Hon. Sharon Carstairs: Honourable senators, I did not intend to speak to this bill, but I must address some of the remarks made by others.

This bill, indeed, has been around for a very long time. I introduced it 12 years ago. For 12 years this bill has been before the Senate of Canada. What I still do not hear in enough responses is the risk to children. We talk about the risk to parents; we talk about the risk to teachers. What about the risk to children? This bill is about the risk to children.

Honourable senators, violence breeds violence. If a child is hit, the child thinks that hitting is acceptable. Study after study will show that kids who are bullies are kids who have been hit.

Senator Stratton: We are beyond corporal punishment.

Senator Carstairs: Study after study will show that parents who act in a violent way — and hitting a child is violent — have themselves been hit.

Senator Stratton: It is corporeal punishment.

Senator Carstairs: One of the saddest moments I had in the Senate when I first introduced this bill was to have a respected colleague say he did not support my bill because the only difference between the way he treated his kids and the way that he was treated is that his father had used the buckle end of the belt. That is the culture we have permitted.

The day this bill was given clause-by-clause consideration in the Legal and Constitutional Affairs Committee, most of us had come from the apology to the First Nations people. In that apology, the Prime Minister said, "I apologize for the physical violence that was used against these children in Aboriginal schools."

It has been mentioned that the Supreme Court put some parameters on section 43, but what members of this chamber have not been told tonight is that Joan Durrant did a study following that decision, and parents have interpreted the Supreme Court decision as saying that it is now permissible to hit children between the ages of two and twelve. I do not believe that was ever the intention of the Supreme Court of Canada. I think they took a petition before them which asked if children had Charter rights on the basis of section 43, and they essentially opined that children did not have Charter rights because they were not 18 years of age and went on to say, however, that there were some things about section 43 that should be addressed.

I ask honourable senators to look at case law on section 43 prior to the Supreme Court decision. Previous case law ruled that it was acceptable to hit a child with an extension cord, and that was justified under section 43; that it was acceptable to kick a child down a flight of stairs, and that was acceptable under section 43; that it was acceptable to throw a child on the front of an automobile, strip her panties off and spank her, and that was the case just a couple of years ago.

Honourable senators, I spent 20 years of my life teaching young people. I watched the effect of violent acts towards children. I know violence does not work, and I would urge us all to support this bill.

Hon. Marilyn Trenholme Counsell: Honourable senators, I am glad that I am here tonight. I feel guilty that I did not stand up and speak on this bill during the many opportunities that existed, but I am so glad that I am here tonight to say a few words.

The last remarks said almost everything that I wanted to say, but this is a very important moment. It is really, in my opinion, as important as what we experienced last week with the Aboriginal peoples. With great respect for the senator who spoke these words about parents being able to defend themselves, I thought over and over again, "little children are so defenceless."

I practiced medicine for 27 years and I saw much of that. I heard a time or two that parents had threatened their children not to tell that they had been hit, that they had been traumatized. There are so many stories. I do not think any of us wants to stand up here tonight and say, "Yes, I did or did not spank my children," or "Yes or no, my parents did spank me," but I can tell you that any child, any person who has even once been spanked never forgets it until their dying day. It is traumatic; it is such a scar; it is such a wound. All of the things the senator said about it leading to violence and bullying are true. It is indefensible. There are other ways to discipline. As parents, we try to learn other ways, but we often do not succeed. I am speaking in general now and not necessarily speaking about myself because this is not the time for individual testimony.

As Minister of the Family, I learned about the terrible difficulties that parents have in parenting. We use the words so often that parenting is life's greatest responsibility, and yet we prepare parents so very little for this greatest responsibility in life. This bill will give us a chance to study how we prepare young people, whatever age, for parenting.

We cannot drive a car until we study a book and pass a test. I am not suggesting that there be tests for parents, but I thought about this as I was sitting here. Would it not be proper to have a leaflet, booklet or information of some sort given to every parent at the time of the birth of each child, if there were more than one? This new legislation, this new rule in Canada would be very clear.

• (2310)

If there were a question of literacy, which happens in so many cases, it would be incumbent upon the person's attendant at that birth, or immediately thereafter, be it public health nurses or family physician, to ensure that the parents understood that. In that education process, other things would be included.

This is an important moment. Yes, parents need to understand how to parent and how to discipline, and they need to understand the impact of their actions or lack thereof. They need to learn so much. I truly hope that when we finish the report on early

childhood development and learning that it will mention often the importance of parenting programs and parenting education. You cannot have early childhood education without parenting education; the two must go together.

I rise tonight because I think of the defenceless children, of the wounds they suffer for a lifetime and, as the honourable senator said, of the patterns of behaviour. If you are hit, then why can you not hit back?

It is so unfathomable to think that you cannot hit a child until he or she is two years old and thereafter you can hit them when they are between the ages of 2 years and 12 years. That does not make any sense, but what we are doing tonight makes sense. Society will have an even greater responsibility to parents, to grandparents, to teachers, to caregivers and to nannies to ensure that education is in place to support this bill and that justice will be done.

Some Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Hervieux-Payette, seconded by the Honourable Senator Fraser, that Bill S-209, An Act to amend the Criminal Code (protection of children) be read the third time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

CONSTITUTION ACT, 1867

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Day, for the second reading of Bill S-229, An Act to amend the Constitution Act, 1867 (Property qualifications of Senators).—(*Honourable Senator Fraser*)

Hon. Joan Fraser: Honourable senators, I have taken some time to marshal my thoughts on this most important bill sponsored by Senator Banks and on its companion motion, which appears further on in the Order Paper. I know that all honourable senators have been waiting with baited breath to hear my views on "Lands or Tenements held in Free and Common Socage, or . . . "Lands or Tenements held in Franc-alleu or in Roture," not to mention the ever-fascinating topic of the boundaries of the 1867 Quebec electoral districts.

It is a subject of very great importance that touches all of us and deserves careful consideration. However, I suspect that at the end of a long day, when we have already dealt with a series of serious and complex issues, the audience will be less than attentive if I launch into a discussion of the Constitution of Canada. Therefore, I move the adjournment of the debate for the remainder of my time.

On motion of Senator Fraser, debate adjourned.

EXCISE TAX ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Cook, for the second reading of Bill S-230, An Act to amend the Excise Tax Act (zero-rating of supply of cut fresh fruit).—(*Honourable Senator Comeau*)

Hon. Lorna Milne: Honourable senators, I wish to ask Senator Comeau when he intends to speak to this item.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I will check with my colleague Senator Meighen, for whom I moved the adjournment.

Senator Mercer: Where is he?

Senator Comeau: We have a long standing tradition in this place. The honourable senator is not in the chamber at the moment but as soon as he returns, I will inquire and report back to Senator Milne.

Senator Milne: I would point out that it is at day 12 on the Order Paper.

Senator Comeau: There is no question that this bill will not die on the Order Paper; trust me.

The Hon. the Speaker: Honourable senators, Item No. 10 was called. Was Senator Milne speaking to Item No. 10 or was she speaking to Item No. 11?

Senator Milne: Item No. 10.

The Hon. the Speaker: Was Senator Comeau speaking to Item No. 10 or Item No. 11?

Senator Comeau: I was speaking to Item No. 11. Would it be helpful if we started again?

Honourable senators, I move the adjournment of the debate on Item No. 10 for the remainder of my time.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion?

On motion of Senator Comeau, debate adjourned.

URBAN MODERNIZATION AND BUSINESS DEVELOPMENT BANK BILL

SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Fitzpatrick, for the second reading of Bill S-226, An Act to amend the Business Development Bank of Canada Act (municipal infrastructure bonds) and to make a consequential amendment to another Act.—(*Honourable Senator Eyton*)

Hon. Jerahmiel S. Grafstein: Honourable senators, I ask the Deputy Leader of the Government in the Senate when Senator Eyton might opine on this matter. It has been almost six months. Certainly, Senator Eyton could give us that benefit so the item could be moved forward.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I will speak to Senator Eyton as to when he intends to speak to this item and let the honourable senators know.

Order stands.

WORLD AUTISM AWARENESS DAY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jim Munson moved second reading of Bill S-237, An Act respecting World Autism Awareness Day.—(*Honourable Senator Munson*)

He said: Honourable senators, it is late in the evening and all have been patient in listening to serious debates on issues dealing with children and with the military. I am determined to deliver my speech on an issue that is very important to me and, I believe, to this country.

Honourable senators, I am proud to present Bill S-237, An Act respecting World Autism Awareness Day. I am also pleased that my Conservative friend, Senator Don Oliver, is supporting this initiative in a major way.

Bill S-237 would make April 2 world autism awareness day, which would bring the attention of all Canadians to the issue of autism, a problem that affects at least one in 165 families in this country. Autism, a neurological disorder that isolates people from the world around them, is on the rise in Canada and affects more children worldwide than pediatric cancer, diabetes and AIDS combined. A generation ago, autism was considered to be a psychiatric response to parents, in particular mothers who were cold or not loving enough.

• (2320)

Thank goodness that nonsense has been dispelled.

Unfortunately, no hard knowledge has been gained. Autism remains a mystery. We do not know what causes it. We do not know how to cure it. We do not know why the number of children affected is growing. We do not have consensus about what constitutes adequate or appropriate treatment, and we do not know how to pay for that treatment.

When it comes to autism, honourable senators, we are in the dark. Families across the country are on their own, struggling to find treatment and struggling to pay for it. Marriages are breaking up. The stress is tremendous. Canadian families with autism have to go it alone.

This became abundantly clear to me and other honourable senators when the Standing Senate Committee on Social Affairs, Science and Technology conducted its inquiry into autism. As you may remember, the Social Affairs Committee studied autism. The title of our report, *Pay Now or Pay Later - Autism Families In Crisis*, spoke volumes.

Intensive behavioural intervention, one of the treatments that has proven to be effective for many people with autism, is very expensive. It costs from $50,000 to $65,000 a year.

People with autism who receive little or no treatment often require full-time care or institutionalization. In addition to these not inconsiderable costs, there are moral costs; the loss of the potential of a human being. People with autism who get the treatment and support they need can contribute to society. Those who do not receive treatment and support retreat into themselves and some become aggressive and violent.

I have met some extraordinary people in investigating this very sensitive issue. I met young Joshua Bortolotti, as has the Leader of the Government. His little sister has autism. This young man, just in middle school, has circulated petitions, spoken publicly about autism and collected money for the cause. There is nothing that he will not do for his little sister.

Honourable senators, there is just about nothing that I will not do for Josh.

Some Hon. Senators: Hear, hear!

Senator Munson: It is emotional to talk about these children and families.

I also met Stefan Marinoiu who walked all the way from Scarborough to Ottawa this past winter. He did not get headlines for that. He walked from Scarborough to Ottawa just to draw attention to the plight of families with autism. He has a son aged 15 who is no longer eligible for treatment. Stefan said that from birth to age 13 he could handle his son, but now his son has become very aggressive. He is a big man, and he cannot handle him anymore. This man is so desperate that he also went on a hunger strike in front of Queen's Park. He does not know what to do anymore for his son.

I met Andrew Kavchak, a lonely protester with a sandwich board on Parliament Hill who told me about autism and its devastating impact on families.

As I speak tonight, a gentleman by the name of Jonathan Howard is walking across this country. He is not like Terry Fox, to whom we all paid attention. Jonathan Howard started walking

a month ago from St. John's and is walking to Victoria. I do not know who is paying attention to Jonathan right now, but he is walking to try not only to create awareness, which we all want to do, but also to secure a national strategy to deal with autism. He may be in New Brunswick or somewhere in Quebec, but he is still walking.

Josh is strong and brave and a fighter; Stefan is brave and a fighter; and Andrew is brave and a fighter. However, for every Josh, Stefan, Andrew and Jonathan, there are countless brothers, sisters and parents who feel alone, who think we do not care. That is why a day like World Autism Awareness Day is important.

Autism is on the rise around the world, and we do not know why. April 2 has been declared by the United Nations as World Autism Awareness Day. There was consensus among 192 countries that there is a need to draw the attention of people around the globe to this neurological disorder that is affecting more and more families.

I remind honourable senators that Canada is a signatory to the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities. These international conventions bind us to take action to see that children with disabilities enjoy a full and decent life in conditions that ensure dignity, self-reliance and full participation in their community.

It is clear, honourable senators, that if we want to honour the commitment of these international conventions, we must get to work. Children with autism in Canada do not receive the protection they require, the protection we said we would provide. This is Canada, the country of Tommy Douglas, of health care, of a social safety net that provides security for citizens and a quality of life that is the envy of the world.

We need to recognize autism for the health problem that it is, one that is urgent and demanding of our immediate action. Canada's most vulnerable children are falling through the mesh of our social safety net. Every province has a different approach to treatment and funding. Parents need patience and persistence to understand the intricacies of what they are entitled to, which list to get on and where, and where to ask for help.

Honourable senators, these families have enough on their plate. We need to make it easier and recognize that autism treatment is an essential health service that should be funded through our health care system.

Some Hon. Senators: Hear, hear.

Senator Munson: Honourable senators will remember that the Subcommittee on Population Health traveled to Cuba earlier this year as part of our work. In Cuba we went to a school for children with autism. It was impressive. Everyone can talk about Cuba and say that teachers do not get paid very much, and so on, but this was impressive. There were 21 teachers for 21 children with autism.

I was in that school. One could cry to see them. The teachers were not talking about money; they were just talking about caring. The children in that school came from countries in Central and South America, not only from Cuba. If Cuba, a poor country with so little, can do so much for their children with autism, surely Canada, with a budget surplus, can step up to the plate.

I do not like to play politics, but in our report *Pay Now or Pay Later* we said something. We asked for a national strategy.

• (2330)

We need help for these children. World Autism Awareness Day that I am asking for is a small thing we can do. It will be an opportunity to raise public awareness of autism and the need for research, early diagnosis, access to treatment, increased training of medical personnel and support for people with autism and their families for as long as they need support.

I remind honourable senators that the Centers for Disease Control and Prevention in the United States have called autism a national public health crisis. It is a crisis. I am fully aware that declaring April 2 as World Autism Awareness Day will not fix things overnight. Families will still struggle with the demanding and difficult task of finding and buying care for their children. Parents will still worry about the future. Parents will still worry about the day when they are gone, about who will care for their children with autism. Nine out of ten children who do not receive treatment for autism are institutionalized. This cost to our society is huge, a tragic loss of potential and a moral travesty.

If these children had cancer, would we not take immediate action? Would we debate whether they deserved chemotherapy, whether we had the responsibility to treat them? Of course, we would not.

Honourable senators, I have learned a few things in my four and a half years here in the Senate. The most important one is that small steps lead to historic journeys. When I walked across Parliament Hill and I met a lonely protester, a public servant with a sandwich-board calling on the government to devote more resources to autism, I had no idea that within a year I would ask the Senate to study autism in depth. I did not know. I had no idea that tonight, after all these debates, which are extremely important — I wish the gallery were full of media — I would be tabling a bill to make April 2 World Autism Awareness Day. It is a simple thing. I think that by declaring April 2 World Autism Awareness Day, we will make an important statement.

I want to salute Senator Oliver for his strong support for this bill. Senator Oliver, I want to say thank you for what you do in Nova Scotia and this country, and I know the families that you work with in Nova Scotia. It is important for where we will take this debate. I have 13 more years here, hopefully, and we will fight for this cause. We will fight for a national program and national leadership. I hope that we will say to people with autism and their families: Yes, you matter; and yes, we care. We will say to all Canadians that autism is a growing problem that affects their community, their schools, their workplace, their neighbourhood, and their country. Declaring April 2 World Autism Awareness Day is one small step in a journey to see that all people with autism and their families have the care and support they need. I hope, honourable senators, that you will support this bill so that we can take that step and walk with Canadians with autism and their families and say, "You are not alone; we are here with you; and together we will make things better."

[*Translation*]

Hon. Gerald J. Comeau (Deputy Leader of the Government): I must advise honourable senators that the 45-minute period of time normally reserved for the second speaker is reserved for a senator on the government side.

[*English*]

The Hon. the Speaker *pro tempore***:** Senator Keon, do you wish to speak on the bill?

Hon. Wilbert J. Keon: Honourable senators, the hour is late. I will speak briefly. I want to add my support to Senator Munson for everything he has done for this subject. I want to mention again something I have said before in our conversations, and that is the tremendous need for research.

Senator Munson will recall I drew an analogy between autism and AIDS when we first confronted AIDS. There were five patients that I operated on who died mysteriously back in the 1980s, and we had no idea what we were dealing with. Then we heard about AIDS. I was the vice-president of the Medical Research Council at the time, and, indeed, I was acting president for a while when Dr. Ball was sick. We tried to do something to deal with this situation when it hit the horizon. We did not have a single scientist in Canada who knew anything about retroviral research.

We asked for submissions, and the submissions we received were awful. We could not fund any of them because the science was so bad. However, we persisted and recruited into Canada retroviral experts, and now Canada has one of the strongest research bases in the world in retroviral studies. AIDS, while it has not been cured, has been converted to a chronic disease.

When we deal with the unknown, the tendency is always to jump in desperation to try to treat a situation, and that is fine; I have no objection to that at all. However, more important than that is, we make a strong initiative to build appropriate scientific expertise in our country, coupled with America and other countries, to solve this, because we do not have the scientific knowledge we need at this point in time to manage this entity on an intelligent basis.

Everything Senator Munson said is absolutely true. For some reason, in the Western world, autism is growing in leaps and bounds. The interesting thing is that in Cuba, it is not. It is there, but it is not growing at the same rate.

Until we have a research establishment to target this disease, we will not make much progress in its management.

Senator Munson, I encourage you to keep hammering at that, and I can assure you I will support you in any way I can.

Hon. Donald H. Oliver: Honourable senators, I am delighted to rise tonight to add my support to this important initiative undertaken by Senator Munson. For many years now, our colleague has vocalized his concerns for Canadian families coping with autism. Time and time again, he has emphasized the need for a national autism program, a strategy that will ensure our most vulnerable citizens receive the necessary health care and social support that we Canadians value most.

Senator Munson's dedication to the well-being of Canadians with autism inspires us all to lend our voice to this cause. This bill, to recognize April 2 as World Autism Awareness Day, is yet another example of Senator Munson's commitment to raise awareness about autism.

Autism spectrum disorders, ASD, are an important health and social issue in Canada. Approximately one in every 165 Canadian families is affected by ASD. This complex lifelong developmental disability affects individuals regardless of their race, religion, socio-economic status or geography. It has no known cause and no known cure.

• (2340)

Bill S-237 is of particular importance since the number of Canadians diagnosed with ASD has increased by 150 per cent in the last six years. In fact, there are currently 48,000 children and 144,000 adults with autism in Canada right now.

This bill proposes that we join the global effort to focus the world's attention on autism. On World Autism Awareness Day, communities around the world will speak up about autism by coordinating events to acknowledge the daily realities of people living with this condition.

World Autism Awareness Day stems from United Nations Resolution 62/139 which was passed on December 18, 2007. April 2 has become one of only three disease-specific UN days.

This day expresses the UN's deep concern at the prevalence and high rate of autism in children in all regions of the world and the consequent developmental challenges. In fact, more children worldwide are affected by autism than pediatric cancer, diabetes and AIDS combined.

This day will also acknowledge the ongoing struggles and extraordinary talents of the approximately 35 million people living with autism in our international community.

The UN resolution is an active way of encouraging member states like Canada to emphasize the importance of universal human rights and, more specifically, the rights of the disabled.

When speaking on the objectives of World Autism Awareness Day, UN Secretary-General Ban Ki-moon said:

> . . . let us dedicate ourselves to enabling the family, the most basic unit of society, to fulfill its role ensuring that persons with disabilities enjoy full human rights with dignity, and flourish as individuals.

Within our Canadian communities, individuals with ASD and their families are longing for our support. Bill S-237 reaffirms the government's commitment to the health and social well-being of all Canadians. Individuals with ASD are equal members of our community, and they need to know that they are not alone.

By increasing autism awareness, World Autism Awareness Day will address social misconceptions associated with autism. It will also discourage the stigmatization and discrimination of autistic individuals. By highlighting their incredible talents and potential, we are working to ensure that all Canadians are respected.

When testifying before the Standing Senate Committee on Social Affairs, Science and Technology, Dr. Jeanette Holden of the Autism Spectrum Disorders Canadian-American Research Consortium emphasized the importance of increasing awareness about autism spectrum disorders. She explained:

> We need to appreciate the gifts they have and their ability to be happy. We also have to understand that many of these kids are suffering from medical conditions that are not recognized. They may be acting out or having problems because they are in pain from unrecognized conditions. We must ask what is causing these behaviours. Is it because they just want to be naughty kids and be a nuisance? No. There is a reason. They are either intellectually frustrated or medically compromised. All of these factors must be taken into account.

Autism Awareness Day will sensitize our communities on the difficulties of raising a child with autism. It will create a greater support network for Canadian parents.

As honourable senators can imagine, parenting a child with autism can be quite challenging. It requires great patience, strength and devotion. In fact, research has shown that families of children with autism experience high levels of stress, more than families with other types of disabilities. This stress can sometimes lead to despair, depression and, in the worst cases, suicidal thoughts. These caregivers need our support.

I wish to take a moment to speak about the significant work that is being done in Nova Scotia.

Joan and Jack Craig of Nova Scotia have done tremendous work to support Canadian families in the Atlantic region. They are known for their devotion and dedication to finding answers and increasing our understanding of ASD.

Their vision and generosity led to the establishment of the Joan and Jack Craig Research Chair in Autism at Dalhousie University, which was founded in 2001. It is the first endowed chair in autism research in Canada.

Its chair holder, Dr. Susan Bryson, is recognized internationally as a leading expert on autism and related disorders of development. The chair is working on attention and emotion in children with autism. They are also conducting a groundbreaking, comprehensive, multinational study on infant siblings of children with autism. They are charting the first signs of autism in order to develop modules for frontline physicians to use in their practices.

Jack and Joan Craig have also founded a provincial autism centre in Halifax, Nova Scotia. This professionally-run resource centre is focused on helping parents and professionals "access quality education about autism spectrum disorders." The centre welcomes approximately 2,000 people a year, including individuals with autism, their parents and siblings, students, and people interested in learning more about ASD. It is the largest source of information on ASD in Eastern Canada. Its extensive library and resource centre is in high demand, so much so that they can hardly keep the material on the shelves.

The centre provides social activities for teens and young adults with ASD, many of whom have never had social activity with peers before. Weekly events allow individuals to interact and socialize.

The centre also focuses on introducing young people with ASD to the community as volunteers. The outcomes of this initiative have been extremely positive since it allows the community to better understand autism while providing individuals on the spectrum with valuable opportunities.

The centre is also increasing awareness in Canadian workplaces and universities. Only 12 per cent of people living with autism are employed, and only 1 per cent of these individuals will find employment in their area of specialty. The centre is working on bridging this gap. By working with teachers and employers, the centre hopes to identify strategies to help create a positive learning environment for individuals with autism.

The centre has had many successes since its 2002 opening. For instance, the young adults in the centre publish their own newsletter called *Autism Aloud* and they can chat one-on-one on the supervised chat line.

Thanks to the Craigs' passionate perseverance and dedication to the well-being of all Canadians, I am certain that the centre will have continued success in the future. Their work continues to provide credible information and life-changing opportunities for Canadians in need.

As parents of a 54-year-old with autism, the Craigs understand the challenges and rewards of parenting a child with ASD. Like any parent, parents of a child with ASD want what is best for their child. They question whether their child is receiving the necessary support and whether he or she will be able to live an independent life, yet trying to find and access necessary services, effective treatments and support networks are an ongoing challenge.

Carolyn Bateman, who is the mother of a 24-year-old son with autism and co-founder and past president of the Autism Society of P.E.I., explained to the Standing Senate Committee on Social Affairs, Science and Technology:

> Families want older children to be independent and feel self-worth, a sense of belonging and to know that someone cares enough that they will not be sent to an institution or an inappropriate setting when their parents are not around. No human being should be expected to live without that in this country.

This bill acknowledges the challenges that I have just described. It demonstrates that we, as Canadians, care about these individuals. More important, it proves that we want to increase dialogue and identify strategies to improve their situation, yet many of us do not know the challenges related to living or caring for an individual with ASD.

Dr. Eric Fombonne, Director of Child Psychiatry at McGill University, explained:

> . . . the typical pattern is that parents become aware of problems at age 16 or 18 months on average, and then they must wait. They go to their pediatricians, and there is a waiting time of six to eight months before they are taken seriously. Then they refer the child to us, and they wait in my centre for 12 months at this point in time before they can be seen.

• (2350)

Anne Borbey-Schwartz, a former senior therapist and trainer in Intensive Behaviour Intervention, explained that this waiting period often leads to parents becoming skeptical towards "the system." She said:

> . . . through months of waiting and struggling to come to terms with the situation, their trust in the system has faltered.

The Autism Canada Foundation has also reported that, "unfortunately, many pediatricians and other physicians are not experienced in diagnosing autism." They also explain that many health professionals guide parents with a "wait and see" approach or promises that the child will "catch up" one day.

Yet, early diagnosis and early intervention of ASD are keys. During his December 7, 2006 testimony, Dr. Bernand Deslisle, a member of the Franco-Ontarian Autism Society, explained to the Senate committee that:

> . . . all the experts agree that autistic children and adolescents are children at risk and thus their needs are commensurately great. It has been proven that the quality of life for autistic children can nonetheless be improved through early diagnosis and treatment, combined with subsequent support from appropriate programs and services.

Yet, Canadians with autism spectrum disorders have unequal access to services across the country and they are required to wait for assistance. This cannot continue.

More worrisome still were the statements to the committee which indicated that "the service system for adults is woefully inadequate. The recognition of the mental health needs of adolescents and adults is very important and often missed and misunderstood." Parents of "adult children" are left with very few health and social support networks and continue caring for their children as they themselves age.

Our own Senate committee "recognized that family caregivers are struggling to provide the best care possible for persons living with autism. Their emotional and financial hardships are very real, and a solution must be found."

Clearly better knowledge about autism is needed for all Canadians who deal with this disorder. This includes parents, siblings, family members, service providers and policy-makers. In advance of any strategic work to address autism, it is essential that governments and stakeholders better understand its causes and optimal interventions.

While services to screen and treat autism remain a provincial/territorial responsibility, the Government of Canada is committed to supporting the evidence base on this important issue so that future action by provincial and territorial governments, caregivers and families will be well-informed. The government is therefore collaborating with a range of partners to support those with autism and their families through research and knowledge-based activities.

For example, on October 20, 2007, the Government of Canada announced the establishment of the National Chair in Autism Research and Intervention at Simon Fraser University. The chair is jointly funded by the Government of British Columbia and Health Canada and is contributing $1 million over five years on this initiative. Moreover, a web page with links to relevant information on autism has been included on the Health Canada website, and will continue to be enhanced as new developments arise.

The Canadian Institutes for Health Research has also done significant work in autism. From 2000 to 2007, it spent or committed approximately $26.1 million for related research. This research is exploring many relevant issues, including autism's causes, origins and treatments.

The National Autism Research Symposium, which took place on November 8 and 9 in Toronto, was also a positive development in autism research. Service providers, policy-makers, researchers and people with autism and their families gathered to share knowledge and to support dialogue and to discuss future research priorities.

In addition to activities which support improved knowledge and awareness of autism, the federal government already provided significant transfers to provincial and territorial governments for health care and social programs through the Canada Health Transfer and the Canada Social Transfer respectively. This is good news for Canadians.

I am confident that these activities will contribute to greater evidence and awareness of autism, and will enhance Canada's capacity to address this important issue.

Honourable senators, in conclusion, I would like to leave you with the words of Anne Borbey-Schwartz. When testifying before the Senate committee she said, "It takes a community to raise a child." She emphasized that "a child with autism deserves no less." I could not agree more.

I would like to thank Senator Munson for calling on us all to recognize the unmet needs of this community. He has lent his voice to this important cause by reminding us that individuals with ASD and their families are in desperate need of our support.

Honourable senators, Senator Munson's bill is our opportunity to send a clear message to all Canadians that individuals with autism are a valuable part of our community. By officially declaring April 2 World Autism Awareness Day, we are giving them a voice. Let us join with other UN member states in declaring April 2 World Autism Awareness Day.

Hon. Marilyn Trenholme Counsell: Honourable senators, I know the hour is very late, but I have to say this: I want to give great praise to my fellow New Brunswicker, Senator Munson, for not only this bill but all of his work on autism. It shows his passion and his compassion.

I also want to say that I applaud Senator Keon for his comments about research because that is really the number-one thing at this time. The World Autism Awareness Day will help, but the research is fundamentally necessary.

I did hear mention made of an autism school in Cuba. I know that Senator Keon will bring to us valuable information in his report on population health based on Cuba, but I want to say this: One of the very last things that Premier Hatfield did — former Senator Hatfield — was to introduce a bill in the Government of New Brunswick that would end segregated schools. He closed the William F. Roberts School and it was left to the government, of which I was a part, to bring in full integration. In the last two years, we have had another study by a learned academic, in which New Brunswickers said yes to full integration.

I will now tell honourable senators a little story. I know a child very well who has autism. Up until a few months ago, he was able to have his lunch with all the children in the school, in the cafeteria. Then, because resources were cut, they said no, there will be a table where children like him will have their lunch. His parents got very upset because he did not eat. He was not eating and he was crying about his lunch and the lunch can was still full when he came home. They looked into the matter and it was because he had been separated with other autism children. They fought a hard battle, and I helped them, and they got that additional teacher assistant back and the child was able to eat in the cafeteria with all the children.

That is the message: Inclusion is so important. The awareness is important and the knowledge that Senator Keon will bring from a country that is doing better probably than we are. Research, yes, but let us always have inclusion. I pay tribute to former Premier Hatfield and former Senator Hatfield for breaking down those barriers and saying yes to inclusion in New Brunswick.

Hon. Terry M. Mercer: In light of the late hour, I will adjourn the debate quickly, except that I do want to associate myself with comments by Senator Munson and Senator Oliver, and also to support the Jack and Joan Craig Foundation in Nova Scotia.

People do not understand how important are these days of recognition. By declaring April 2 World Autism Awareness Day in this country, it brings a focus to a problem that we have been dealing with. It took Senator Cochrane two years to get it done. We drew the attention of this chamber and the entire country to World Blood Donor Week, which was celebrated last week, and it brought a whole new focus to this issue. This is extremely important.

As a former executive director of the kidney foundation and the diabetes association, and some of us worked for the lung association over the years, I understand how these days help focus the public's attention, and how these days focus what we are doing.

I have had the privilege of knowing several families with autistic children. The parents of these children, who must manage the difficulties they experience to raise these children, are some of the most special people in the world. We need the compassion and we need to bring to this debate the compassion that goes beyond this place. We need to carry it out into the community, as Senator Trenholme Counsell has talked about, with her case of the child who was segregated in the cafeteria.

On motion of Senator Mercer, debate adjourned.

The Hon. the Speaker: Honourable senators, in accordance with rule 6(1), it being twelve o'clock midnight, it is declared that a motion to adjourn the Senate has been deemed to have been moved and adopted.

The Senate adjourned until Wednesday, June 18, 2008 at 1:30 p.m.

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