I would like to thank the Senate for its permission to reproduce this document.

F. Lareau
20 July 2011

CANADA

DEBATES OF THE SENATE

OFFICIAL REPORT
(HANSARD)

THE HONOURABLE GUY CHARBONNEAU
SPEAKER

1991-92-93
THIRD SESSION, THIRTY-FOURTH PARLIAMENT
40-41-42 ELIZABETH II

VOLUME I

(May 13, 1991 to February 28, 1992)

Parliament was opened on May 13, 1991

and was prorogued on September 8, 1993

On motion of Senator Simard, debate adjourned.

• (1610)

[*English*]

CRIMINAL CODE
NATIONAL DEFENCE ACT
YOUNG OFFENDERS ACT

BILL TO AMEND—SECOND READING—DEBATE CONCLUDED

On the Order:

Resuming the debate on the motion of the Honourable Senator DeWare, seconded by the Honourable Senator Kinsella, for the second reading 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.

Hon. Richard J. Stanbury: Honourable senators, first of all, I wish to thank Senator DeWare for her explanation of Bill C-30 last Thursday. I have listened with interest in the hope that some of my concerns about the bill would be satisfied during her presentation. I regret to say that some of my reservations about some aspects of this bill are still there. Nevertheless, I hasten to assure honourable senators that I intend to support the principle of the bill so that it can be moved on to committee.

Bill C-30, by the long title: an Act to Amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act, is an attempt through legislation to address a serious discrepancy between how our current criminal justice system treats an accused person who is mentally disordered and what is acceptable treatment according to Canadian society today.

The *Swain v. The Queen*, a Supreme Court Charter decision handed down in May, underscored the necessity for a reconciliation between the specific law and the fundamental attitudes of Canadians as expressed in the Charter of Rights and Freedoms. The court found that the present law violated the Charter rights of the mentally ill, as well as principles of fundamental justice and freedom as a result of arbitrary detention. The decision requires Parliament to enact remedial legislation to address the concerns of the court. Therefore, the need for legislation is unquestioned. Where there is a question, however, is in making the determination of whether this bill will satisfy the needs of the Charter as well as being good public policy.

There are two objectives of the bill. The first is to improve protection of society against those few mentally disordered accused who are dangerous. The second is to recognize that those accused have the fundamental right to due process and fairness under the law. Both objectives are, of course, laudable.

The bill would introduce a cap on the length of time an accused can be detained on the basis of his mental health. Caps vary from two years to ten to life, depending on the severity of the crime. This mechanism is intended to generate more fairness in the system by providing a rough equivalence between the way law treats sane offenders and the way it treats those who are mentally disordered. The cap assures that people will not get lost in the bureaucracy of the system.

Also central to this bill is an effort to reconcile the justice system's relationship with the provinces and their review boards. Bill C-30 regularizes the system by making review boards compulsory and allotting them specific responsibilities. They take over the determination role from the provincial lieutenant governor.

Still, beyond the logic and need for these provisions and others, there are unresolved questions about this bill from a policy standpoint as well as from the standpoint of how the legislation would impact the existing policy environment. For instance, there is already a distinct lack of facilities and staff for the treatment that is needed to help those people who currently find themselves considered insane by the court system. I am concerned that the drain on the system is going unaddressed and that it will only get worse.

I would hope that the government will soon introduce social policies that will recognize the environment that will exist after the implementation of this legislation; and, similarly, for the parole legislation currently being debated in the other place. We cannot sit here, away from the working level of the system, and simply legislate. Changes to the laws—which changes are warranted—are not enough to address the pressures on the system. There must be a concerted effort to address the associated needs of the system.

In fact, not only has the government not targeted any resources with the introduction of this legislation, it shifts the burden to provincial review boards. This bill will increase the load on the shoulders of the already overburdened provinces. It would give provincial governments greater responsibility while neglecting to provide them with any additional resources.

Another concern I have had is not so much with the bill itself but with the government's handling of the bill. It is obvious that the government was under serious time constraints to amend the Criminal Code as a result of the Supreme Court ultimatum; however, the government was well aware of the problem long before that decision. Knowing this was the case, I would have thought that the government could have drafted and tabled this bill with more dispatch so that there would be adequate time for parliamentary debate. As a consequence of the government's schedule, I am not confident that the ramifications of this important legislation have been sufficiently studied.

I understand that it takes time to compose a bill, but I would have hoped that the minister could have done a better job of anticipating the ruling of the Supreme Court that had been expected for some time before it was announced in May. With a little anticipation, the minister could have had a draft bill waiting for final editing.

It is not, after all, the first time that this government has looked at this subject matter. The Honourable John Crosbie had tabled a draft bill on this subject as far back as 1986. Nevertheless, we are faced with consideration of this bill today with little time to study the implications. That is why the

provision for a parliamentary check on the legislation was deemed so important.

Section 36 of Bill C-30 requires evaluation to determine whether the legislation is meeting its objective. Clause 36(1) states:

> A comprehensive review of the provisions and operation of this Act shall be undertaken within five years after the coming into force of any provision thereof, by such committee of the House of Commons as may be designated or established for that purpose.

Clause 36 (2) continues:

> The committee shall submit a report of the review to the House of Commons within one year after commencing it, or within such further time as the House of Commons may authorize.

I hope that these clauses, which were introduced in the other place by amendment, will keep the minister on her toes with regard to the bill's provisions. I hope that if the legislation does not work as intended, we will see amending legislation. You will note that there is no provision for review or report in the Senate of Canada.

This is serious legislation that will have serious consequences on the criminal justice system as well as on those who work with the system and those who find themselves within the system. This bill should not be considered as being perfect or the last word on dealing with the mentally disordered accused.

As for our current consideration of the bill, I support the principle of the bill and agree with Senator DeWare that it should be sent to the Standing Senate Committee on Legal and Constitutional Affairs for closer consideration.

The Hon. the Speaker: I wish to inform the Senate that if the Honourable Senator DeWare speaks now, her speech will have the effect of closing the debate on second reading of this bill.

Hon. Mabel M. DeWare: Honourable senators, I wish to thank the Honourable Senator Stanbury for his remarks and say that I agree with some of his points. I am glad to see that he agrees that the bill should go ahead.

Bill C-30 has received months and years of consultation with the federal-provincial governments and departments, as well as with interest groups and members of immediate families of some of these interned mentally accused. What has happened over this time of consultation has strengthened the bill and has made it acceptable to the parties concerned.

• (1620)

Honourable senators, if the bill received second reading, I will move that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

[Senator Stanbury.]

On motion of Senator DeWare, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

INSURANCE COMPANIES BILL
COOPERATIVE CREDIT ASSOCIATION BILL
TRUST AND LOAN COMPANIES BILL
BANK BILL

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—DEBATE CONCLUDED

On the Order:

> Resuming the debate on the consideration of the Third Report of the Standing Senate Committee on Banking, Trade and Commerce (subject-matter of the following Bills: Bill C-4, An Act to revise and amend the law governing federal trust and loan companies and to provide for related and consequential matters; Bill C-19, An Act respecting banks and banking; Bill C-28, An Act respecting insurance companies and fraternal benefit societies; and Bill C-34, An Act to revise and amend the law governing cooperative credit associations and to provide for related and consequential matters), tabled in the Senate on 28th November, 1991.

Hon. Michael Kirby: Honourable senators, I rise to make a few remarks on the third report of the Senate Banking, Trade and Commerce committee on pre-study of four bills which, together, constitute a significant reform of the financial services industry in this country. It is appropriate to speak on the committee report at this point because when the bills come to us from the other place later this week they will be too large and technical to fully digest. There are a number of policy questions worth raising because they are discussed in the committee's report, and there have been a number of senators appointed since the Banking, Trade and Commerce committee last reported on this issue.

I ought to perhaps make a couple of observations at the outset of my remarks, honourable senators. One is to stress that the committee report before you is unanimous. Historically, with the notable exception last fall of the GST bill, for more than a decade, reports of the Banking, Trade and Commerce committee have always been unanimous. Precisely because they have been unanimous, the industry and the government have paid considerable attention to what the committee has had to say.

On the broad subject of financial institution reform, the Senate began its study of that issue back in 1985 when we had a series of hearings that continued through much of the fall of 1985 and on into the spring. In May 1986 at the conclusion of those hearings, chaired by Senator Ian Sinclair in his capacity as Chairman of the Banking, Trade and Commerce committee, the committee issued a report in response to a green paper from the government. The Government's green paper came out in the summer of 1985. We had hearings in the fall and through the winter, and in May 1986 a report was tabled entitled, "Towards a More Competitive Financial Environment". The government accepted the recommendations out of