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HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

THIRD SESSION—THIRTY-FOURTH PARLIAMENT

40 Elizabeth II

VOLUME IV, 1991

COMPRISING THE PERIOD FROM THE TWENTY-EIGHTH DAY OF OCTOBER, 1991
TO THE TWENTY-SIXTH DAY OF NOVEMBER, 1991

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Government Orders

CRIMINAL CODE

MEASURE TO AMEND

The House proceeded to the consideration of Bill C-30, an act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act in consequence thereof, as reported (with amendments) from the Standing Committee on Justice and Solicitor General.

Hon. Shirley Martin (for the Minister of Justice) moved that the bill, as amended, be concurred in.

Motion agreed to.

Madam Deputy Speaker: When shall the bill be read the third time? By leave, now?

Some hon. members: Agreed.

Mrs. Martin (for the Minister of Justice) moved that the bill be read the third time and passed.

Mr. Rob Nicholson (Parliamentary Secretary to Minister of Justice and Attorney General of Canada): Madam Speaker, I am pleased to have this opportunity to rise and speak in favour of this bill at third reading stage. I believe this bill represents a major improvement in the law respecting the mentally disordered who have come into conflict with the criminal law.

In introducing this bill the Minister of Justice said it proposes "wide-ranging changes to modernize, streamline and clarify the provisions of the Criminal Code dealing with mentally disordered accused".

Today I would like to deal with the role of the review boards in assuring that mentally disordered persons who have been found to be either unfit to stand trial or not criminally responsible are dealt with fairly and in a manner that takes into account public safety.

Under the provisions of the Criminal Code as they stand today, the lieutenant-governor of the province is the person responsible for making all decisions regarding the detention, care and conditions of release of those under the authority of a lieutenant-governor's warrant. While the code does provide for the establishment of boards to review the cases of persons held in custody under a lieutenant-governor's warrant, this provision is not mandatory. British Columbia and the two territories have yet to establish review boards under the authority of the code. The role of the board is merely advisory. Nor does the code give much guidance as to how boards should conduct themselves.

It is therefore not surprising that the Law Reform Commission of Canada in its report entitled *Mental Disorder in the Criminal Process,* published in 1976, found that the make-up of the boards differ, the resources available to the boards differ, the criteria they apply, the procedures they use, the material they examine and the rights they accord the prisoner patients all differ from province to province. In some the differences far exceed the similarities.

While in recent years the review boards have taken pains to find out what their counterparts in other provinces are doing, the first annual report, *Canadian Data Base: Patients Held On Lieutenant-Governors' Warrants,* prepared by Doctors Hodgins and Webster for the federal Department of Justice in October 1989, continued to show very considerable discrepancies in procedures.

I do not by this intend any criticism of the review boards or their members who are performing a difficult task with great dedication. Nor am I suggesting that we should insist upon absolute uniformity of procedure as between the various review boards. However it behoves us to assure that there is equality of justice in the way in which we treat mentally disordered persons who come into conflict with the criminal law. This is particularly so in light of the comments made by the Supreme Court of Canada in the case of Swain *v.* The Queen, which talks about the way in which mentally disordered individuals are dealt with presently under the Criminal Code.

In order to foster equality of treatment the bill requires that a review board be set up in each province and territory. This provision guarantees that no matter where one is in Canada cases of this type will be dealt with by a body that has the same structure, powers and obligations as elsewhere in the country. Moreover, henceforth the review board will be the decision-making body rather than merely an adviser to the lieutenant-governor as is the case today.

From both a legal and practical point of view this change makes sense. There is a principle of law that the person who decides the case must hear the evidence, but the lieutenant-governor presently hears neither the witnesses nor the arguments of counsel. It is the review board that sees the mentally disordered person, hears

the evidence, examines the files and has the expertise to make a proper assessment of what needs to be done.

From a practical point of view in the larger provinces if the lieutenant-governor were to consider each individual's case with the same care that the review boards do, he or she would have to spend almost full time examining and deciding these cases. Of necessity therefore the lieutenant-governor must rely on the recommendations of the review board. The proposed modification puts the decision-making powers where they belong.

This bill also proposes changes in the structure of the review boards. Under the existing provisions of the Criminal Code, a review board shall consist of a minimum three and a maximum of five members, at least two of whom shall be duly qualified psychiatrists entitled to engage in the practice of medicine under the laws of the province for which the board is appointed, and one member shall be a member of the bar of that province.

The new provisions would set the size of the review board at a minimum of five but with no maximum. The larger minimum is to bring a greater range of expertise to the board, while the elimination of the maximum is to allow for different panels of the board to be created in large provinces so that service on the board does not become too onerous for its members who have to take time off from their regular positions.

The membership of the review boards will also be changed. With the elimination of the role of the lieutenant-governor from the process, it was thought important to have the board chaired by a federally appointed judge, a retired judge or a person eligible to be appointed as a judge. This would help to ensure that the public would have confidence in the board. Provision is made however to permit the incumbent chairperson to complete his or her term of office so as not to interfere with the operations of an existing board.

This bill also reduces the minimum number of psychiatrists on the review board from two to one. However, where only one psychiatrist is named at least one other person must have training and experience in relation to mental health and be qualified by the laws of a province to practise medicine or psychology.

The reason for this reduction in the required number of psychiatrists is that in the territories and in some of the smaller provinces it is often difficult to find two psychiatrists that have not been involved in the treatment of a mentally disordered person before the board.

• (1150)

For this same reason the bill only requires that the designated professional members of the review boards be qualified somewhere in Canada and not necessarily in the jurisdiction where the board is located.

Both the Law Reform Commission of Canada report which I have referred to earlier and the study done by Doctors Webster and Hodgins reveal that the review boards conduct their hearings in a fairly idiosyncratic manner. It is not essential that the procedure followed exactly the same procedure in every board. However there are some basic rules which must be adhered to if the procedure is to be "in accordance with the principles of fundamental justice", to use the words of section 7 of the Charter of Rights and Freedoms.

The following are some of the rights that should be respected in all cases: the right to receive a notice of hearing, the right to be represented by council, the right to be present during the whole hearing unless there is a good reason for being excluded, the right to give evidence, and the right to examine or cross-examine witnesses.

These are among the primary procedural rules set out in the bill. Other rules protect the privacy of the mentally disordered. They require the board to keep records of the proceedings and to give reasons for its decisions. There are miscellaneous rules dealing with specific problems that may arise. It should be made clear, however, that it is not intended by these amendments to convert the review boards into courts. The first in the list of procedural rules set out in the bill is that subject to those rules hearings may be conducted in as informal a manner as is appropriate under the circumstances.

The bill also provided that any procedural irregularity in relation to a hearing does not affect the validity of the proceedings unless the accused suffers substantive prejudice. While some boards may fear that the procedure spelled out in the bill will cause the proceedings for them to become longer and more complex, it is reassuring to learn from the Hon. Mr. Justice Thomas Callon, chairman of the Lieutenant-Governor's Board of Review,

that his board has been following these rules without any difficulty for the last three years.

In addition to setting out a core of provisions relating to procedure before the review boards, the bill sets out the dispositions the boards may make and the powers they may exercise in carrying out their functions. These provisions are necessary because the boards will have in the future the decision-making power which to date has been exercised by the lieutenant-governor.

Among the remaining provisions regarding the review boards, there are two I would like to mention particularly, for each of them deals with a problem that exists in the present legislation. The first provision grants a right of appeal from a board's decision to the court of appeal of the province or territory in question. At present there is no right of appeal either from the recommendations of the review board or from the decision of the lieutenant-governor, although some relief may be obtained from a decision of the latter in certain cases by means of a prerogative writ. It is universally agreed that a right of appeal ought to exist in such cases and this bill therefore addressed a long-standing deficiency in the law.

The other provision addresses the issue of which review board will have jurisdiction to review the case of a person who has been transferred from one province to another. At present there does not appear to be agreement on the subject. The bill resolves the question by stating that the board of the receiving province will have jurisdiction over the person subject to any special agreements that may have been entered into by the attorneys-general of the respecting provinces.

In summary, the bill modernizes the present law and resolves a number of problems in relation to the care and administration of those who are either unfit to stand trial or not criminally responsible on account of mental disorder. It does so in a manner that respects the rights of the mentally disordered while protecting the security interests of the public.

Finally, it appears to satisfy the concerns expressed by the Supreme Court in the case of Swain *v.* The Queen. There is an additional provision that was suggested by the hon. member for Moncton and agreed to during the legislative committee process that the provisions of this bill should be reviewed within five years.

That is something I think all hon. members should welcome. This is a complicated provision we are dealing with and I think it is appropriate that Parliament should revisit the subject after five years.

I believe five years would be a long enough period to give reasonable time for this bill to be implemented and reasonable time for us to be able to assess either its positive aspects or its weaknesses, if any.

I am pleased that too is a part of the bill. As I say, I am pleased that this bill has received the co-operation of the House as a whole and that it received the co-operation of hon. members when it was referred to a legislative committee.

As a result of those deliberations and all the work that has gone into preparing this, I encourage every member of the House to support this legislation which I think is both progressive and humanitarian.

Mr. George S. Rideout (Moncton): Madam Speaker, I want to give my colleague opposite our assurance that we will be supporting this legislation on this side.

While there are some hesitations and concerns which were brought forward during the committee study, we feel that given the present circumstances we will support the bill. I am sure some people are a little confused with the Swain decision and what it means. In effect, the Supreme Court of Canada did put us to a very strict timeframe and we have had to deal with that.

In fact, the government was forced to ask for an extension of time because our time ran out on November 2, I believe the date was. It has now been extended into February. The legislation itself is probably okay. That is the best way to put it at this particular stage because nobody is really sure.

As we listened to the testimony, it became more and more confusing. What was interesting, I suppose, was trying to balance the legal arguments over what constitutes mental disorder or insanity as we have always heard it talked about before and what were the medical definitions and trying to see whether we could deal with those two different issues.

Suffice it to say, sometimes during the committee hearings everyone was totally confused as to what it meant and how it would be administered.

I think in actuality the legislation is not bad. It does deal with the problems that were talked about in the Swain decision and deals with lieutenant-governor warrants and their unconstitutionality.

I was pleased to put forward the amendment that would see us come back and take another look precisely for what I have just said, the problems that the committee faced, trying to grapple with the different issues. This will at least allow us to go back and correct the deficiencies once they become apparent.

I am sure there will be some, but over all the bill seems to do what it is intended to do and that is a proper thing. Much of the bill, as well, is going to be implemented relatively slowly and the parliamentary secretary has referred to all the difficulties and all the things that the bill is going to do.

We are going to see what will happen over a period of time. Hospitals are going to start with pilot projects and some aspects of the legislation will not be in effect for two to three years. That was why the amendment was crafted, so that a five-year period would see the bill come up for review.

• (1200)

There is one problem. I consulted with most of the ministers of justice and ministers of health of the provinces to see what was going on from their vantage point. There are some concerns that the effect of this legislation will cause problems for the provinces. We should be mindful of that.

In essence what is being said—and that is the way our Constitution works—is that dealing with the criminal law we turn to the federal jurisdictions but when we are dealing with health and care of people through the health care system they become the responsibility of the provinces. We are going to see a burden placed on provinces. We were concerned that there might be some unevenness in the delivery of that health care. Those issues were also of concern to us.

I just want to quote from a couple of letters that I received because they contain this common theme of uncertainty as far as the provinces are concerned. From my own home province of New Brunswick, the minister of health, the hon. Russell King, wrote back to me and said: "With regard to the department of health and community services concerns, the service delivery system required to ensure the Supreme Court decision is upheld will need to be flexible in terms of providing services in both the community and in a hospital setting. The additional need for the province of New Brunswick to prove dangerousness will require mental health specialists familiar with the mental health and criminal justice system, a specialty not previously required in this province. The community component of this service will involve screening, assessment and treatment. Further, the hospital component of this service will need to be upgraded".

That gives a clear indication of some of the concerns that the minister of health for the province of New Brunswick has observed in reviewing the legislation. He does not say: do not do it. He just says recognize that this is going to create some problems for New Brunswick.

The same theme occurred in a letter that I received from the minister of justice and premier of the province of Prince Edward Island, Joseph Ghiz. He indicated to me that his province supports the changes but recognizes the shift to the provinces particularly in the area of treatment. He is concerned and says: "The amendments make no attempt to build in treatment as part of Parliament's response to the mentally disordered offender but leaves that issue entirely in provincial hands at a time when there is a great deal of controversy across Canada on the civil rights aspect of involuntary treatment. We would rather have seen specific treatment provisions in these amendments as they represent a very narrow and justifiable public safety infringement on civil rights in a manner ancillary to and flowing from the public interest in safety and prevention of crime".

From these quotes and from other letters which I have received from across the country, the provinces do have a concern. They realize that it is their obligation to provide for the mentally ill, but we are dealing with the criminal justice system as well as the mentally ill. That is going to create new responsibilities and new stresses and strains on the hospital situation, on community based services and all of those types of things that have an impact on provincial budgets.

While the federal government is a beneficiary in a way because it has now dealt with this relatively easily from its vantage point, there will be an onus and a responsibil-

ity passed on to the provinces, and the provinces are concerned.

That points to the benefit of the amendment which we proposed on this side of the House because we will be able to look back after five years and determine whether the provinces have been successful in changing and adapting to the effects of this legislation.

In a general sense we are supportive of the legislation. It was absolutely necessary because the Supreme Court said we had to do it. We had to do something and this bill seems to do what we want. In that sense we will support the legislation and look forward to the review which will occur in five years because, if we are wrong, we will at least have an opportunity to remedy it and to remedy it very quickly.

Mr. Ian Waddell (Port Moody—Coquitlam): Madam Speaker, I rise on behalf of the New Democratic Party as justice critic to speak on this bill. I just want to add a few remarks to some of the comments that have been made by my hon. friends who have already spoken, the parliamentary secretary and the member for Moncton.

To take up one of the member's themes and to re-emphasize it a bit more, the public policy process in this bill has not exactly been a rousing success. The government left it up to the Supreme Court of Canada to force a change in the present insanity provisions of the Criminal Code. That is what we are talking about in Bill C-30, the issue of criminal insanity.

The government has had the bill since 1986. It has had a Law Reform Commission report since 1976. That means it has been sitting on its hands and was forced by the Supreme Court of Canada finally to act. That is not a very good way of doing legislation. This minister has been very slow with her legislation. It is only in the past little while after a lot of public pressure and pressure from the opposition, I might add, that some action has finally been produced. We had all talk and no action. Now we have some action and we are pleased about it.

Some of the principles that have to be emphasized I noticed the parliamentary secretary opened his speech with and I basically agree with him. We have to take into account public safety, the safety of citizens from people who are insane versus human rights. These people do have human rights under the Charter of Rights and Freedoms, rights as Canadian citizens and as individual human beings.

Part of the reason for the Swain case—and I believe that is the decision of the Supreme Court of Canada that brought on this amended bill if I recollect it right—was that someone was given a pretty well indeterminate sentence, locked up for a long time for an assault charge. That does not ring right with people. That seems wrong. I think that is why there was some basic feeling that this system really was wrong in terms of human rights.

We have to balance human rights with the public safety. I was able to see this concretely when I met a few months ago in British Columbia with some people from the human rights committee of the B.C. Mental Health Association, led by a woman called Judy Shipper who came to Ottawa to testify before our parliamentary committee. I am very grateful for the work those people in my home province of British Columbia have put in on this bill and for their comments. I met with them, with some patients and with some people who were the main forensic unit is in my riding in British Columbia. It was very interesting. I was sitting across the table from two people who had committed murder when they were insane. They appeared to me from what I could see that they had made substantial progress on the road back to sanity.

These are very difficult cases. What do we do with these people? We have the notion of retribution from the public, we have the public interest, and on the other hand we have the human rights of these people. They should not be sitting locked up when they are basically cured. It is a very difficult issue. The bill attempts to deal with this.

Let me deal with some of the provisions of the bill. As I said, the Criminal Code provisions for the mentally disordered offender contain a lot of inconsistencies and omissions and often lack clarity. Much of the law dates back to 1892 or earlier. The law of insanity in Canada is really a 19th century law. The language used to describe mental disorder is archaic and in some cases the authority given to the courts and to the lieutenant- governor is inappropriate.

On May 2, 1991 the Supreme Court of Canada in the Swain case decided that one of the key provisions of the Criminal Code was contrary to the Canadian Charter of Rights and Freedoms and therefore invalid. The court gave Parliament six months to clean up the law. This was extended and Parliament ultimately produced Bill C-30.

• (1210)

Back in 1976 the Law Reform Commission of Canada in its fifth report called *Mental Disorder and the Criminal Process* stated that major changes were required in the way the criminal law dealt with persons suffering from mental disorder.

The Department of Justice carried out additional studies to gather data on exactly how the existing system was operating. It also conducted extensive consultations with the federal and provincial government and produced a draft bill in 1986. We are just getting to that bill now.

This is a big bill. The thrust of these amendments is to modernize and streamline the law in response to demands for change by legal and medical practitioners and interested organizations in accordance with the government's 1990 undertaking to review federal legislation affecting the handicapped.

Amendments are based on the recognition of the complementary roles of the federal and provincial governments. We have two governments involved here. We set the law but basically the provincial governments look after health and the institutions and make a lot of the decisions: a typical Canadian way of doing things. Therefore we have to deal with the provincial governments as well.

I might add that I believe my friend, the member for Moncton, has introduced an amendment that there be a review of this bill. I think that is a good idea. We have been busy with gun law, young offenders, extradition and you name it in the justice area. I have a feeling that we should have given this bill a little bit more scrutiny. I think we have protected ourselves by this review. Where there is good will to make this work it will work. I think we are going to have to come back to the bill.

Let me go into a few more details of the bill. As I understand it, one of the first provisions is the idea of remand for assessment. I might say that I started my working career as a Crown attorney in Vancouver and was defence counsel there. I dealt on a daily basis with some of these remand cases, as crown counsels do.

A court may order that a person be sent for an assessment of his or her mental state. This is when a person is picked up for a criminal offence and is referred to as a remand. A person can also be committed under the provincial Mental Health Act when a person is mentally ill. We are talking now about someone who is suspected of being mentally ill but is picked up in the system through a criminal offence. That criminal offence can range from shoplifting to assault to murder.

Currently the Criminal Code permits a remand only on the basis of medical evidence and only for the purpose of examination to determine fitness to stand trial. When the person is brought into court it has to be determined if he or she is fit to stand trial. The person is remanded, the case is adjourned, and the person is in custody.

The amendments will let the court decide the kind of evidence necessary to trigger a remand. The remand is expanded to include an assessment to determine the individual's mental status at the time of the offence, as well as to assist in making appropriate disposition or even a hospital order. This is good. This gives a lot more flexibility to the judge.

The traditional remand for fitness is maintained. Where appropriate, the court may order treatment with safeguards for the sole reason of making the accused fit to stand trial. It has to be determined right away if the accused person is fit to stand trail. This is to enable the person to have a trial as quickly as possible while witnesses are still available, before memories fade. We do not just want to lock the person away and not have the trial.

It is sort of like Alice in Wonderland. The queen said to Alice: "Off with her head and then we will have the trial". This time we are going to have a little fairer procedure. We will not take the head off before we have the trial and we will have a speedier trial.

There is provision for a five-day assessment. Normally when a a person came into court and we did not know whether the person was fit to stand trial, the person was remanded for 30 days automatically. That is a big deprivation of liberty. If it is a shoplifting offence the penalty would normally be maybe a suspended sentence or probation.

Under this bill, as I understand it, in order to save time and money and minimize interference with the liberty of the person, subject to the assessment the amendments stipulate that a remand for a fitness evaluation will be no

more than five days, excluding any travel time, unless the accused and the prosecutor agree to a longer period. That is definitely an improvement in the law.

A new area of the law deals with protected disclosures as it relates to evidence of statements made by the accused. Once we remand the accused for psychiatric assessment, the assessment is done by a psychiatrist or a psychologist. During that court remand period when the assessment is being done, there is going to be protection in the law so that what the accused says to the psychiatrist and the psychologist cannot be used as evidence in court without the consent of the accused. There are some exemptions to this rule. I will not go through the exemptions, but that is putting it simply. And that makes sense, does it not? We want the person to be able to unburden himself to the psychologist or psychiatrist to see whether that person is really fit to stand trial. That is an improvement.

The other area that the bill deals with is the verdict of insanity. Section 16 of the Criminal Code sets out the defence of insanity, and that is amended to modernize its terminology. I said that this insanity notion in our law goes back to the 19th century, to the 1892 Criminal Code, as a matter of fact. Anyway, it is amended to modernize its terminology to make it more consistent with current medical use and to remove a subsection that was found by the court to be unnecessary. The amendments do not attempt to alter the judicial interpretation of the insanity test itself.

We have sort of moved to modernize it, if I can put it that way, but not completely. As I understand it, in the legislative committee that studied this bill members heard from psychiatrists and psychologists. They asked the committee to modernize the law, whereas criminal lawyers do not quite agree on the same terms as the psychologists and psychiatrists. I point out to this House that we still have to approach this. We may still have to come back after a few years and actually deal with modernizing the modern law of insanity. But that is a big project.

Consultation press reports over the past few years show that the general public finds it difficult to understand the present verdict of not guilty on account of insanity when it is known that the accused committed the act. They say that if he committed the act, how can he not be guilty? In addition, a number of psychiatrists suggest that the verdict of not guilty permits the accused to continue deluding himself or herself that he or she has done nothing wrong. They say this may interfere with the possibility of treatment, if the person does not think he or she has actually done anything wrong.

That is what the psychiatrists say. I received a letter from one of Canada's foremost criminal lawyers, my friend Clayton Ruby from Toronto. He wrote to me about these proposed insanity amendments, and I will just quote one of the paragraphs from his letter. He says: "I do not understand why we fled from the idea that insanity does not produce a true acquittal. I like the idea that it does. This document"—that is the bill—"abandons that idea and creates some new form of non-criminal responsibility. Indeed I do not even like abandoning the verdict of not guilty by reason of insanity. I think people understand it and I think it is a true acquittal". Well spoken, like a true defence lawyer.

We see the difference between the medical group and the defence lawyers. Parliament has to struggle to find an adequate definition. I am just telling the House that I do not think we have quite found it, but we are moving that way.

Some American states have moved to the verdict of guilty but insane. This runs counter to the basic principle of Canadian criminal law that to be convicted of a crime one has to do the act, which is called the *actus reus* in criminal law, and you have to have the mental state, which is called the *mens rea* in criminal law. You not only need the wrongful act; you need the guilty mind. If you are insane, how can you have a guilty mind? Therefore you are not guilty, if I can put it very simply. That is the Canadian law in two sentences with respect to insanity.

• (1220)

This bill therefore proposes a verdict here which declares that the accused committed the act or omission but is not criminally responsible on account of mental disorder. To me that sounds reasonable, but I do point out that criminal lawyers that know more about the law than I do, Clayton Ruby for example, say this is too much of a hybrid. We are going to need another look at this as we go on.

With respect to the disposition, once a finding of insanity or unfitness is made, the individual must be ordered by the court into strict custody until the pleasure of the lieutenant-governor is known. What a quaint phrase. The lieutenant-governor is the cabinet basically or the lieutenant-governor of the province acting on the provincial cabinet. You can be locked up and the key can be thrown away until the cabinet, politicians, let you out.

You may get someone who has killed a couple of people in his family because he is mentally insane or even someone who has done something not so serious. The lieutenant-governor is going to hesitate to sign that order and you are going to be locked up for a long time. Of course that is the problem.

Such persons are then held, as I said, in the psychiatric facility under the jurisdiction of the provincial lieutenant-governor. About 1,100 Canadians are now being held in custody in this fashion. It is important to recognize that none of them has been convicted of a crime. Indeed many of them have not even had the benefit of a trial to determine whether in fact they committed a crime. In many respects their situation is worse than if they had been convicted of the offence charged. Indeterminate custody under a warrant of the lieutenant-governor is at the lieutenant-governor's absolute discretion.

The Criminal Code provides for the creation of a board of review in each province but, as the parliamentary secretary said, for a while in the territories and British Columbia there was not even that board of review. The lieutenant-governor is not obliged to set up a board of this kind or to follow its advice. Board procedures are not set out and neither the decisions of the board nor those of the lieutenant-governor are subject to appeal.

We can see why the Supreme Court of Canada said that there were some very questionable procedures under this law from the point of view of the charter of rights.

Under this bill review boards become mandatory and will assume the decision-making role currently filled by the provincial lieutenant-governors with regard to persons found insane or unfit to stand trial. That is the most important part of the bill and the part I think all of us in this House support.

To assure that persons who are found unfit to stand trial and not criminally responsible because of mental disorder are dealt with expeditiously, the bill provides that the court can make a disposition if it is satisfied that it can do so readily and that a disposition should be made without delay. If the court does not make a disposition, the review board shall make one within 45 days, within a maximum of 90 days, if the court is satisfied that exceptional circumstances exist. The review board must review a disposition made by the court within 90 days of it being made.

That is what the bill sets out. It is technical but that is what the bill as I understand it sets out. We are going to see how this works. I know we have the pledge of the government that it will watch to see how this is going and review the matter if it is not working.

A guiding principle with regard to all decisions and dispositions under the proposed legislation is that the court or review board shall use the least intrusive or restrictive option consistent with the protection of society. For example, the court or review board might allow someone who committed a theft who is not dangerous and willing to submit to psychiatric treatment on a voluntary basis as an out patient to stay at home rather than occupy a costly hospital bed. Such a condition would be subject to supervision and so on.

I just want to make this point. This tendency to treat people with mental illness outside institutions is basically I think a good idea.

We have to accompany that by resources. We can enact all the laws we want here but if we do not provide resources and the provinces do not provide resources and the government does not provide resources, we cannot rely on charity. We need real resources to deal with these people. I think that is the mistake that has been and is being made.

There have to be professionals who can come to visit these people. There have to be good facilities and treatment centres and so on, and I think that is where we keep falling down. If we fall down, we are going to have a major problem in Canada like in other countries where we have a lot of people basically on the streets, homeless, with mental illness problems. We just do not want to go that route. I warn the government about that because we are on our way down that road.

I thank the House for its permission to conclude my remarks even though my time has expired. I just wanted to add that there is a provision for capping. There would be outer limits as to how long you can hold a mentally disordered accused. I think that is good. I think it is about time we had that, and I think that was what was said in the Swain decision.

As I understand it some provinces will have to amend their mental health legislation to bring it into line with the new Criminal Code provisions. I think my friend from Moncton did a good job in writing to the provincial people to get them to respond to this and to get them to know what is going on.

That means the capping provision of this bill will be delayed for some time. I know that is going to happen and I hope that will come in sooner rather than later.

When we review this again we should have a look at the protection of society with respect to dangerous offenders, which is covered by this matter. The dangerous offender provisions will be amended here in the bill consistent with the Charter of Rights and Freedoms. There will also be provisions for hospital orders, dual offender status and amendments to the Young Offenders Act.

Let me conclude by summarizing my thoughts, and I will do it simply. We passed a very big and very complicated bill. It deals with a matter that is very complicated. I tried to make it fairly simple in the sense that we have new remand provisions, new capping provisions, provisions for a new board of review, and we brought it into the Charter of Rights and Freedoms so that people have their rights. I hope we have the right balance between the protection of society and the rights of the individual. That is the key to good criminal law and good procedure.

We have to work with the provinces and we need to have some resources to deal with the people. We have to continue to consult people in the field.

Having said all that, and I thank the House for giving me a little extra time, on behalf of my party we would agree to this bill going through today. I know when it passes here it will go to the Senate and I expect it will be the law of Canada very shortly.

Again I would like to express the view that we will have a review of this bill in a few years and the provinces will act quickly and efficiently in getting their boards and facilities in order.

[*Translation*]

Mr. Vien: Madam Speaker, on a point of order. I believe both sides of the House would be agreeable to calling it one o'clock.

Madam Deputy Speaker: If the hon. member does not mind, perhaps we should first put the question, vote and then decide what time it is.

[*English*]

Is the House ready for the question?

Some hon. members: Question.

Madam Deputy Speaker: Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

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

• (1230)

[*Translation*]

Madam Deputy Speaker: It seems there is unanimous consent for calling it one o'clock.

Mr. Waddell: Madam Speaker, it is only 12.30, but if hon. members say it is one o'clock that is quite possible because this Parliament has extraordinary powers.

Madam Deputy Speaker: The Chair is the servant of the House.

It being one o'oclock, I do now leave the chair until two o'clock this afternoon.

The House took recess at 12.31 p.m.

AFTER RECESS

The House resumed at 2 p.m.