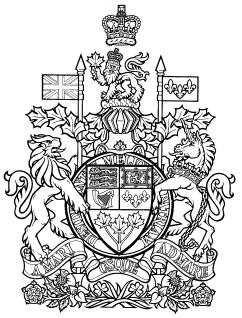

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(HANSARD)

Wednesday, December 12, 2007

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, December 12, 2007

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

Prayers.

SENATORS' STATEMENTS

THE HONOURABLE PAT CARNEY, P.C.

RESIGNATION FROM THE SENATE

Hon. Pat Carney: Honourable senators, I wish to advise the Senate that I will be notifying the Prime Minister that I will resign my seat effective January 31, 2008.

TRIBUTES

THE HONOURABLE PAT CARNEY, P.C.

The Hon. the Speaker: Honourable senators, I received a notice earlier today from the Leader of the Government to request, 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 Pat Carney, P.C., who will retire from the Senate on January 31, 2008.

I remind honourable senators that pursuant to our rules, each senator will be allowed only three minutes and they may speak only once. The time for tributes shall not exceed 15 minutes, but it does not include the time allotted to the response of the senator to whom the tribute is paid.

Hon. Hugh Segal: Honourable senators, our colleague Patricia "Pat" Carney came to Ottawa in 1980 from the riding of Vancouver Centre, not to have a better job than the one she had as a journalist, economist, analyst, lecturer and community leader, but as a newly elected MP in the Clark Progressive Conservative team to build a better country. In the 27 years of service to Vancouver, British Columbia and Canada, that is precisely what Pat Carney did.

• (1335)

Never a go-with-the-flow pushover, Senator Carney stood her ground, in partisan and policy terms. She always fought for economically rational and socially progressive policies, even when the politics and the biases of the day favoured neither.

Her determination, focus, integrity and strength were often viewed by bureaucrats, the media and even some of her own colleagues in the same party as being aloof, stubborn and difficult. By the way, these terms were used by men to diminish women, especially in the 1970s and 1980s when a paternalistic, old-boys, golf club, male, Ottawa culture deeply resisted strong, competent and take-no-nonsense women. Thankfully, Pat Carney was not bothered.

She did her job and charged straight ahead, and helped change the culture as a result. *Beneath the Veneer*, the 1990 report of the Task Force on Barriers to Women in the Public Service, of which Senator Carney was chair, was a catalyst that would encourage women in the public service to move beyond the glass ceiling. Senator Carney's political partisanship never interfered with her advocacy for women. In 1991, when Bill C-43 came before the Senate, Senator Carney voted against her own government's bill. It was one that sadly would have criminalized abortion. Her vote produced the tie that defeated that bill.

Hon. Senators: Hear, hear!

Senator Segal: Senator Carney is a woman from a generation who understood and experienced the limitations that culture and society placed on women. She is also an example of how cultural and societal limitations on women were broken down, often through compelling competence, sheer acts of courage and personal will of the kind her career will always symbolize.

As Minister of International Trade, her role in the free trade negotiations was seminal, clear-cut and demanding. Her advice in public and private was clear-headed and insightful. She brought a Pacific-coast sensibility to discussions that would have been otherwise only about Central Canada, as is often the case in this city.

The value of Senator Carney's economic literacy, articulate analysis and determined advance of a better life for middle-income Canadians and the poor was inestimable. It brought a spring to the step of humane and compassionate Conservatives as we all went door-to-door fighting for a better way of governing and serving. She served under Prime Minister Clark, and as Minister of Energy, Mines and Resources in the early Mulroney years. She negotiated and delivered the Atlantic and Western accords. The accords brought fairness to the regions and undid the horrific damage of the confiscatory National Energy Program, a program that was designed in Ottawa, by Ottawa, for Ottawa. Her leadership, strength, intellectual rigour and competence in no way diminished her rich Irish sense of humour and depth of friendship; a friendship she extended often to new MPs, such as Barbara McDougall and Mary Collins, who greatly benefited from her advice, camaraderie and experience with others.

For that friendship, leadership and her work on free trade, we owe Pat Carney more than we can ever adequately repay. The championing of the case of both heritage lighthouses and Senate reform are legendary and reflective of her never-give-in demeanour.

Senator Carney's autobiography, *Trade Secrets: A Memoir*, while a compelling and entertaining journey of her life and careers, is definitely not the end of the story. We wish her a full, active and robust retirement. I doubt that her service to Canada and its people is over. I am sure it is simply entering a new phase.

• (1340)

Hon. Joyce Fairbairn: Honourable senators, it is with feelings of personal pride and regret that I say farewell to a long-time friend and colleague who is leaving the Senate to return to the Gulf Islands and her beloved province of British Columbia.

There is only one Pat Carney in this world and, during her working life, she has stirred up attention to and an understanding of our Canada as a journalist, a vigorous member of both Houses of Parliament, a cabinet minister and a voice for people who need attention and help to be able to join in the daily life of this incredible country.

Born in Shanghai, China, with a South African mother and an Irish Canadian father and a twin brother, Jim, she and her family moved to British Columbia where Pat was raised in the Kootenays, where, I can hardly believe, she once dreamed of becoming a rancher. Instead, her mother's background as a writer set her moving in the direction that eventually led her to this Hill back in the 1960s.

Pat and I pioneered many years as eager young women in a man's world — a time when we were referred to as "female newsmen." Educated at the University of British Columbia, she has worked all over the province and in the Yukon for newspapers, radio, television and magazines with some of the finest reporters, editors and commentators in Canadian journalistic history. Along the way, she was recognized as a first-rate financial writer.

While she was doing all that in the 1960s, I was in Ottawa, working away in the Parliamentary Press Gallery. My weakest effort was anything to do with high finance, and I stood in awe of Pat when she was dispatched from Vancouver on annual budget days. She would march into those scrums and take direct aim at the finance minister, whose knees would be shaking at the directness of her questions.

In 1968-69, she was assigned to the Ottawa team of *The Vancouver Sun* and FP Publications in the Press Gallery, where she joined up with me and another vigorous young journalist, the late Marjorie Nichols. The three of us were just, well, a threesome; we were great friends.

With all of this excitement in her system, she returned to Vancouver where she carried on writing as always and working as an economic consultant. However, having been here, politics was on her mind, and in 1979, she gave it a try, unsuccessfully, as a Progressive Conservative candidate. Then, putting up a vigorous effort, she was elected in Vancouver Centre the following year, which added vigour to a new Parliament.

In 1984, Pat joined the Mulroney cabinet as the first female Minister of Energy, Mines and Resources and, two years later, was named Minister of International Trade. She played a significant role in negotiating the Canada-U.S. Free Trade Agreement, for which she received a reward for outstanding achievement in the field of international law and affairs from the New York Bar Association, which was pretty hot stuff, I would say. She was a best-selling author of *Trade Secrets: A Memoire*. She went on to serve as President of the Treasury Board and the Minister Responsible for the Asia Pacific Initiative at the time.

In 1988, Pat decided not to run for re-election but her life in Parliament was far from over. Two years later, she was appointed to the Senate of Canada, and showed the strength of her personal convictions when she opposed the then Conservative government's proposed anti-abortion act, which was defeated on a tie in the Senate. Always an advocate for women's rights, she showed great courage and that was very much appreciated across this country. The effort will never be forgotten.

As a result of her background with those who live and work in the Gulf Islands, Senator Carney joined with the late Nova Scotia Senator Mike Forrestall to try to persuade the federal government to protect heritage lighthouses, but so far, to no avail. I have no doubt that she will vigorously promote this important issue in her remaining days in this chamber and I hope she will succeed, or pass the torch because she never lets things lie. They have to be done and Pat, one way or another, will get this one done.

• (1345)

As I look at Pat's history today, I emphasize that she has been a tremendous benefit to this country as a journalist, a parliamentarian, and a special character with deep convictions and I thank her for that. I know that journalism is still in her heart, as it is in mine, and I would not be at all surprised if we see her by-line again and perhaps another book.

Good wishes to you Pat, to Paul and the family. Be assured that I will remember you always as a tough colleague, a good friend and a devoted Canadian.

Hon. Lowell Murray: Honourable senators, it is almost 30 years since Bill Neville and I met Pat Carney and her young son over breakfast one morning in the Château Laurier to encourage her to yield to the Progressive Conservatives of Vancouver Centre, who were trying to recruit her as their candidate for the 1979 general election.

To politics, to government and to Parliament she brought her broad perspective and understanding of what was happening and how and why; her knowledge of mining and resource development in Northern Canada, which she knew from direct experience; her roots in the Far East as well as in her beloved British Columbia, where her antennae unfailingly registered every significant development, no matter how nuanced, usually before it happened.

Pat Carney was a famously quick study as a cabinet minister and as a parliamentarian. As lead minister, her name will forever be identified with some of the most important contributions of the Mulroney government to Canada's prosperity: dismantling and replacing the more perverse elements of the National Energy Policy; negotiation of the offshore energy accords with

Nova Scotia and Newfoundland; and the Canada-U.S. Free Trade Agreement. She was the point person, the fulcrum of all this and more, reporting to cabinet and caucus, answering to Parliament, explaining to the media and defending the policy to a host of public interlocutors.

I should say here that the policies I have just referred to, and, in addition, the Forrestall-Carney Heritage Lighthouse Protection Bill, were as popular on the East Coast as on the West Coast. This was a point made to me in conversation as recently as this morning by our former colleague and leader, Senator Al Graham.

I like to think of my seatmate as one of the last of the Progressive Conservatives. She believes that government does have a role in the economy. In the Mulroney government, she was the most ardent advocate of the child care legislation that we passed through the House of Commons but which later died on the Senate Order Paper when the clock ran out and the 1988 election campaign began. She had let us know, and Mr. Mulroney referred to this often, what it had been like for a single parent to have to drive halfway across Vancouver before and after work every day to place a child in secure daycare, a burden that still afflicts too many Canadian families.

In that connection, my mind goes back 30 years to the presence of her young son at that breakfast in the Château Laurier, and forward to today as she takes her leave of us. In 1979, coming into politics, she needed to know that that life could be reconciled with her obligations as a parent. Heading into 2008, she leaves us because other needs at home are more pressing. Those concerned about family values could well reflect on the personal, professional and public life of Pat Carney and on her priorities.

Much water has gone under the bridge since that breakfast in 1979, and speaking of water, I again commend to honourable senators Bill S-217, An Act to amend the International Boundary Waters Treaty Act on bulk water removal, another Carney legacy in the making.

Hon. Mobina S. B. Jaffer: Honourable senators, the province of British Columbia will lose a powerful and skilled advocate in the Senate when Pat Carney retires at the end of January.

• (1350)

Her departure marks the end of a storied 25 years in Parliament, during which time she blazed many trails for Canadian women. My first memories of her were in her role as a minister. She was an immense support and went out of her way to help the immigrant and visible minority organization through her friend Patsy George, while she was a Member of Parliament for Vancouver Centre. The stories amongst my friends are abundant of how she helped many immigrant women obtain their goals.

It is her work in the Senate that I wish to highlight today. Many would say her legacy is lighthouses. I beg to differ. There is no question she has given a great deal to the preservation of maritime heritage, but I choose today to honour her work in two important areas: coastal community sustainability and Aboriginal women.

Throughout much of her time in the Senate, Pat Carney worked hard in opposition lobbying for projects that made a difference. She fully utilized her background in journalism, municipal planning and economic consulting. There is no question one of Pat Carney's legacies in the Senate is the voice she gave to B.C. coastal communities in Ottawa.

The other legacy that should not be forgotten is her work to provide Aboriginal women access in Ottawa. She has tried, in vain at times, to get the Senate to do a report on the consequences and effects of Bill C-31, introduced in 1985, an act that intended to restore Indian status to Aboriginal women who had lost their status by marriage to non-Aboriginals. Repeatedly she has called attention to this issue, and the need for this type of study.

Honourable senators, I was deeply moved by the words of a B.C. native woman's activist, Wendy Lockhart Lundberg, who recently wrote in the *Vancouver Sun* about what Pat Carney's work meant in her life. She writes:

> We would like to thank Pat Carney for her solid and consistent support. She was one of the first and few parliamentarians to acknowledge the marginalization and under-representation of native women in Canada in the very core legal and legislative issues that affect their human rights and interests.

She goes on to say:

> Carney was instrumental in ensuring that both individuals and organizations participated in policy and legislative development. Among other things, she made sure that native women were provided with opportunities to speak in a variety of forums about the discriminatory provisions of the Indian Act that still affect them today.
>
> We thank the senator for her leadership and we wish her a long and happy retirement. Our hands go up to her in honour and respect.

Today, I, along with everyone else in the chamber, wish to also raise my hands in respect. Senator Carney has spent so many years in public life, and I want her to know that people from British Columbia have appreciated her service.

[*Translation*]

Hon. Pierre De Bané: Honourable senators, I would like to join my colleagues in paying tribute to a great woman who has excelled in both the House of Commons and the Senate.

Senator Carney made a truly remarkable contribution to both Houses of Parliament. Throughout her successful career in the Senate, Pat Carney was a member and vice-chair of the Standing Senate Committee on Foreign Affairs and International Trade. She was also a member of the Standing Senate Committee on Aboriginal Peoples, chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, and vice-chair of the ad hoc parliamentary committee on lighthouses, which a number of my colleagues have mentioned.

[*English*]

When Senator Carney joined the Senate, she was the first Conservative senator to be appointed from British Columbia since 1931. She has always been a strong advocate for British Columbia and its unique interests, including issues surrounding marine safety on Canada's West Coast. Born in Shanghai, China, Senator Carney had a career in journalism and economic consulting before entering politics.

• (1355)

I listened to Senator Murray talk about his first encounter with her. When I went to British Columbia, I was told that Senator Carney hesitated, that she wanted to run as a Liberal. I said that would have been a great comfort for my party because I have known her in the House of Commons, where she was a powerful voice for the official opposition between 1980 and 1984.

Although Senator Carney was summoned to the Senate in 1990, her political career is over a quarter-century long. Not only in politics, but also in journalism, she was an important figure.

She held three cabinet posts, as honourable senators know: Minister of Energy, Mines and Resources; Minister of International Trade; and President of the Treasury Board. She was the first female to be appointed to these senior cabinet positions.

In 1988 she was presented with the prestigious award for outstanding achievement by the New York Bar Association, along with her American counterpart, Ambassador Clayton Yeutter.

Her academic achievements have indeed matched her illustrious political career. She holds a BA in Economics and Political Science, a master's degree in Community and Regional Planning and an Honorary Doctor of Laws degree from both UBC and the British Columbia Open University.

I would like to tell my dear colleague that I wish her many years of enjoyable retirement in the beautiful surroundings of Canada's Gulf Islands. Many people who do not know her see only a person who is a tower of strength and an eloquent spokesperson for the aspirations of the people of Western Canada.

I know how sensitive Senator Carney is to the most humble request of the people of this country, and I want to communicate to her my esteem and gratitude.

Hon. Ross Fitzpatrick: Honourable senators, I too rise today to pay tribute to a valued colleague on her early retirement from this chamber.

Although Senator Carney and I are on different sides of the political spectrum, I have always admired and respected her commitment and dedication to serve Canadians and, in particular, her rigorous pursuit of matters of special importance in our home province of British Columbia.

Although she was born in Shanghai, China, I am proud to say that Senator Carney and I share a British Columbia background. While I was born in Kelowna and received my early schooling in Oliver, she was growing up in the Kootenays and attended high school in Nelson. She also has strong ties to the Okanagan, as her family were early pioneers in Kelowna and the Vernon area.

The original Carney Ranch at Ellison is now part of the Kelowna International Airport. As we drive to the airport, we can still see the Tom Carney brand burned into the side of the old homestead barn.

I followed her career as an incisive and outstanding financial and business writer in the 1960s. In those days, I do not think that either one of us kids from the country thought that we would ever end up serving together in the Senate here in Ottawa.

Senator Carney has always taken a strong interest in the Okanagan, and she has been an unyielding champion for British Columbia's coastal communities and an important voice in the Coastal Community Network, which develops common ground on resource and marine policy and effectively articulates the needs of the coastal communities.

As honourable senators know, Senator Carney has also been a great champion of our seafarers, introducing a bill in Parliament to protect our heritage lighthouses for those at sea and also as an important part of our history and culture. The coastal communities will surely miss her strong and steadfast support.

• (1400)

Honourable senators, Senator Carney has earned the right to an early retirement. I know that you will join with me in wishing her well as she leaves us to return to beautiful British Columbia. I feel confident that she will find true happiness, as she has had the wisdom to become reunited with Paul, her long-time Grit love and mate. The best to you both.

Hon. Senators: Hear, hear!

Hon. Pat Carney: Thank you, colleagues. I thank those of you who took the opportunity to offer me good wishes and Godspeed for my retirement. It is much appreciated and reflects the friendships we have made over the 25 years I have been a parliamentarian.

In view of the comments made by Senator Fairbairn, who wore the shortest miniskirts in the press gallery in the cool 1960s — she had the best legs — I should note that I never intended to become a politician. As a journalist, I sat in the press gallery in the other place looking down literally and figuratively on the MPs while Dief the Chief jiggled his jowls, Walter Gordon and Mitchell Sharp engaged in partisan debates, and I wondered why anyone would choose to be in politics.

I was persuaded by Senator Murray and his colleagues to become a political Joan of Arc, fighting the armies of bureaucrats wielding red tape. Now, after nearly 30 years of political battles, I am reminded that Joan was burned at the stake, a fate I wish to avoid by taking early retirement, retreating from the battlefield relatively unscathed.

I have had the unique opportunity to sit on all sides of both Houses of Parliament as an opposition MP, as a government cabinet minister, and again as an opposition and government senator. It has given me a well-rounded view of the Canadian legislative process, which I think ranks with the best in the world, and I would like to leave you with some observations.

Canadian democracy is based not only on the rule of law but on the principle of accountability. As MPs, we are accountable to the people who elected us, as well as those who did not. As senators, we are accountable to our regions, and to the defence of the Canadian Constitution and the rights of minorities. Always we are accountable to our country, Canada. It is our primary duty as parliamentarians. I stress this because the issue of accountability is the subject of scandal and speculation in today's political environment, obscuring the fact that as Canadians we have one of the most open, accessible and transparent political systems in the world.

Unlike some countries, we do not need to be millionaires to run for office. When I ran in 1979, the requirements for nomination were $200 and 25 signatures. In 2007, it is $1,000 and 50 signatures for small constituencies and 100 signatures for larger ridings.

Normally, the successful candidate is the person who signs up the most members and delivers them to the nomination meeting in sufficient strength to win a majority of the votes cast. Party memberships are generally modest, $5 or $10. This simple strategy is often overlooked by would-be candidates.

Stringent rules apply under the Conservative government's Federal Accountability Act, and previously with Prime Minister Chrétien's changes. These new rules reinforce the fact that Canadian federal elections cannot be bought by special interests. They are won or lost by political foot soldiers, the volunteers. The role of volunteers is of crucial importance and they rarely receive the glory they deserve.

My favourite story involves my first campaign in 1979. I was a shy and ineffective campaigner, believe it or not, and Flora MacDonald was sent west to teach me campaign techniques. Campaigning cannot be that hard, I thought, as Flora charmed the voters and dragged me along in her wake.

That evening, my team positioned me at the corner of Robson and Thurlow, one of Canada's busiest intersections. I chose an elderly lady with curly grey hair who was crossing the street. When she reached the curb, I stuck out my hand and said bravely, "I am Pat Carney, your Conservative candidate, and I need your vote." The benign-looking senior snatched her hand away and snapped viciously: "I would rather my hand withered and dropped off before shaking hands with a Conservative." She then walked away.

• (1405)

Nearly 30 years later, I find campaigning — because I still do that — is tougher for volunteers. At least that is the case in urban ridings, where seniors peer through the keyholes to check out visitors, home dwellers fear they are opening their doors to home invaders and the candidate's outstretched hand may be mistaken for a homeless street person seeking a handout; but our Canadian system depends on our volunteers, and we should all salute them.

I have been honoured to serve in the Canadian Parliament, and particularly to represent my beloved province of British Columbia, both as an MP — the first Conservative woman ever elected in B.C., and that was only in 1980 — and as a senator, supporting the importance of B.C. in a strong and united Canada, a subject I dealt with in my maiden speech in the other place as a newly elected MP.

Since then, B.C. has made some progress as an equal partner in Confederation. The province has attained status as a region for the purpose of exercising regional votes. Under Bill C-22, an Act to Amend the Constitution Act, 1867 with regard to democratic representation, now before Parliament, Prime Minister Harper proposes to restore the principle of representation by population, which was the guiding principle in determining the initial allocation of seats in the other place among the provinces at the time of Confederation.

In 1867, of course, B.C. was not a member of the Canadian union; and it has been generally under-represented since it joined Canada in 1871, although I would argue that the quality of those elected to represent the Pacific province helped make up the difference.

The pattern was set by one of our first B.C. premiers, Amor de Cosmos or "lover of the universe," also known as Bill Smith. The former Nova Scotian strongly endorsed the union of Canada in the colonial debates over the Terms of Union. However, when he became one of B.C.'s first MPs in Ottawa and he viewed how Confederation worked, he promptly introduced a resolution calling for B.C. to secede from Canada — a sentiment shared, if not implemented, by many who were elected after him.

Under the Harper formula, the number of seats allocated to B.C. will increase from 36 in the current House of Commons to 43, but we will have to wait another 10 years, until 2017, for that to happen.

I trust the gains that have been made in securing B.C.'s equality in Confederation will not be jeopardized by the possible introduction in this chamber of the motion to amend the Constitution of Canada, proposed by my esteemed colleague, Senator Murray, which proposes to double B.C.'s representation in the Senate from 6 to 12 seats or votes; as a region, B.C. is entitled to 24 Senate seats, the same allocated to the two founding regions of Ontario and Quebec. As I have argued in this place, a region is a region is a region.

The role of senators is sometimes disparaged by the public, and even more by some senators; but our responsibility to ensure the quality of legislation before us is paramount. One example was the 1991 Bill C-43, which dealt with abortion and which was raised by other honourable senators today. This, again, raised the principle of accountability, in my mind. The issue was not simply a matter of a woman's choice to choose, which I supported. In this case, I viewed the proposed legislation as badly flawed and unlikely to be effectively implemented, since some abortions would be deemed legal and others would be deemed a criminal act. Pregnancies, as we know, are not that predictable.

Senators routinely deal with poorly drafted legislation in our role as arbiters of sober second thought, and abortion is a highly emotional issue in our society. Although Prime Minister Mulroney had declared a free vote on the bill, I was subject, along with others, to unrelenting pressure from government

ministers to support the legislation. I still recall that I was chilled to the bone when I became the first Conservative senator to stand in my seat to vote "no" to the bill, supported by colleagues such as Senator Fairbairn.

The abortion bill was the first government bill to be defeated in the Senate in 30 years. I often think what would have happened if we had wavered in our responsibilities and passed a bill that we knew was a bad bill. That is an example, I think, that history overlooks. It was not just the defeat of the abortion bill; it was a perfect example of senatorial accountability.

• (1410)

I experienced a similar crisis of accountability in my role as the Minister of International Trade with the responsibilities for the Canada-U.S. free trade negotiations, which we successfully concluded in October 1987. As was outlined earlier, I was the Minister of Energy, negotiating the Atlantic accord with Newfoundland and Labrador, and a similar one with Nova Scotia dealing with the offshore oil and gas resources. I negotiated the Western Energy accord, which dismantled the Liberal's controversial National Energy Program; and was appointed by the Prime Minister, in 1986, as Minister for International Trade.

However, seasoned Canadian negotiator Simon Reisman did not intend to play by the rules of cabinet accountability, as some honourable senators will remember. Simon and I went on to be good colleagues, but his attitude then was, "You may be the minister, but I am not your deputy; I do not report to you." He also refused to report to the "fancy pants" in the Department of Foreign Affairs and International Trade. He also refused to divulge the status of the negotiations to either myself or to the cabinet. We sometimes learned more from Reisman's unauthorized media interviews than from discussions at the cabinet table. My cabinet colleagues were understandably frustrated with me. How would their departments and responsibilities be affected? What powers would be traded away? How would Canadian sovereignty be compromised? What elements were on the negotiating table? I had few specifics to give them.

Prime Minister Mulroney, as he said at the time, was rolling the dice, but Canada was the prize, and I am not a gambler. On June 18, 1987, after a stormy meeting with the Prime Minister, when both our Irish tempers were at boil, I wrote the Prime Minister a letter questioning whether there was any point in my continuing to play a role in this government. Honourable senators, I am tabling a copy of that letter today because the original was returned to me by Derek Burney, the Prime Minister's chief of staff. It was never logged in the Prime Minister's correspondence. The Prime Minister may never have read it.

Since we cannot find the original, I suspect that it was among my ministerial papers, which were illegally destroyed after I left International Trade for Treasury Board in April 1988. A subsequent investigation by the Privy Council Office failed to identify why ministerial papers were shredded and who ordered their destruction. What is interesting about this story is we subsequently learned that one reason he told us so little was he had so very little to tell.

On September 23, after walking out on the trade talks in Washington, Reisman told the Prime Minister and key ministers — and my colleague Senator Murray was at the meeting — that he could not engage the Americans on the key issues, and, with the clock running out on the President's fast-track authority to sign the agreement, then Finance Minister Michael Wilson, myself, Derek Burney and our able officials were dispatched by the Prime Minister to Washington to meet with our U.S. counterparts and conclude the remaining elements of the free trade agreement. We signed the document on October 4, 1987 — 20 years ago — and tabled it in Parliament a few days later. At the end of the day, ministerial responsibility was protected.

The real heroes and heroines of the free trade agreement are those Canadian businessmen and women who took the opportunity to access the huge U.S. market, to the benefit of millions of Canadians. Governments can only provide the framework. Canadians themselves earned the benefits and paid the costs. Politicians, including senators, are accountable to them.

I pay tribute to all of those who have written or emailed me good wishes on my retirement, particularly those in B.C. coastal communities, whose issues such as marine safety I have often supported, both as a senator and as a resident of Saturna Island. They include the Orca scientists, the lightkeepers, and the mariners from places that are familiar names to those along the B.C. coast but not normally familiar to people in Ottawa.

As a long-time mentor of women in politics, I leave the future in good hands. I have here a letter written by an 11-year-old girl from Richmond and Saturna Island. She wrote:

> Dear Pat Carney:
>
> I am a 11 year old girl who lives in Richmond and part time on Saturna. . . . I am very interested in politics and have been since I was 5. At the age of 6 I could name all the political parties and their leaders. Some day I want to be party leader or maybe even Prime Minister although Premier would do. I swing more left than right. I think politics is like feet. I have a left foot and a right foot; by themselves you fall over but put them together and you are sturdy.
>
> That is why I think everyone's views should be heard, no matter what politics they believe in. I wish you a happy retirement, though I know you will be busy.
>
> Ania.

• (1415)

Finally, I am very appreciative of my family, who have been so supportive over the years: My husband Paul White, who told me 30 years ago I should not go into politics — it took me 30 years to realize he was probably right — and my son, who is a Cathay Pacific pilot and flew in last night for our dinner, but missed this speech because he had to fly back to Hong Kong at 6:00 this morning.

I am particularly appreciative of my past and present staff, some of whom are with us today; those patient and talented people who deal with West Coast issues, help those who have lost

their passports abroad, left their driver's licences back home in Scotland or are in trouble with the law, and deal with the myriad of problems that find their way to my office. With me today are Sarah Cuff, Patty Loveridge, Aneel Rangi, Cathy MacEachern and Janice Meller.

I would also like to recognize my Casey cousins from Ottawa and Grete Hale, of the Morrison sisters, who have contributed so much to my enjoyment of Ottawa.

To you, my Senate colleagues, I wish success in your senatorial endeavours.

In the words of St. Paul, ". . .the time of my departure is at hand. I have fought a good fight, I have finished my course, I have kept the faith" I have kept faith in Canada; faith in Parliament, where I have served for more than 25 years; and faith in whatever the future holds.

Now, Senator Day, we have to go to committee and discuss a bill to protect heritage lighthouses, for the seventh time.

God bless, and I seek permission to table the letter.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Is permission granted, Honourable senators?

Hon. Senators: Agreed.

Hon. Nick G. Sibbeston: Honourable senators, I would like to use this occasion to say a few words about Senator Carney. Mention was made of Senator Carney spending her life in B.C. and in Ottawa. She was in the Northwest Territories in the 1980s when the North was very active with the possibility of a 48-inch gas pipeline down the Mackenzie Valley. She was a consultant for one of the pipeline groups, which was a very challenging task. She travelled from community to community to convince people of the merits of the pipeline. Pat was operating in a man's world. It was in the early years of government in the North. The government was Commissioner Stuart Hodgson, who was really the king of the North.

To assist her in her task, Pat hired Aboriginal people to bridge the cultural differences between the big companies and the local community. It was a daunting task. In her boldness she was an inspiration to people like me who would never have thought to challenge the government and the status quo. Pat is certainly a personality and a character, and she has done very well for the people of the North.

In closing, I want to make a bit of a pitch. My office was on the same floor as Pat's, and I have always admired her corner office. If somehow you could will it to me, Pat, I would be most grateful. Best wishes for your retirement, and thank you.

ATLANTIC CANADIAN UNIVERSITIES AND COLLEGES

Hon. Donald H. Oliver: Honourable senators, I rise today to call your attention to the importance of Atlantic Canadian universities and colleges.

Today, Canada's economy is knowledge-based. Without a post-secondary education, Canadian artisans, lawyers, software developers, scientists and engineers would not have the necessary knowledge to compete in an increasingly global marketplace.

In Atlantic Canada alone, there are 17 post-secondary institutions with 77,000 full-time students enrolled. These post-secondary institutions include more than $510 million in research and development investments, which fuel 16,000 faculty and staff positions and an additional 27,000 indirect jobs. As a result, post-secondary institutions contribute $4.4 billion to this region's economic output.

• (1420)

A strong education system allows skilled and knowledgeable citizens the opportunity to create jobs. Education encourages business promotion; for example, Canada's Research In Motion, RIM, created the BlackBerry. In 2005, RIM established a 1200-person technical support operation centre in Nova Scotia. As an example, consider that, in less than a generation, these types of technological innovations have spawned global offshore supply chains for manufacturing finished goods.

This innovation has lifted countries like India and China, once two of the poorest nations, to global economic powerhouses as a result. Long before other institutions of higher learning even considered the possibility of using mobile technologies and social networking, Acadia University in Wolfville, Nova Scotia, pioneered the use of mobile computing. The university did not simply provide each student with a laptop computer; it supplied the knowledge to leverage those tools through support and training. It practiced what it preached by extensively using technology in the classroom.

In 2001, Newfoundland's College of the North Atlantic was awarded the "biggest educational contract that's ever been done in Canada," according to Acting President Bruce Hollett. It entered into a partnership with Qatar in the Persian Gulf where it developed a campus for research and technology, specifically in oil and gas.

Now, Canadian ingenuity is training engineers and technicians to work in the natural gas and oil extraction industries. Additionally, Canadian technology is sought after around the world for offshore drilling.

The Peninsula, Qatar's leading English newspaper, reported in April 27, 2006, a state-of-the-art laboratory to research the latest third-generation mobile technology will be established in the College of the North Atlantic-Qatar campus with sponsorship and expertise from Qatar Telecom.

As reported in the *Khaleej Times*, a leading English newspaper in the United Arab Emirates, the University of New Brunswick became the first North American university to establish a campus in Dubai. Dubai is the financial capital of the Middle East and the largest city in that region. The Dubai campus will focus on information technology and business-related studies. Full degrees are offered at the prestigious Dubai Knowledge Village. Students can also choose to study in Dubai for two years and then transfer to Canada to complete their degree.

Honourable senators, Atlantic universities and colleges are at the forefront of technology innovation and are renowned internationally. This helps bolster the potential attraction and retention of well-qualified immigrants to Atlantic Canada, and will contribute towards regional prosperity and competitiveness.

CHALLENGES FACING IMMIGRANTS

Hon. Mobina S. B. Jaffer: I rise today to speak about the challenges new immigrants face in obtaining jobs.

Canada is not free of its challenges to social cohesion. It was unsettling to learn this week of the results of a survey sponsored by the Canadian Race Relations Foundation and the Association for Canadian Studies that found one in four Canadians believe they have been the victim of discrimination based on their race or ethnicity.

Even more alarming is that one in five respondents said the source of discrimination was an employer or a potential employer. We rely on immigration in Canada to fuel our population growth and meet the needs of chronic shortages of skilled labour. However, despite these needs, the major barrier to economic integration and equality faced by immigrants to Canada is the non-recognition of academic credentials.

Recent Canadian researchers found that new immigrants fare less well in the labour market than their predecessors, despite having higher levels of education and training. This research suggests that visible minorities have an increased likelihood to experience low-income or poverty situations because they perform worse in terms of income, employment and labour market participation than other Canadians.

It is a sad state of affairs that obtaining recognition for foreign credentials and experience is still one of the contributing factors of poverty faced by immigrants in Canada. It has been said in Vancouver that the best place to have a heart attack is in a taxi-cab because the chances of receiving medical attention are high as the odds are good the cab driver is a doctor.

The federal government is responsible for establishing immigrant selection criteria. However, the responsibility for recognizing experience and credentials is complicated. Recently, the federal government established a Foreign Credentials Referral Office. Its intention is to better inform prospective immigrants and newcomers about the Canadian labour market and labour participation requirements. However, this office does not address or solve the complex process involved in getting credentials recognized. We need a central agency for this.

• (1425)

Honourable senators, not all the news is bad as progress is being made in the private sector. A growing number of employers have begun to accept qualifications from other countries while offering programs to help recent immigrants adapt. This all spells out the need for more programming to support foreign workers and the companies who hire them. By doing this, we might just start achieving the real sense of cohesion or belonging that has eluded so many new immigrants.

MANITOBA

WINNIPEG—DOWNTOWN REVITALIZATION—CONGRATULATIONS TO NYGÅRD INTERNATIONAL

Hon. Rod A. A. Zimmer: Honourable senators, I rise today to congratulate Mr. Peter Nygård, an outstanding Canadian business leader, on the opening of the Nygård Fashion Park Store on Broadway in Manitoba.

This store is a testament not only to Mr. Nygård's business success, but also to his long-term vision for the city of Winnipeg. A major element to Mr. Nygård's vision is the revitalization of the downtown core. More than $1 million went into renovating this 12,000 square-foot store with the goal of bringing shoppers back to the downtown. With a large population base in this area, retail businesses are necessary to keep the downtown alive. In addition, Mr. Nygård has been able to offer reemployment to those affected from the closure of a factory on Church Street.

Honourable senators, at a time when Canadian municipalities are finding it difficult to secure adequate funding, Mr. Nygård's initiative is to be commended. It is not, however, a solution to the ongoing problems. A report released by the Federation of Canadian Municipalities outlines the $123 billion infrastructure deficit that is facing Canadian municipalities. Canada's cities are the engine of our economy and they must be at the table with the provincial and federal governments. The Liberal motion that was passed recently in the other place brings us a step closer to helping Canadian cities face these challenges.

Therefore, today, I applaud Nygård International for having the vision and the initiative to become an integral part of the Broadway West business community. Although Nygård's business success is impressive, his commitment to the Winnipeg community is outstanding. Honourable senators, I congratulate Nygård International for this new business venture, and I wish them every success for the future.

MILLENNIUM SCHOLARSHIP FOUNDATION

Hon. Catherine S. Callbeck: Honourable senators, we have to develop a strong, well-educated workforce in order to compete in the global economy. Without that workforce, Canadians will no longer enjoy the benefits of a rich and prosperous nation. That is why the federal government needs to do everything it can to help our youth pursue post-secondary education. The Canadian Millennium Scholarship Fund has been helping our youth to do just that since its inception in 1998. More than $2.5 billion has been distributed across the country to more than 800,000 students in the past nine years. In my home province of Prince Edward Island, nearly 4,000 young Islanders have benefited from more than $11 million in funding for their educations.

More than 95 per cent of all current awards are given through the Millennium Bursary Program, which assists students who demonstrate merit and greatest financial need. A look at the foundation's website and its feedback section demonstrates the importance of these bursaries. Erin from Stratford, P.E.I., who received a Millennium Bursary, writes:

> Receiving this financial aid relieves so much of the stress associated with my accumulating student loans. Knowing that I am not standing alone and that you believe enough in my goals to provide me with this kind of help is truly encouraging.

If time allowed, I could read many other such quotations, but suffice it to say that students across the country are appreciative of the foundation and its efforts.

Not only are the foundation's activities appreciated by students, but also it is receiving excellent reviews from others. The Auditor General recently reported that the programs were well managed. A recent Treasury Board review praised the foundation's low overheads of about 3 to 4 per cent, and its ability to work well with the provinces. However, the foundation has only a 10-year mandate that will expire soon.

Honourable senators, as a country, we need a highly qualified workforce, and the Millennium Scholarship Fund helps to do just that. The foundation creates opportunities for Canadian youth to pursue a post-secondary education while keeping their debt burdens low. I urge the Conservative government to renew this very worthwhile program and to give Canadian students the assistance they deserve.

• (1430)

THE LATE JACOB GAUDAR, O.C.

Hon. Francis William Mahovlich: Honourable senators, I rise today to pay tribute to Jacob "Jake" Gaudar, who passed away on December 4 at the age of 87.

In his lifetime, Jake accomplished many great things: He was a pilot in World War II, an accomplished athlete, a Grey Cup winning football player and administrator, as well as the longest serving commissioner in the history of the CFL.

Jake followed his father's footsteps in rowing initially, earning both Canadian and North American championship titles. He was also involved in lacrosse and hockey before he began his career in Canadian pro football. During his 14 years as a pro football player, he was a member of a number of teams including the Hamilton Tiger-Cats, Toronto Argonauts, Toronto RCAF Hurricanes, Toronto Indians and the Montreal Alouettes. However, he may be best remembered for his role behind the bench. For 13 years he was the President and General Manager for the Hamilton Tiger-Cats and, in that time, the team won four Grey Cups and nine East Division titles.

In 1968, Jake became Commissioner of the CFL after four different people held the job in about one year's time — one of whom was a former senator, the Honourable Keith Davey. The role of commissioner is one that Jake excelled at. During his time as commissioner, attendance for the regular season hit an all-time high; he negotiated several deals worth millions for the CFL; and he oversaw the complete unification of the East and West Divisions of the league.

As a man, Jake has been described as very classy and a true gentleman. Despite his tremendous achievements, however, he always remained humble and did not like to draw attention to himself. Regardless, Canada has honoured him in many ways: He was inducted into the Toronto Argonauts Hall of Fame, the Canadian Football Hall of Fame as well as Canada's Sports Hall of Fame in 1990 along with George Chuvalo, Victor Davies, Avelino Gomez, Justice Joe Kryczka, Brigadier-General Denis Whitaker. Frank Mahovlich was also in that group. Jake was also made an Officer of the Order of Canada.

This great athlete and Canadian will be fondly remembered by many fans from coast to coast.

[*Translation*]

ROUTINE PROCEEDINGS

INDIAN CLAIMS COMMISSION

2006-07 ANNUAL REPORT TABLED

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

ABORIGINAL HEALING FOUNDATION

2006-07 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2007 annual report of the Aboriginal Healing Foundation.

[*English*]

SCRUTINY OF REGULATIONS

SECOND REPORT OF JOINT COMMITTEE TABLED

Hon. J. Trevor Eyton: Honourable senators, I have the honour to table, in both official languages, the second report of the Standing Joint Committee on Scrutiny of Regulations, which deals with incorporation by reference.

[*Translation*]

BUDGET AND ECONOMIC STATEMENT IMPLEMENTATION BILL, 2007

MOTION TO REFER SUBJECT MATTER TO NATIONAL FINANCE COMMITTEE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rules 58(1)(e) and 74(3), I move:

> That, in accordance with rule 74(1), the Standing Senate Committee on National Finance be authorized to examine the subject-matter of Bill C-28, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2007, and to implement certain provisions of the economic statement tabled in Parliament on October 30, 2007, in advance of the said Bill coming before the Senate.

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

Hon. Senators: Agreed.

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

Motion agreed to.

THE SENATE

NOTICE OF MOTION
TO SUSPEND RULE 13(1) ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move:

> That the Speaker not see the clock at 6 p.m. and that rule 13(1) be suspended for today.

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

Hon. Senators: Agreed.

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

Motion agreed to.

• (1435)

[*English*]

BILL TO PERMIT THE RESUMPTION AND CONTINUATION OF THE OPERATION OF THE NATIONAL RESEARCH UNIVERSAL REACTOR AT CHALK RIVER

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-38, An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River.

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.

[*Translation*]

ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF EDUCATION, COMMUNICATION AND CULTURAL AFFAIRS COMMITTEE, MARCH 5-6, 2007—REPORT TABLED

Hon. Andrée Champagne: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report by the Canadian parliamentary delegation of the Canadian Branch of the Assemblée parlementaire de la Francophonie regarding its participation in the meeting of the Education, Communication and Cultural Affairs Committee held in Fort-de-France, Martinique, on March 5 and 6, 2007.

CANADA-JAPAN INTER-PARLIAMENTARY GROUP

GENERAL ASSEMBLY OF INTER-PARLIAMENTARIANS FOR SOCIAL SERVICE, AUGUST 22-25, 2007—REPORT TABLED

Hon. Marie-P. Poulin: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian delegation of the Canada-Japan Inter-Parliamentary Group regarding its participation in the third general assembly of Inter-Parliamentarians for Social Service held in Seoul, Korea, from August 22 to 25, 2007.

• (1440)

QUESTION PERIOD

PUBLIC WORKS AND GOVERNMENT SERVICES

REPORT ON REVIEW OF GOVERNMENT POLLING

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, I would first like to welcome the Honourable Senator Fortier, who joins us here today. I would like to thank him for agreeing to speak to us today regarding a matter that is of great concern to him, that is, the famous Paillé report.

Can the Minister of Public Works and Government Services tell us if he has finished reading the Paillé report? If so, can he tell us whether, during his moratorium, he plans to allow anyone else to study the report after he tables it? If he tables it after this session of Parliament ends, which is quite likely, we could study it and contribute to developing a new standard.

Can the minister tell us, first of all, if he has finished reading the report? Can he also tell us if he intends to maintain the moratorium until new standards are established?

Hon. Michael Fortier (Minister of Public Works and Government Services): I thank the honourable Leader of the Opposition for her question. I am delighted to hear that she is taking attendance here in the Senate. Next time, I will be sure to bring a note from my mother to justify my absence.

Mr. Paillé delivered his report at the beginning of October and I have reviewed it.

As for the committee that I hear was discussed yesterday, the document in question will be available to everyone. If anyone would like to study it, of course, they are more than welcome to do so and I would be happy to hear any comments. Naturally, the Paillé report can be read and consulted by anyone interested.

As for its disclosure, as I said last week and I repeat here today, it will follow shortly.

POSSIBLE MORATORIUM ON GOVERNMENT POLLING

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, I would like to get back to the moratorium that was supposed to be in effect, that might have been in effect and that was not in effect for more than three hours on the day when the minister told us there was a moratorium.

I would simply ask the minister this: If he does not intend to impose a moratorium, how is he going to develop his parameters? Will he contact the polling industry and ask for its opinions before seeking the opinions of members of Parliament and the general public?

Hon. Michael Fortier (Minister of Public Works and Government Services): I am a bit disappointed with the Leader of the Opposition bringing back the issue of the moratorium. I apologized last week about that issue. I am well acquainted with the Leader of the Opposition in this chamber, and I know that she is not as partisan as she appears to be today. That is why I am going to forgive her that lapse.

I will be pleased to hear any comments from the general public and the honourable senators. This report was paid for with public money. It will therefore be available to all Canadians and to the honourable senators and members of this committee, which appears to be very busy and eager to be of service.

CONSULTATIONS ON NEW STANDARDS FOR GOVERNMENT POLLING

Hon. Céline Hervieux-Payette (Leader of the Opposition): We hope that the Minister of Public Works and Government Services will come back to the Senate and to the committee that studies this report. We have not often seen the minister at the committee meetings. I am not engaging in petty partisanship in pointing that out. Moreover, I do not believe we will call his mother next week, when we will likely be on our Christmas break.

I would just like the minister to assure us that he will come and consult us on the issue of standards for these surveys, because the minister commissioned this study in light of the Liberal government's polling practices. Obviously, the Conservatives' goal was to do better than the Liberals, yet they achieved quite a different goal by spending more than the Liberals.

My question is therefore: will the minister consult us before finalizing these standards?

Hon. Michael Fortier (Minister of Public Works and Government Services): I have appeared several times before committees of the House of Commons. I did so as recently as this week, with regard to the sale of buildings. The Senate committees have never invited me to appear.

When a committee wants a minister to appear to discuss an issue, it sends the minister an invitation. I will be pleased to appear before your committee if you would like me to.

Once Mr. Paillé's report has been tabled, the government will have responses to Mr. Paillé's recommendations. Honourable senators will have the opportunity to examine the government's response, and I will be pleased to answer any questions or comments.

Senator Hervieux-Payette: I would like to point out to the Honourable Senator Fortier that he may be a minister but he is also a member of the Senate. Therefore, he may attend all Senate sessions and the committees of his choice.

• (1445)

Senator Fortier: Honourable senators, the Leader of the Opposition started going on about committees last week. She asked why her committee had not been asked to look at polling. I told her then, and I am telling her again today, that if a committee was truly interested in the polling issue, why have they waited for the Paillé report? Why did she not look into it in 2003 when the Auditor General first mentioned it or in 2005 when she referred to it again? Was the honourable senator not interested? The Leader of the Opposition only became interested when Mr. Paillé was appointed. That is what is bothering the honourable senator, if truth be told.

REPORT ON REVIEW OF GOVERNMENT POLLING

Hon. Jean Lapointe: Honourable senators, I have had a keen interest in this matter. The minister, on several occasions, has said: soon, soon, soon. I am beginning to think that it is quite late in coming. Can he tell us when he will table the report? Does he have a specific date in mind or is it still up in the air?

Hon. Michael Fortier (Minister of Public Works and Government Services): Honourable senators, it will be soon and the honourable senator will be able to read it soon. I am pleased to note that Senator Lapointe has an interest in something other than culture. I find that reassuring.

Senator Lapointe: I am flattered that the minister finds me reassuring. Once again, I will compare him to the Leader of the Government: he is a very fine skater. The leader also tap dances, thus she has a slight cultural side that he seems to be lacking.

I thank the minister for having answered "soon" to the question, even though it has been late in coming.

[*English*]

MULTICULTURALISM AND CANADIAN IDENTITY

ESTABLISHMENT OF CENTRAL AGENCY FOR ASSESSMENT AND RECOGNITION OF FOREIGN CREDENTIALS

Hon. Mobina S. B. Jaffer: Honourable senators, my question is to the Leader of the Government in the Senate. The Canadian Race Relations Foundation and the Association for Canadian Studies released a survey earlier this week that found one in five of its survey respondents experienced discrimination from an

employer or potential employer. Why has the government not followed up on its election promise to create a central agency for assessment and recognition with regard to foreign credentials?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, the findings in the report were very alarming and disturbing. The Secretary of State, the Honourable Jason Kenney, has been working very closely with various multicultural communities across the country. With regard to foreign credentials, the government is working on this particular issue. It is a situation that should not be tolerated in this country, when people who have credentials are having such difficulty finding work in their own field.

The government is working on a solution. This was a campaign commitment of the government, but I remind the honourable senator that when we make commitments as a government we make them realizing there is much work to be done in some of these areas, and we have only been in office for less than two years.

IMMIGRATION AND CITIZENSHIP

FOREIGN CREDENTIALS REFERRAL SERVICE

Hon. Mobina S. B. Jaffer: Honourable senators, I thank the leader and her government for continuing to look at ways to empower new Canadians or new immigrants to get jobs. I bring to her notice, so that she can bring it to the attention of her colleagues, that the Foreign Credentials Referral Office that has been established by her government basically refers new immigrants to the provincial bodies and is not effective. I ask the government to set up an effective body as soon as possible so that the new immigrants can get jobs quickly.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question. Through the Department of Foreign Affairs, we have been working with our various postings abroad to deal with potential immigrants to Canada in their country of origin. We are hopeful that much of the work and advice now being given through our foreign postings will paint a more accurate picture of some of the difficulties immigrants may encounter. At the same time, it will try to deal with the expectations and still encourage potential immigrants to come to Canada. We are working very hard to put in place programs whereby new immigrants can quickly enter a system where their credentials can be brought into line with Canadian requirements.

• (1450)

Honourable senators, this is something that Minister Kenney has been working hard on. This is a matter of interest for him. Since he has been made Secretary of State for Multiculturalism and Canadian Identity, he has traveled far and wide in this country and he has attended large and small functions. The other day, he commented on the numerous days he has spent around the country attending events as the minister. He is doing a great job. The people in the various communities with which he is working are very happy.

I attended an event in Vancouver in September where members from the Chinese, Korean and Iranian communities were present. When I met with them, I heard about what a great minister and what a great help Jason Kenney has been as they try to navigate their way through the system.

INDUSTRY

COPYRIGHT LEGISLATION

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, Canada recently submitted documents to the Ministers of Industry and Canadian Heritage concerning the government's impending copyright legislation. The concern is that the legislation will not address the needs, requirements and realities facing post-secondary institutions when it comes to copyright.

As honourable senators know, post-secondary institutions are both creators and users of copyright material. What measures will the government take to ensure, as it noted in its 2005 policy declaration, that the rights of creators are balanced with the opportunity for the public to use copyrighted works for teaching, researching and lifelong learning?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the Honourable Senator Tardif for that question. As she knows, the Minister of Industry, Minister Prentice, is seized with this issue at the moment. I will take the question as notice.

[*Translation*]

Senator Tardif: Honourable senators, it appears that the Minister of Industry decided not to introduce the copyright legislation yesterday, Tuesday, December 11, 2007, although a notice had been filed to that effect.

Could the Leader of the Government in the Senate explain why the legislation was withdrawn, and could she tell the Senate whether the Minister of Industry will allow hearings to be held and conduct public consultations to ask Canadians what they think?

[*English*]

Senator LeBreton: Honourable senators, the minister is very thoughtful and thorough. He will obviously table his legislation when he feels it is in good form. I simply need to refer the question to him. Knowing Minister Prentice, the thoroughness of his work and the way he conducts himself as a cabinet minister, I am sure that there are good and valid reasons why he did not proceed. I am quite sure that when he does, the honourable senator will be well pleased with the product.

FINANCE

BANK OF CANADA—SUPPORT TO CHARTERED BANKS BASED ON DEBT INSTRUMENT COLLATERAL

Hon. Jerahmiel S. Grafstein: Honourable senators, I rise on a question of great concern about the recent action of the Bank of Canada to allay the current credit crunch. Based on a C.D. Howe e-brief of December 4, it appears that the Bank of Canada

exceeded its statutory or legislative authority by providing liquidity to chartered banks based on the collateral of debt instruments such as asset-backed and unsecured commercial paper and the risks that those financial instruments carry. What is the position of the government in this regard?

• (1455)

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for the question. I always fear questions from Senator Grafstein. They are always highly technical, financial questions. As I have said many times, I am not an expert on the financial market and its many nuances, which is probably a good thing in many ways.

I am well aware, honourable senators, of the testimony of the outgoing Governor of the Bank of Canada. I will not comment beyond that; however, I will refer the honourable senator's question to the Minister of Finance and ask that department to provide a written response.

Senator Grafstein: I raise this issue with the leader because in her role as a minister responsible to cabinet, this should be a major consideration for any cabinet.

AMENDMENTS OF BANK OF CANADA ACT

Hon. Jerahmiel S. Grafstein: I would like to ask the leader a question concerning the Minister of Finance. Why did the minister not introduce to Parliament amendments to the Bank of Canada Act at the start of this session to ensure that the bank had appropriate flexibility, short of declaring a perceived financial emergency, which in these circumstances might have made the situation worse?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): The honourable senator can understand that I will not divulge cabinet discussions. I am certain that the Minister of Finance is on top of this situation and I will refer the question to him.

Senator Grafstein: Honourable senators, time is of the essence. In light of the recent statements reported today in the *National Post* by the Governor of the Bank of Canada, why does the governor not introduce salutary amendments to correct this situation before we adjourn?

Senator LeBreton: I cannot speak for the Minister of Finance. I saw the article in the *National Post* today. I cannot predetermine or presuppose what the minister may or may not do. Again, I will take that question as notice.

Senator Grafstein: It appears, to astute observers, that the government's failure to make timely amendments to the Bank of Canada Act leaves Canadians and foreign investors with a lack of clarity on the Bank of Canada's powers during a state of uncertainty — especially concerning our financial credit markets today.

Senator LeBreton: On all matters of public policy, there are many varying opinions. Naturally, I will not comment on opinions of some and not others. I will refer the honourable senator's concerns to the Minister of Finance for a delayed response.

[*Translation*]

TREASURY BOARD

ACCESS TO INFORMATION ACT—
LA SOCIÉTÉ DU 400E ANNIVERSAIRE DE QUÉBEC

Hon. Francis Fox: Honourable senators, my question has to do with the Access to Information Act. In the newspaper *Le Soleil* today — I understand if the minister wants to take this under consideration since the information was published today — Minister Verner stated that La Société du 400e anniversaire de Québec would not be subject to the Access to Information Act. Maybe she was talking just to hear herself talk. If this is a non-profit corporation, perhaps it is not subject to the act. I do not know. But if she said that the corporation would not be subject to the Access to Information Act in its dealings with the Government of Canada, what gives a minister the power to disregard the Access to Information Act?

[*English*]

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I am totally unaware of what the honourable senator is speaking about, but I will take the question as notice.

THE ENVIRONMENT

CLIMATE CHANGE

Hon. Grant Mitchell: My question is for the Leader of the Government in the Senate. The government, on the one hand, says that it believes in the science of climate change, while on the other hand, it does nothing that even remotely approaches what the dictates of science tell us we must do.

Could the Leader of the Government in the Senate tell us what she really thinks the climate of this country and the planet will be like in 25 or 50 years if we fail to do what is necessary, if we fail to do enough — if we actually, as the government is doing, do nothing?

• (1500)

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, I thank Senator Mitchell for his question. I am happy to answer it.

Today, I was interested to read in *The Toronto Star*:

> Former prime minister Jean Chrétien is blaming his own Liberals in part for Canada's failure to meet the Kyoto targets for cutting greenhouse gases. . . yesterday, at a Liberal conference on foreign policy in Toronto, Chrétien pointedly said, 'We lost four years' in living up to Kyoto — two of those years including the time Paul Martin succeeded him as prime minister and when Stéphane Dion, now Liberal leader, was environment minister.

The article continues:

> I signed Kyoto. I knew it was to be tough to meet the goals of 2012 . . . When I left, we were very close to have a deal with the oil industry, if you follow the file. After that, it was not implemented.

It is debatable that he was close to a deal with the oil industry. Mr. Chrétien told reporters this, and he insisted he was not blaming Mr. Dion. However, Mr. Dion was the minister. He appeared to blame former Prime Minister Martin, however.

Some Hon. Senators: Resign.

Senator LeBreton: Today at the United Nations Climate Change Conference, it has become obvious that Canada is taking a strong leadership role. Countries are supporting Canada's position.

An Hon. Senator: Two of them.

Senator LeBreton: We made announcements on climate change at the conference. The Minister of the Environment announced today that our government has formally advised industry of new requirements to submit air emissions data to the Government of Canada within the next six months.

The government has introduced a plan to obtain results with tough mandatory regulations for industry to reduce emissions by 20 per cent by 2020, and 60 per cent to 70 per cent by 2050. Under our plan, air pollution also will be cut in half by 2015.

We are taking strong measures in this country, but this issue is a global one. At the summit in Indonesia, I think Minister Baird would be correct to ask the question about global targets. Even though Canada and other nations are making progress, we cannot deal with this problem in the global context if the major polluters in the world — India, China and the United States — do not participate.

Senator Mitchell: The only thing that is consistent in this government's position on climate change is the spinning, the "can't" answers and the fundamental lack of understanding.

I do not think that Senator LeBreton and her government understand what I am saying. They are the government. They must take the responsibility and they cannot shirk it or set it aside. Why are they not doing what the science dictates must be done? What do they think this planet will look like in 25 years or 50 years when it turns out they have not done it?

Senator LeBreton: Progress could be made if the global community follows the strong leadership of the Canadian government, as outlined at meetings of the G8, the Asia-Pacific Economic Cooperation, the Commonwealth, and at the United Nations. This is the beginning of the next process.

I put on the record what Mr. Chrétien said to underline that we must work from what is available. There is no point in going back to try to address this issue. Even Mr. de Boer, Executive Secretary of the United Nations Framework Convention on Climate Change, was critical of Canada. The government agrees with his opinion regarding Canada's poor record in the last decade.

We need to start now. We have brought in strong regulations. We are doing our part. Minister Baird is trying to discuss global targets in Indonesia.

Senator Mitchell, if the world works together and follows global targets in addition to the strong leadership of the Prime Minister and the Minister of the Environment, the planet will be better.

• (1505)

Senator Mitchell: Honourable senators, the fact is, 24 months is more than long enough for this government to have done something concrete to address climate change, and it has not done so. Rather, we get spin and see a fundamental inability on the part of the government to understand that it has a responsibility to future generations. The government can neither shirk nor shake this issue; the government has to do something. Why does the leader not admit that the government is using every last possible excuse? The government has undermined efforts in Bali, has failed to address Kyoto and has used every possible excuse. One minute it is the U.S., the next minute China and pretty soon it will be Luxembourg or some other country that will inhibit the government from doing what it has to do for the future generations of this country and of the planet.

Senator LeBreton: Senator Mitchell, the government has a plan. The previous government did not have a plan. It is not my problem that the honourable senator does not like the government's plan; that is his problem.

On the subject of climate change, the government has demonstrated leadership at home with its plan to achieve an absolute reduction in greenhouse gases of 20 per cent by 2020 and 60 to 70 per cent by 2050. The government has demonstrated leadership at the G8, APEC and the United Nations. The government has invested $375 million in conservation programs to protect our heritage places, such as Nahanni National Park and the Great Bear Rain Forest. The government is getting tough on those who poach, plunder and pollute by putting 100 additional enforcement officers and more boots on the ground.

On the subject of clean water, $93 million is included in Budget 2007 and action will be taken to clean up Canada's lakes, rivers and streams. As well, there will be tough new regulations for sewage. Altogether, Budget 2007 invested $4.5 billion in the environment. The Conservatives have been the government for only two years and that is what they have accomplished. The Liberals did nothing but talk, talk, talk for 13 years. The Conservatives are taking action.

POINTS OF ORDER

Hon. Joan Fraser: Honourable senators, I have a point of order for clarification regarding one of Senator Fortier's spirited responses to the Leader of the Government in the Senate. The honourable senator used the words, "Madam Fraser" several times. I would like to clarify that there are two Madam Frasers involved in his answer. Otherwise, a casual reader of *Debates of the Senate* might think he was wondering why Madam Fraser was

not paying attention when Madam Fraser made a report. There are, of course, two of us. There is my humble self and there is the very distinguished Auditor General of Canada, Madam Sheila Fraser.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, will the Speaker hear the point of order now or after delayed answers?

The Hon. the Speaker: Honourable senators, I am satisfied with Senator Fraser's statement.

Senator Nolin: Honourable senators, I appreciate the Speaker's sensitivity, but I would like a clarification. During question period the Leader of the Opposition gave an opinion that compelled the Minister of Public Works and Government Services to give his own opinion. Is it appropriate during question period to express opinions rather than ask questions or provide answers?

The Hon. the Speaker: Honourable senators, in the spirit of Christmas, during question period, both the questions and the answers are well founded and delivered with enthusiasm. Honourable senators know the rule on question period and how we must proceed during that period. In that vein, and considering where we are, we will continue our work.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour of presenting delayed answers to three oral questions: a question raised by Senator Ringuette on December 4, 2007, on Bernard Lord's remuneration for his work as special adviser for the consultations on official languages; a question raised by Senator Jaffer on December 6, 2007, on funding for Status of Women Canada; and a question raised by Senator Callbeck on December 6, 2007, on agriculture and agri-food and the problems facing livestock producers.

OFFICIAL LANGUAGES

SPECIAL ADVISER FOR THE CONSULTATIONS ON LINGUISTIC DUALITY AND OFFICIAL LANGUAGES—APPOINTMENT OF BERNARD LORD

(Response to question raised by Hon. Pierrette Ringuette on December 4, 2007)

The Prime Minister announced the appointment of Mr. Bernard Lord as Special Adviser to head the Consultations on Linguistic Duality and Official Languages. For this work, Mr. Lord will receive an amount of $24,950, expenses included, for the months of December 2007 and January 2008.

This amount includes $18,450 for professional fees and $6,500 for travel expenses.

STATUS OF WOMEN

RESTORATION OF PROGRAMS INVOLVING WOMEN'S ADVOCACY AND RESEARCH FOR EQUAL ACCESS TO JUSTICE—FUNDING OF HOMES FOR BATTERED WOMEN

(Response to question raised by Hon. Mobina S. B. Jaffer on December 6, 2007)

Status of Women Canada works to promote the full participation of women in the economic, social and cultural life of Canada. Through the Women's Program, financial assistance is provided to organizations to carry out projects at a local, regional and national level in key areas.

On October 11, 2007, as a result of the first Call for Proposals for the Women's Community Fund, the Honourable Josée Verner announced funding totalling over $8 million to 60 projects across Canada. These projects will benefit over 260,000 women in their communities, making meaningful contributions in areas such as improving women's economic security and addressing violence against women.

For example:

In New Brunswick, funding will support a project amount aimed at addressing the unique barriers faced by rural women experiencing abuse in a non-urban setting.

In Ontario, funding will support a project which will pair isolated immigrant and refugee women with mentors to support them in making the transition to full time employment/business ownership.

In Québec, funding will support a project aimed at raising awareness of the dangers of violence against women among young women aged nine to 17.

In Alberta, funding will support a project which will help urban Aboriginal women improve their lives through support and mentoring activities, in an effort to improve their economic situation.

In British Columbia, funding will support a project addressing the social marginalization and exclusion faced by visible minority and Indigenous women and girls.

At the National level, funding will support a project to increase Aboriginal women's financial literacy in order to prepare for their return to their communities, after accessing shelter services.

The second Call for Proposals was launched on November 1, 2007, with a closing date of December 21, 2007.

AGRICULTURE AND AGRI-FOOD

PROBLEMS FACING LIVESTOCK PRODUCERS

(Response to question raised by Hon. Catherine S. Callbeck on December 6, 2007)

At the request of the Minister of Agriculture and Agri-Food, officials at Agriculture and Agri-Food Canada (AAFC) and the Canadian Food Inspection Agency (CFIA) set up a task force with the industry in early November to see what we could do to address their issues. Industry members include representatives from the Canadian Cattlemen's Association (CCA), the Canadian Pork Council (CPC) and the Canadian Meat Council (CMC).

Industry has been working directly with AAFC and CFIA officials since then to determine how current programs can assist industry members, and to identify other measures that may help in both the short term and to reposition the industry in the long term.

The Minister met with his provincial counterparts on November 16th and 17th and they developed an action plan to:

- accelerate and improve access to existing programs, such as:

  1. Targeted advances and interim payments under AgriStability

  2. AgriInvest, in particular the federal Kickstart payment of $600 million by early January (with notice of benefits being sent to producers by mid-December)

  3. Advance Payments

- immediately investigate any additional actions, and

- work with industry to improve:

  a. Canada's export market position through actions such as trade missions and concerted efforts to expand market access

  b. Competitiveness and profitability by addressing regulatory impediments identified by industry.

Industry and government officials (including representatives from provinces) continue to work together on an urgent basis. The Minister and his provincial and territorial colleagues are scheduled to discuss this further at their teleconference scheduled for December 13, 2007.

• (1510)

[*English*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

ANNUAL MEETING, MAY 18-21, 2007

WESTERN GOVERNORS' ASSOCIATION ANNUAL MEETING, JUNE 10-12, 2007

COUNCIL OF STATE GOVERNMENTS-EASTERN REGIONAL CONFERENCE ANNUAL MEETING AND POLICY FORUM, AUGUST 12-15, 2007

PACIFIC NORTHWEST ECONOMIC REGION ANNUAL SUMMIT, JULY 22-26, 2007— REPORTS TABLED

Leave having been given to revert to Tabling of Reports from Inter-Parliamentary Delegations:

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table in the Senate the report of the Canadian delegation of the Canada-U.S. Inter-Parliamentary Group respecting its participation at, first, the forty-eighth annual meeting of the Canada-United States Inter-Parliamentary Group, Windsor, Ontario, May 18-21, 2007; second, a report of the Canadian Parliamentary Delegation to the Western Governors' Association, 2007 annual meeting, Deadwood, South Dakota, United States of America, June 10-12, 2007; third, the Council of State Governments, Eastern Regional Conference, forty-seventh annual meeting and regional policy forum, Quebec City, Quebec, August 12-15, 2007; and, finally, the Pacific NorthWest Economic Region, (PNWER), the Seventeenth Annual Summit, Anchorage, Alaska, United States of America, July 22-26, 2007.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Eyton, for the second reading of Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts.

Hon. John G. Bryden: Honourable senators, this bill is entitled the "Tackling Violent Crime Bill." We all know that this title in fact does not mean much. The bill is really an omnibus bill that amends the Criminal Code, and this title will disappear; it is just spin, honourable senators, or a public relations exercise by this government that will no doubt be used to put pressure on us to speed up our study of its provisions or we will stand unfairly accused of not wanting to tackle violent crime. We have seen those tactics before from this government. We all remember the

last Bill C-2, the Federal Accountability Act, when extraordinary pressure was brought to bear on us to speed our study and pass that absolutely critical bill. Today, a year after it was passed, this government still is not ready to implement many of its critical provisions.

Senator Oliver: That is not correct.

Senator Bryden: Honourable senators, we are talking here about the Criminal Code of Canada. We are talking about provisions that will see Canadians put in prison for many years, and even indefinitely. These are serious matters, far too serious for spin or political gamesmanship. Our constitutional responsibility is to act as a chamber of sober second thought. I, for one, intend to do just that. I am confident my colleagues on this side will join me, and I fervently hope my colleagues opposite will as well.

I was happy to hear Senator Nolin's question last week, when he asked Senator Stratton, the sponsor of this bill, whether we will be able to study this bill and introduce amendments if we see fit, notwithstanding the statements of the Minister of Justice and the Prime Minister to the effect that no amendments will be accepted to this bill. I was pleased to hear Senator Stratton reply that the responsibility of this chamber is to examine the bill in detail and make our judgments on amendments later.

Let me get one thing straight, for the record, before we get into the meat of this very complex and far-reaching bill: This government likes to say that we on this side care about criminals more than we do about victims. That is hogwash, honourable senators. We care about Canadians. We care about upholding the Constitution of Canada and ensuring that all Canadians receive the rights and protections to which they are entitled, as Canadians. That includes a Canadian facing a court in this country, and it also includes a Canadian outside Canada, facing that most terrible sentence, the death penalty, even in the justice system of one of our closest neighbours and allies.

It is easy to talk about locking up murderers, but there have been mistakes, honourable senators. Ask Steven Truscott or Donald Marshall. Mistakes do not occur often, but when they do occur, they destroy the lives of innocent Canadians. The safeguards in our Constitution and criminal justice system are there precisely to try to ensure that such terrible miscarriages of justice do not happen. That is why I fight to defend our system, honourable senators. It is misleading and, frankly, insulting to suggest anything else.

In his speech last week, Senator Stratton talked about a number of reasons why the government was introducing these amendments. He quoted the preamble to the bill — incidentally, this is also something that will disappear — where it says that "Canadians are entitled to live in a safe society." There is no disagreement there, but the fact is, crime is down in this country. The fact is that our courts and police and Crown prosecutors do an excellent job of keeping us safe. Could things be better? Of course they could. Any violent crime is a terrible thing. However, it is wrong and even irresponsible to suggest that we are living in a violent, crime-ridden society when that is simply not true. Statistics Canada reported in October that the national homicide rate dropped by 10 per cent in 2006. Senator Stratton noted in his speech that Bill C-2 focuses on gun crimes. Honourable senators, 2006 saw a 16 per cent drop in the rate of firearm homicides. In fact, in 2006, stabbing deaths outnumbered homicides involving firearms. According to Statistics Canada, most violent offences are committed without a weapon at all.

Violent crime is a problem, and any violent crime is too much, but the best way to be tough on crime is to be smart in fighting it. We have to tackle the real problems of crime. I know, absolutely, that the best way to do that, the most effective way, the Canadian way, is to do it while remaining true to our values and beliefs and standards as a nation.

I was dismayed to see how selective this bill is in terms of the violent crimes that it addresses and those it ignores. Domestic violence is, by and large, ignored by this bill, yet 40 per cent of solved homicides in Canada in 2006 involved violence committed by intimate partners or family members. Experts say that the provisions in Bill C-2, by and large, fail to address the issues in those crimes. Why are those violent crimes, whose victims are most often women, ignored by this government?

On November 24, 2007, the *Ottawa Citizen* devoted a large part of its Saturday "Observer" section to crime in Canada and whether Bill C-2 actually addresses the real issues facing Canadians. The lead article by Don Butler, a respected journalist on these issues, was entitled "A solution in search of a problem."

It is our job to work with the facts and the experts and to design real solutions for real problems. Are there improvements to the Criminal Code that can and should be made? Absolutely, but there are a number of questions about some of the proposed amendments set out in Bill C-2 and the approach proposed to specific problems. Let me elaborate.

I will begin with what I frankly thought would be the least contentious part of this bill, raising the age of consent from 14 to 16. Justice Minister Nicholson has referred to this several times as one of his favourite parts of Bill C-2. The stated purpose, an excellent one, which I am positive all of us here emphatically support, is to protect young people against adult sexual predators.

However, honourable senators, as I examined the nuts and bolts of how these amendments have been drafted, I began to wonder whether that is truly the guiding principle in all of the amendments or whether we are seeing the use of that important goal as a smokescreen to slide in provisions that criminalize sexual conduct of which this government does not approve while specifically exempting other conduct of which it does approve. Or it may be that some of the amendments were drafted too quickly, and certain unintended consequences were the result. Either way, there are issues that will require study and consideration.

• (1520)

Bill C-2 addresses this issue by criminalizing any sexual activity between a 14- or 15-year-old and someone five or more years older. That sounds good, but honourable senators, these sexual activities include "all forms of sexual activity ranging from sexual touching such as kissing to sexual intercourse." That is a quote, honourable senators, from the Justice Canada website. The way

the amendments are drafted, consent is no longer available as a defence to such crimes. In other words, these offences essentially become strict liability crimes.

Just over two years ago, in July 2005, we passed another Bill C-2, which also amended the Criminal Code in order to better protect children. That bill provided for mandatory minimum punishments of imprisonment for individuals found guilty of a number of these crimes. That is fine when we are talking about 50-year-olds preying on 14- and 15-year-olds. However, as drafted, this bill lumps 19-year-olds in with 50-year-olds. To provide some additional context, 14- and 15-year-olds are usually in high school. It is not uncommon for a 19-year-old also to be in high school.

When one looks at the amendments passed in 2005, and combines them with what is proposed in this Bill C-2 we will have criminalized not only the acts we are concerned about, for example a 50-year-old preying on a 14-year-old, but also any sexuality activity — including kissing — between two high school students. The fact that they were on a date, or at a high school dance, and that the kiss was absolutely consensual is irrelevant. The 19-year-old would have to be sentenced to 14 days imprisonment; no option, it is mandatory.

Is that what we want our Criminal Code to say, honourable senators, that statement of our most fundamental values and beliefs as a nation? Is this a moral statement by this government, or simply the result of amendments drafted in too much haste?

Are these amendments necessary? Senator Stratton says that these amendments "will finally say no to adult sexual predators who seek to sexually exploit young, vulnerable persons." However, we already did this. The bill we passed just two years ago, in 2005, significantly strengthened the protection for young people against exploitive sexual activity. In fact, our amendments applied to protect young people between 14 and 18 years of age, a wider ambit than that anticipated here. Honourable senators will no doubt recall that the amendments we passed stated expressly that "a judge may infer that a person is in a relationship with a young person that is exploitive of the young person from the nature and circumstances of the relationship, including (a) the age of the young person; (b) the age difference between the person and the young person.

Do we know already that those amendments do not provide adequate protection? What problems have there been, what conduct by sexual predators is not adequately addressed by the current code? Honourable senators, I am a father and a grandfather. Like you and all Canadians, I want to ensure our children, our young people, are strongly protected. However, I do not want to continue to pass laws, especially ones that criminalize innocent conduct. Are there better ways to strengthen the law? For example, could we include a rebuttable presumption, for example, that someone who is five or more years older is presumed to be in an exploitative relationship? This would allow a judge to assess the facts of the particular case before him or her, and decide on the correct and appropriate disposition in the circumstances.

Senators Nolin and Andreychuk, along with other members of the Standing Senate Committee on Legal and Constitutional Affairs at that time, including me, will recall that there were concerns that the previous Bill C-2 went too far, especially in imposing mandatory minimum punishments. The committee recommended that research be undertaken and made available for the five-year parliamentary review called for in the bill — and the committee took the extra step of saying that in view of the controversial nature of a number of the provisions in the bill, the committee wished to review the bill before five years have elapsed.

I admit to being surprised that the government knows already that those amendments, passed just two years ago, clearly were not sufficient. What we thought as going too far at the time, in fact, did not go far enough. I know that Senator Andreychuk and Senator Nolin will join all committee members in looking forward to seeing the result of the government's research on what has occurred in the last two years.

I was also surprised at one of the exceptions to the age of consent amendments. Subsection 150.1(2.1) sets out two exceptions to the strict liability aspect of these provisions. It says that consent is a defence if (a) the accused is less than five years older and is not in a position of trust or authority towards the young person in question, is not in a relationship of dependency and is not in a relationship that is exploitive of the young person; or (b) the accused is married to the young person in question.

Honourable senators, as originally proposed in Bill C-22 in the last session, the marriage exception applied only on a transitional basis; that is, if the two were married on the day the subsection came into force. Justice Minister Nicholson was very clear when he testified before the Standing Committee on Justice and Human Rights on March 21, 2007 in the other place, that this exception was available only if the relationship was not one of authority, trust, dependency, or is not otherwise exploitive of the young person. He said:

> A time limited exception is therefore proposed for these youth where they are already, as at the date of the entry into force of the new age of protection — married, or living in a common-law relationship as already defined by the Criminal Code or as proposed by Bill C-22, and provided always that the relationship is not one of authority, trust, dependency, or is not otherwise exploitive of the young person.

This exception was changed in the Commons committee during their study of Bill C-22 from a transitional one to a permanent one. However, there is no proviso as described by the justice minister. It is there for common law relationships but not for marriages. A 50-year old sexual predator can prey upon a 14- or 15-year-old under this section, so long as the individuals marry each other. There are a number of provinces and territories where this could happen, for example, if the young girl is pregnant or the man somehow is able to persuade the girl's parents to consent to the marriage.

Does this make sense? We are criminalizing innocent relationships between two high school students that involve as little as a kiss, and sending older students to jail for a mandatory minimum of two weeks, with all the life consequences of a jail term and criminal record for a sexual offence, but we leave free and clear the 50-year-old sexual predator so long as he marries the young girl. Perhaps clarification on these issues will occur at committee.

• (1530)

In the interests of time, I will move to what used to be Bill C-10, the provisions providing enhanced mandatory minimum punishments for individuals who commit certain offences with firearms.

Here, too, I must ask, do we need these amendments? Will these amendments achieve their objective? Where is the evidence that these new penalties will reduce violent crime? Honourable senators, all the evidence that I have read says that this is wrong-headed policy.

These proposed new penalties will not deter crime. They have not worked in other jurisdictions where they have been tried. The only real argument in favour of long-term incarceration as a crime deterrent is that while someone is in prison, he or she cannot commit a crime. The problem is, unless we are prepared to lock up every criminal for every crime for life, eventually the criminal will be released.

Chief Superintendent Michael Woods of the RCMP told the following to the Standing Committee on Justice and Human Rights in the other place:

> The proposed legislation will have a positive impact on crime rates in terms of incapacitation. You're putting more people in jail, and if you're lucky enough to hit the prolific offenders, then the people committing the most crime will be behind bars and not committing crimes while they're there.
>
> There are two problems. I'm thoroughly convinced that it doesn't deter them from committing the offence. More importantly, what happens to the community when they come back out?

He was quite clear in his testimony:

> The threat to the community is eliminated through his lack of access to it, but he may be a greater threat upon his release. Prison allows him to learn his craft better and provides him the opportunity to increase his network.

Again, honourable senators, if this government truly wants to be serious about tackling violent crimes, is this the best way to accomplish this task?

One of our critical roles in this chamber is to represent minorities. Honourable senators, there are serious concerns that these proposed penalties will have a disproportionate impact upon Aboriginal Canadians and visible minority groups. Aboriginal Canadians make up 3 per cent of the Canadian population, yet 22 per cent of the prison population in this country. There is great concern, shared by many, that this situation will be exacerbated by the provisions of this bill.

That has certainly been the experience in other jurisdictions that adopted mandatory minimum punishments. Julian Roberts prepared a study for Justice Canada in September 2005, in which he examined the mandatory minimum sentences of imprisonment in several different common law jurisdictions. The experience in the Northern Territory of Australia is instructive and frightening.

Mr. Roberts wrote:

> As is the case in some other jurisdictions, the mandatory sentencing legislation in the Northern Territory affected Aboriginal offenders to a disproportionate degree. As of 2001, Aboriginal offenders were represented in the population of mandatory sentencing offenders at a rate of 3,728 per 100,000 adult population compared to 432 for non-Aboriginal peoples. This disproportionate impact on Aboriginal communities is one of the factors giving rise to the repeal of some of these provisions.

The United States, of course, has used mandatory minimum prison sentences for a number of years in their attempt to reduce crime. A new study was released just a few weeks ago, entitled *Unlocking America*: *Why and How to Reduce America's Prison Population* It was produced by the JFA Institute, a non-profit agency that has worked for 30 years on justice and corrections research. The report lists nine authors, each a prominent expert in the criminal justice field. On this issue they found:

> Prison policy has exacerbated the festering national problem of social and racial inequality. Incarceration rates for Blacks and Latinos are now more than six times higher than for Whites; 60 per cent of America's prison population is either African-American or Latino. A shocking 8 per cent of Black men of working age are now behind bars, and 21 per cent of those between the ages of 25 and 44 have served a sentence at some point in their lives. At current rates, one third of all Black males, one sixth of all Latinos and one in 17 White males will go to prison during their lives. Incarceration rates this high are a national tragedy.
>
> . . . In effect, the imprisonment binge created our own American apartheid.

Honourable senators, that must not be our future. It is an issue that must be examined carefully.

Let me for a minute tell you about a young girl from my province of New Brunswick and how her prison sentence impacted her life.

When she was 15, Ashley Smith committed a crime. She threw crabapples at a postal worker. Maybe some of you do not know what a crabapple is. A crabapple is a little apple about the circumference of a loonie, and you use it to make crabapple jelly. She threw them at a postal worker. This was a crime, honourable senators, deserving of punishment.

According to *The Globe and Mail* last Saturday, she had been told that the postal worker liked to deliver the welfare cheques a few days late. She decided to teach him a lesson, climbed a tree and threw the crabapples at him.

She was convicted of a series of offences, including assault with a weapon, assaulting a peace officer, uttering threats and possession of a prohibited weapon in a vehicle. Most of her convictions apparently came from conflicts with the authorities in prison.

She was sentenced to six years' imprisonment. *The Globe and Mail*, which has now published two articles about her case, wrote that her parents tried to make the best of it, hoping that some jail

time might finally straighten her out. "We were encouraged to let the professionals take over," they said in a statement. However, the six years turned into a death sentence.

Peter Cheney, *The Globe and Mail* reporter wrote, "Critics contend that Ms. Smith's treatment created what amounts to an institutional suicide machine."

She was sent from one institution to another across Canada, effectively cut off from her family in Moncton. She was assaulted in prison. For nearly two years, she was confined to segregation cells, where she lived alone in appalling conditions. She was forced to sleep on a concrete slab, no mattress, no blanket. She was wrapped in a confinement chair. Her only clothing was a security gown, a garment that has been described as resembling a horse blanket.

Kim Pate of the Canadian Association of Elizabeth Fry Societies, who met with her several times, said that Ms. Smith was spiralling downward, trapped in a cycle of self-defeating rage against the institution, which reacted with more punishments and deprivations.

On October 19, honourable senators, Ms. Smith committed suicide. Her parents have said that they took her away from them at 15; they returned her to them at 19 in a body bag. By the way, she would have been eligible for release from prison on November 27.

There are criminal charges now pending against four prison employees and several investigations under way; but we must not deceive ourselves as to what prison is like and what we are doing when we legislate for more and higher mandatory minimum prison sentences.

As Senator Nolin — I am really not picking on him — told this chamber just two and a half years ago, quoting from Supreme Court Justice Louise Arbour:

> Mandatory minimum sentences are not the norm in this country, and they depart from the general principles of sentencing expressed in the Code, in the case law, and in the literature on sentencing.

• (1540)

Senator Nolin was clear in 2005. He said we should not impose new minimum sentences "simply because some people consider the legal system and the sentencing proceedings are not sufficiently effective." I agree wholeheartedly.

These are critical questions of the policy of these mandatory minimum prison sentences. However, there are problems when one goes into the details of the proposed amendments. For example, the bill imposes different mandatory minimum prison sentences depending on the type of firearm used to commit a particular offence. Higher minimum sentences are required if the weapon is a restricted or prohibited firearm rather than, for example, a long gun.

Honourable senators, I can understand this kind of differentiation for offences like importing or trafficking in weapons. However, I fail to understand its rationale for an offence like sexual assault with a weapon, aggravated assault, robbery or attempted murder.

How would this government explain to a sexual assault victim why her attacker received a lower prison sentence than someone else because his weapon of choice was a long gun rather than a handgun?

I suspect any firearm is terrifying to a victim. One person's sexual assault is not better or less blameworthy than someone else's because the attacker used one type of gun rather than another.

Laurent Champagne of the Church Council on Justice and Corrections pointed out to the Standing Committee on Justice and Human Rights in the other place some of the bizarre results of the drafting of the proposed provisions:

> Under the amendments proposed pursuant to Bill C-10, the following situation could occur. A person carrying a loaded long gun like a hunting rifle commits a robbery in a convenience store, for instance. He has a long criminal record which includes many previous firearms-related guilty pleas. Under section 344(1)(a.1) he would be punishable by a mandatory minimum sentence of four years.
>
> Another person commits a robbery under similar circumstances but carries an unloaded handgun. It is a first offence and the person has no criminal record. In this case the offender would receive a mandatory minimum sentence of five years, under section 344(1)(a). The same provision would apply if instead of robbery, the offence was sexual assault, kidnapping, hostage taking or extortion.
>
> This proves that the length of mandatory minimum sentences under the bill depends on the legal status of the firearm in question rather than on the actual danger to the public caused by the offence. An unloaded handgun is considered more serious than a loaded long gun, shotgun or hunting rifle, regardless of the actual circumstances of the crime or of the offender's actions, the actual harm caused or any victim-related considerations.

Honourable senators, what message is this government trying to send with these provisions? I believe that the underlying premise of these mandatory minimum prison sentences is that would-be criminals know the Criminal Code and make informed choices based on its provisions. The argument follows that someone would refrain from committing a criminal act because that person is deterred by the mandatory minimum prison sentence.

I do not accept that premise. Based on my experience as a former deputy minister of justice and from various readings, I believe that would-be criminals are deterred only by the likelihood of being caught. They are not deterred by the penalty for the crime set out in the Criminal Code.

If we accept the government's premise for the moment, then what are we to make of these provisions? Is the government trying to tell would-be criminals not to commit sexual assault with a weapon, but if they really want to, then use a long gun rather than a handgun?

While tacitly encouraging people to use long guns to commit crimes, this government simultaneously is doing away with the long gun registry. Again, this is a strange way to tackle violent crime.

Even the Canadian Police Association has come out publicly against this differentiated treatment, calling it "misguided" and admitting that they are "at a loss to understand the rationale."

They point out that, in many situations, a rifle or shotgun is a far more lethal threat in the hands of a criminal than a handgun. I ask honourable senators to recall the kind of gun responsible for killing the four police officers in Alberta, the one that killed the man in Nunavut and the kind of rifle that caused the tragedy in Montreal.

According to newspaper reports in the last few days, this government recently passed an order delaying for two more years, until December, 2009, the coming into force of a regulation requiring Canadian gun importers to mark all firearms imported into the country.

In contrast to the fanfare with which they have tabled this "Tackling Violent Crime" bill, this order was passed quietly. It was so quiet, in fact, that the Canadian Association of Police Boards wrote on November 23 to the government asking it not to delay the measure, not knowing that the order to delay had already passed cabinet several days before.

This situation does not make sense to me, honourable senators. This bill imposes tough mandatory minimum prison sentences for offences involving firearms, including weapons trafficking and importing or exporting weapons, knowing it is unauthorized. Why would this government simultaneously delay implementation of a regulation that could facilitate the investigation of these same crimes?

Is this government serious about tackling gun crime?

The bill also would change significantly the current regime concerning dangerous offenders and long-term offenders. There are a number of issues with the proposed provisions, but I will confine myself to two points today.

The first is the constitutionality of the proposed "reverse onus" that would be created under this bill. In brief, the bill creates a new category called "primary designated offences." To name a few, these offences include the broad offence of sexual interference, which covers everything from a kiss to sexual intercourse; sexual assault; assault with a weapon; discharging a firearm with intent; and attempted murder. The bill then provides that if someone has two convictions for a primary designated offence, and was sentenced to two years' imprisonment or more for each of them, the third time they are presumed to be a dangerous offender under the Criminal Code.

In other words, there is a reverse onus, and it is for the offender to prove on a balance of probabilities that he or she is not a dangerous offender.

The bill then provides a second reverse onus, whereby the court is required to impose a sentence of indeterminate detention unless it is satisfied by the evidence adduced that a lesser sentence will protect the public adequately.

A number of legal experts have raised serious doubts about the constitutionality of this proposed regime. Serious questions have been raised whether the provisions effectively eradicate the constitutional "right to silence." Questions have been raised about sections 7 and 9 of the Charter, and the likelihood of success of a constitutional challenge based on one or both of the provisions. The justice department has testified that the provisions are "not manifestly unconstitutional," a clear, courageous opinion.

• (1550)

Honourable senators, on an issue of this importance where Canadians will be put away in prison for an indeterminate sentence essentially for preventive detention, surely we need more than "not manifestly unconstitutional."

I am particularly troubled because, right now, we have a system to put dangerous offenders in prison for an indeterminate period. This system has been tested in the courts and it is constitutional, it protects the fundamental rights and freedoms of Canadians as expressed in our Charter of Rights and Freedoms, and it works to keep us safe. If the new provisions are found unconstitutional, will we have any regime for keeping dangerous offenders in prison? The current system will be gone. Are we risking losing a system that we know works to try something that experts have warned might well be found to be unconstitutional? Again, the government needs to explain why it feels these changes are essential so that the committee and this chamber can assess whether, on balance, the risk is worth taking.

The second issue on dangerous offenders that I want to address occurs throughout Bill C-2. Specifically, the bill repeatedly removes discretion from judges and entrusts the authority instead with Crown prosecutors. Under the current Criminal Code provisions on dangerous offenders, discretion is accorded to judges. Essentially, they are called upon to judge, which is exactly what a judge is meant to do and trained to do. For example, the Code currently says that a court "may" order an assessment to see whether an offender might be a dangerous offender, and then it "may" find the offender to be a dangerous offender. In each of these provisions, this bill proposes to change "may" to a mandatory "shall." The discretion is shifted to the prosecutor, who has the discretion to decide whether to apply under the dangerous offender provisions in the first place.

This distrust of Canadian judges is evident elsewhere throughout the bill as well, most notably in the heavy hand of the amendments imposing new and longer mandatory minimum sentences. Mr. Justice Gomery has called this "a slap in the face" to Canadian judges — a judiciary that is among the most respected in the world, honourable senators. We have safeguards in our system and carefully developed checks and balances on the decisions of our judges. First, there is the appointment process that helps to ensure that our judges represent the best of our legal profession. Then, there is the appeal process, which is the ultimate safeguard on each decision that each judge makes.

Where are the safeguards on the backroom deals made by the prosecutors? Witnesses appearing before the committee in the other place have repeatedly warned that the prospect of mandatory minimum prison sentences, compounded by the

possibility of a "third-strike-and-you-are-out" designation as a dangerous offender, will enhance the power of police and prosecutors, who have the authority to choose which charge to lay. Will it be the offence that carries a mandatory minimum? Will it be an offence characterized as a "primary designated offence"? The Canadian Bar Association has said that the bill will change plea bargaining to charge bargaining.

Honourable senators, our criminal justice system is an adversarial one with the judge, not the prosecutor, as the independent arbiter. I fear that we will radically transform this time-tested system in ways whose outcomes cannot be foreseen. Again, the stakes are terribly high — the highest they can be. We are experimenting with people's freedom.

Honourable senators, there are many important questions to consider during the study of this highly complex and far-reaching bill — questions of drafting detail and of broad policy choices. Violent crime is an issue for Canadians, but is this bill the best way to tackle it? Witnesses before committee in the other place suggested, in many cases emphatically, that it is not the best way. The proposed mandatory minimum penalties will not deter crime and, in fact, may make crime even worse when now-hardened criminals emerge from long sentences in penitentiaries. Provisions in Bill C-2 override long-established principles of Canadian criminal justice, including the critical principle of proportionality in sentencing. Bill C-2 turns traditional roles and relationships on their heads, shifting power and discretion from judges, who are trained to exercise it and who have established appeal procedures to check their power, onto Crown prosecutors, who exercise this power largely behind closed doors and in an adversarial system not designed for this new role.

Honourable senators, I will close with a quote from Anthony Doob, a highly respected criminologist in this country. He said:

> Bills such as this one imply that the solution to serious crime in Canada lies in small changes in the criminal law. In effect, the message you give is that you have addressed the violent crime problem. In fact, there's almost nothing in this bill that will have any impact on violent crime. So not only are you distracting yourselves from changes that will have long-term positive impacts on our society, but you are doing things that will use resources that could be better spent on measures that would address crime.

Honourable senators, time does not permit me to address the other two bills — Bill C-32, on impaired driving, and Bill C-35, which reverses the onus in certain bail hearings.

I thank honourable senators for listening patiently and I ask them please to think about what they are doing.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

[Senator Bryden]

REFERRED TO COMMITTEE

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

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

BILL TO PERMIT THE RESUMPTION AND CONTINUATION OF THE OPERATION OF THE NATIONAL RESEARCH UNIVERSAL REACTOR AT CHALK RIVER

SECOND READING

Hon. Wilbert J. Keon moved second reading of Bill C-38, An Act to permit the resumption and continuation of the operation of the National Universal Reactor at Chalk River.

He said: Honourable senators, I rise to speak in support of Bill C-38, which mandates the Atomic Energy of Canada Limited, AECL, to restart its National Research Universal, NRU, reactor at Chalk River. In considering this legislation, we have to take into account a certain sense of urgency. In a nutshell, Chalk River's NRU reactor has been shut down since November 18, 2007, leading to delays and cancellations of medical procedures involving medical isotopes in Canada. Not only has this extended shutdown put the health of Canadians at risk, it has also contributed to a shortage of medical isotopes worldwide. As many of you know, the isotopes in question are particularly important for diagnostic tests and cancer treatment. As a result of this shortage in isotopes, many treatments and tests are either being cancelled or delayed.

• (1600)

My understanding is that this problem of limited supply of isotopes is quite evident in medical institutions based in smaller communities across Canada, and particularly in the Atlantic provinces. As a result, in these areas, the priority is increasingly becoming one of treating emergency patients only.

The Canadian Medical Association is very concerned about this. Their president, Dr. Brian Day said, "In balancing relative risk, it is important to ensure that the serious and immediate human health consequences of isotope shortage are fully taken into account."

Clearly, honourable senators, this is an unacceptable and critical situation. As Health Minister Tony Clement stated on Tuesday in the House of Commons, "resuming medical isotope production is an immediate priority for Canada's government." That is why Canada's government reacted swiftly the moment the extended shutdown of the reactor at Chalk River occurred. The government has done its due diligence by staying in contact with the Canadian Nuclear Safety Commission and Atomic Energy of Canada Limited. This has been important in ensuring that we find timely solutions to this severe shortage.

My understanding is that the government has also been working with its national and international partners and its officials to identify an alternative source of isotope supply in other countries and other diagnostic options, but the best course for resolving this problem would be to ensure speedy passage of Bill C-38.

The government has given its assurance that the National Research Universal, or the NRU, reactor at Chalk River can be safely started. Indeed, Bill C-38 even contains a clause that stipulates that AECL may resume and continue the operation of the NRU reactor only if it is satisfied that it is safe to do so.

While AECL made the original decision to extend a regularly-scheduled maintenance shutdown in order to perform additional modifications required to meet Canadian Nuclear Safety Commission licence requirements, technical experts now assure us that the reactor can still operate safely. According to the technical experts, the NRU reactor can operate safely on an interim basis until all modifications are completed. In coming to this conclusion, they have also cited the recent connection of a back-up pump power system as substantial upgrade for the reactor, which has operated safely for decades.

Honourable senators, while we all regret that the extended shutdown at Chalk River has led to this serious situation, fortunately we are in a position where we can do something about it.

I raised the matter of safety this morning with the local MP, Cheryl Gallant. She confirmed my own opinion of what goes on at Chalk River. I must tell you that I have a personal interest, since my own country home lies eight kilometres downstream from the Chalk River plant. I am very confident that safety during this 120-day period is not an issue. I have confidence in the people who work at AECL, and I know many of them.

The people who work at Chalk River take pride in what they do. Under no circumstances would they allow any action that would endanger their fellow workers, their community or all Canadians. There are over 2,500 workers currently on site at the Chalk River location. These workers and their families live in the vicinity of the Chalk River site. They include people who have decades of experience. They have made a career in the nuclear industry. It is their life's work. To become an operator takes a minimum of four years of training and involves a mentorship at the reactor location. Much of this is on-the-job training under supervision. To become a senior reactor shift engineer requires an engineering degree, plus four years training with rotation focus on specific aspects of the operations, that is rods, loops and other controls then progressing to work in the control room, alongside an experienced senior reactor shift engineer.

In addition, everyone working in the reactor undertakes refresher training on a regular basis, from three to five years, both during the initial training and through the formal continuing training program, specialized training for components and when procedures and conditions require or when changes are made. Training packages are developed for specific work which will be updated with new information to reflect the upgrades as they come on line.

There are employees at Chalk River working within the NRU who are now third generation, fathers and sons working together, their grandchildren returning for summer jobs. There is pride in their work. There is tremendous expertise. This is a highly educated and dedicated workforce.

Honourable senators, as we try to balance the safety risk of passage of this bill to the health risk of not passing it, it seems clear to me that we should proceed with its passage.

Hon. Sharon Carstairs: Honourable senators, I thank Senator Keon for his speech. I rise to speak on this very important bill, and I do so today because of the urgency of this matter. Medical isotopes produced in Canada are necessary now, not only in Canada but in all other nations where we provide this product. However, there is also a safety issue involved here, and therefore the correct balance must be found between these competing but equally important issues.

This is one of those issues in which partisanship should not have played a role. The Prime Minister should have called all the political parties in the House and the Senate, and also the competing parties, the Atomic Energy Commission and the Canadian Nuclear Safety Commission together. Instead, he chose, as only a non-leader can do, to politicize this issue.

Senator Oliver: That is not the case.

Senator Carstairs: He owes Linda Keen, the president and chief executive officer of the Canadian Nuclear Safety Commission, a public apology. This career public servant, appointed to this position, albeit by a Liberal government, did not deserve the attack he launched on her and other members of her committee yesterday. She was doing her job. She was ensuring the safety of nuclear institutions in this country. She was obeying the law. However, since the present Canadian administration does not understand the concept of apology, I offer her one, which I hope everyone in this chamber will support.

I suspect that each and every honourable senator in this room, either personally or through their family, has been subjected to some form of nuclear medicine, even though they may not have been aware of it at the time. Within my own family, I am extremely grateful for this technology. Following my husband's diagnosis with prostate cancer and the recognition that the Gleason score, which measures the intensity of cancer, indicated that the cancer had spread beyond the prostate gland and therefore he was not a candidate for surgery, his treatment was external beam radiation, followed by radioactive seed implants, a therapy called brachytherapy, followed by hormone therapy. That was 10 years ago, and he remains in remission to the delight of his family and, I must admit, particularly me. Our daughter Catherine was diagnosed with Non-Hodgkin's lymphoma a year ago after the discovery of a 12 by 9 centimetre growth in the middle of her chest. We again turned to nuclear medicine as well as chemotherapy. When her PET scan last May, in which any cancer cells would glow if they were still present in her body, came back negative there was great rejoicing in our family. There is absolutely no question in my mind regarding the value of nuclear medicine and the need for us to ensure the adequate supply of isotopes and other factors that can make such good news stories happen.

• (1610)

Honourable senators, that is only one part of the equation. Canadians, particularly those who live in the vicinity of Chalk River, Ontario, where these products are produced, must be assured of their personal safety. Their safety is as important as the safety of my family. The NRU facility is 50 years old. Maple 1 and Maple 2, which have been slated to replace the NRU, have had constant construction delays. They are nearly 10 years behind schedule and way over budget.

The administration of AECL has a great deal to be held accountable for. Like Senator Keon, I think the employees of AECL are first class, but I do not have the same faith in the administration. They were granted an extension to their licence to operate the NRU reactor until October 31, 2011. That extension was predicated on certain upgrades being done. Meanwhile, the work needed to be done on the NRU was fully known to the Atomic Energy Commission. When AECL closed the reactor for maintenance work on November 19 of this year, it was discovered that the emergency power systems had not been connected to the cooling pumps, despite the assurances in October 2006 when the licences had been renewed that this would be done. The administration of AECL has acted in its typically non-urgent way. It is apparently not urgent to get the new reactors up and running, according to AECL. It is not urgent to meet the safety standards that assure the regulating body.

Why were they the least bit surprised when the safety commission refused to let them reopen without the necessary safety pumps? Why has the Minister of Health, the Honourable Tony Clement, not been on this file much faster in order to prevent what is now an emergency situation?

The proposed legislation before us is relatively simple. It allows AECL to reopen immediately to produce isotopes for a period of 120 days. Let us hope by then the emergency pumps will be fully operational. However, will the administration of AECL now understand what the word "urgent" actually means? Let us hope there will be no untoward accidents at the NRU over the next 120 days.

Honourable senators, we are being asked to take a leap of faith. I wish that my past experiences with the administration at AECL and their failure to address serious and urgent personnel needs at the Pinawa plant in Manitoba some years ago gave me the sense that my faith is in good hands. Regrettably, I do not have that faith in the administration of AECL. However, for the safety and health of Canadians and many in foreign countries, I must take this leap of faith. I do so reluctantly. I also give fair warning to the administration of AECL. If they do not get their act together in 120 days, then they will have a great deal of explaining to do to this chamber, to the Canadian people and to the Minister of Health.

Hon. Tommy Banks: Honourable senators, everything that Senator Carstairs said is right. When Senator Keon talked about an unacceptable situation in not being able to deliver isotopes in the interest of the health of Canadians, he was right.

However, the other thing that is utterly unacceptable is that Canada should be placed in the position of having to make the odious choice between the immediate health of Canadians in respect of cancer diagnosis and treatment on the one hand, and the dangers that exist in the unsafe operation of a 50-year-old nuclear facility on the other. We should never have to make that choice. We should never have to say because we are going to deliver the isotopes — because there is an immediate emergency that we do that — that we will operate a nuclear generator that ought to have been retired more than a decade ago. That should never be the case.

We are relying on the word of Mr. Brian McGee, a senior official at AECL that the facility will be safe. This assurance is coming from an executive who knowingly operated a nuclear generation facility unsafely and in violation of one of its licence conditions.

I first learned about the relationship between the commission and AECL when I was assigned to the Standing Senate Committee on Energy, the Environment and Natural Resources when Senator Taylor was the chair. We produced a study on nuclear safety. We referred to these kinds of questions.

I hope that we will vote on this bill with alacrity because we have to produce those isotopes. We have to make that horrible choice between these two unacceptable options.

We should have third reading of the bill today because if we are to leap, we might as well leap. However, this should never have been allowed to happen. This was known weeks ago by the government. The conditions under which this new licence was reissued were known to AECL in August 2006 and the situation has not been addressed before now. All of a sudden this ridiculous choice is foisted upon us.

I will be proposing to the Standing Senate Committee on Energy, the Environment and Natural Resources, which I have the honour to chair, that the officials of AECL be called before us immediately on an emergency basis to answer questions with respect to this situation. We will want to hear why this has happened, where the fault lies and try to do something about it.

In the meantime, I agree with Senators Keon and Carstairs that, sadly, we must deal with this bill now.

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

Motion agreed to and bill read second time.

[*Translation*]

REFERRED TO COMMITTEE OF THE WHOLE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I move that this bill be referred to Committee of the Whole immediately.

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

Hon. Senators: Agreed.

Motion agreed to.

• (1640)

CONSIDERATION IN COMMITTEE OF THE WHOLE

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, the Senate is now in Committee of the Whole to consider Bill C-38, An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River.

[*English*]

Honourable senators, rule 83 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: Carried.

[*Translation*]

Senator Comeau: Honourable senators, pursuant to rule 21 of the *Rules of the Senate*, I ask that we invite the Honourable Tony Clement, Minister of Health, and the Honourable Gary Lunn, Minister of Natural Resources, to participate in the deliberations of the Committee of the Whole and that their departmental officials be authorized to accompany them.

The Chair: Is it agreed, honourable senators?

Hon. Senators: Agreed.

• (1650)

The Chair: Minister Clement and Minister Lunn, welcome to the Senate. I invite you to introduce your departmental officials and make your opening remarks.

[*English*]

Hon. Tony Clement, P.C., M.P., Minister of Health: Honourable senators, I am grateful to be here. With me is the Deputy Minister of Health, Morris Rosenberg, and the Assistant Deputy Minister of Health, Meena Ballantyne.

I am speaking to you today in support of the government's legislation to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River. We are very pleased that the bill passed in an emergency sitting of the House last night. All parties had an opportunity to bring forward their concerns and the House heard testimony and answers from expert witnesses. I would also like to thank honourable senators who have expressed their desire to see this legislation pass as quickly as possible.

As honourable senators may know, the extended shut down of this reactor has resulted in a world-wide shortage of medical isotopes. These isotopes are used by physicians for cancer and heart disease treatment and diagnostic tests. This shortage has resulted in an intolerable situation in which cancer and heart disease treatments and diagnostics are being delayed or cancelled.

[*Translation*]

Our government is very concerned about the fact that Canadians are unable to obtain the treatment they need.

[*English*]

We have learned that many institutions have very limited supplies. Some centres, particularly in Atlantic Canada and in smaller facilities across the country, are focusing on emergency patients only.

[*Translation*]

If the shortage goes on any longer, it will have a serious impact on public health in several provinces. We are already seeing some of the effects.

[*English*]

One hospital in Newfoundland has told me that most of their staff members in nuclear medicine have been sent home. Without isotopes, there is no work for them to do. Their last generator expired at twelve o'clock last Friday and they have no backup. All appointments for patients have been cancelled and all emergency patients are being turned away.

In another instance, a gentleman suffering from cancer in St. Catharine's, Ontario, had his badly-needed treatment cancelled this morning because the hospital did not have the necessary nuclear isotopes.

Dr. Brian Day, President of the Canadian Medical Association, has indicated that the CMA is "very concerned" about this situation, and that "in balancing relative risk, it is important to ensure that the serious and immediate human health consequences of the isotope shortage are fully taken into account."

This is obviously a very critical situation, and resuming medical isotope production is an immediate priority for Canada's government. In fact, ensuring that cancer patients receive their treatment should be a priority for all honourable senators. I urge you to support this legislation and to ensure that this bill gets speedy approval.

[*Translation*]

We reacted promptly as soon as we were alerted to this extended shutdown of the reactor, and we are exploring all our options. We remain in constant contact with Atomic Energy of Canada Limited and the Canadian Nuclear Safety Commission to ensure that those two organizations cooperate to find a solution to this severe shortage.

[*English*]

We have been working with our officials, as well as national and international partners, to identify alternative sources of supply in other countries, other isotopes that can be applied and other diagnostic options which may be available. We have worked diligently towards resolving this situation, but the best solution for Canadians would be to make these necessary medical isotopes available as quickly as possible. To do this, we need to get the reactor at Chalk River up and running again. For this reason, I am very pleased this bill passed in the House of Commons, and I hope today the Senate will provide swift passage of this urgent legislation. It is very important to pass this bill, honourable

senators. I cannot stand by while the well-being of Canadians is being jeopardized. Please stand up for Canadians in need of cancer treatment.

The Chair: Minister Lunn, please give your opening remarks, and then I will give senators the chance to ask questions.

Hon. Gary Lunn, P.C., M.P., Minister of Natural Resources: Honourable senators, Catherine Doyle, Deputy Minister of Natural Resources, is with me, as well.

I would also like to thank the Senate for this opportunity to come in and address you and try to respond to your questions.

As my colleague has said, this bill was before the House last night. It passed in an emergency session. We were very pleased to receive the support of all parties for the passage of this bill.

The intent of the bill is to restart the NRU reactors as quickly as possible for a period of 120 days so we can restore our medical isotope supply while ensuring the safe operation of the reactor. This bill will continue the safe operation of the NRU that does produce these isotopes. The legislation would permit Atomic Energy of Canada Limited to resume operation of the NRU for a period of 120 days with one specific exemption to their licence conditions, namely, two pumps. However, the bill states explicitly that the Canadian Nuclear Safety Commission will have authority over all of the matters, with the exception of these two pumps.

As of today, AECL has installed one of the two backup power supply units which is required under the licence. This is used as a backup emergency power system in the event of an earthquake. It is important to point out that these backup power supplies are, in fact, upgrades.

I need to stress that these emergency powers for the NRU already exist; there are multiple backup systems. Last night, we learned from the witnesses from AECL, CNA and independent experts in our hearings that they all agreed that the NRU reactor today would operate equally safely or, in fact, safer than it has ever operated before.

Those experts said the following: "It would be prudent to start the NRU following the installation of the emergency power supply that can withstand a design-based earthquake to only one of the main heavy water pumps as proposed by AECL." That is operational now.

In other words, the NRU can be operated safely. As did the Minister of Health, immediately upon learning of this situation, I focused our entire efforts on restoring the supply of medical isotopes. We have focused on nothing else. What are all of our options? We have looked at alternate supplies and potential inventories. We can discuss that more fully in the time allotted for questions.

There is also the option of restarting the reactor. That was and continues to be our focus. Everyone has given us their absolute assurance that it is safe. In fact, they have said this is a licensing issue. It is not a safety issue. There is no question that when these upgrades are completed early, sometime within the next 120 days, that will make the reactor safer. However, there is no question that if we operated this reactor today it would be safer than when it was shut down for scheduled maintenance on November 18.

I look forward to the questions of honourable senators and thank you for inviting us to the Senate.

[*Translation*]

The Chair: Under our rules, when the Senate goes into Committee of the Whole, a senator may speak several times. There may be a first, second or third round of questions if the need arises. Each senator has 10 minutes to ask questions. The list is open. Please indicate your intention to ask questions. I already have Senators Carstairs, Nolin, Dawson and Banks on my list.

• (1700)

[*English*]

Senator Carstairs: I will begin with a question to Minister Clement. We know the reactor was closed down on November 18 and that it would be closed for four days. Presumably at the end of that four days, which would bring us to the end of November 21 or possibly November 22, the reactor was to be reopened. When did you first learn that the reactor would not be opened and, therefore, these isotopes would not be produced?

Mr. Clement: It was Wednesday, December 5.

Senator Carstairs: Can you explain why it took that long? We are dealing with a difficult situation. Why did it take that long for you to be informed of this situation? Obviously, the production of the isotopes is the most important function of this reactor.

Mr. Clement: My colleague, Mr. Lunn, can provide more detail, but I can put on the record that I am disappointed by the amount of time it took for Health Canada to be informed. When I said December 5, I mean both me, as minister, and Health Canada officials. There was no distinct timeline for Health Canada versus me on this matter. If we had known sooner, it would have helped, I believe, at least to arrange an alternate supply or consider what other treatments are available.

That is the situation. Of course, once Health Canada was informed, we swung into action immediately, consulting with over 800 hospitals and clinics across the country to determine the need. We set up an advisory group of medical oncologists and nuclear medicine specialists to advise us on a daily basis as to how we could triage. We were robust and aggressive once the situation was brought to our attention. Can I defer to Minister Lunn in terms of the timelines involved? Would that be helpful to you at this point?

Senator Carstairs: No, I would like to ask another question, after which we will hear from Minister Lunn, if that is acceptable.

Mr. Clement: That is fine.

Senator Carstairs: From your information, and provided Bill C-38 receives Royal Assent tonight, which it likely will, when do you think these isotopes can go back into production?

Mr. Clement: Based on the testimony that we received last night, Atomic Energy of Canada Limited indicated that there would be a period of time of six to eight days to "fire up" the reactor, because there is not a simple on and off switch. Some subpar isotopes could be produced within a few days, but the production of radioisotopes necessary for medical conditions, from full stop to full production, will take about seven to eight days.

Senator Carstairs: People who are in wait lines for PET scans or seed implants for brachytherapy have been put on hold for approximately two weeks.

Mr. Clement: The current situation differs from province to province. In your home province of Manitoba, senator, alternative supply arrangements predated this issue, so we do not have any issues there. Alberta has alternative supply but other provinces, particularly in Atlantic Canada, have a severe shortage. Ontario and Quebec, at last check, had approximately 20 per cent of their normal supply. The supply varies across the country and it differs from institution to institution.

Currently, through the truly superhuman efforts of many medical practitioners, we are performing as much of triage as possible. It is a kind of regional triage, not a national triage, in that Alberta can help Saskatchewan and parts of British Columbia, for example. That is happening all across the country.

There have been some instances of complete lack of supply, and I gave you a couple of instances of what that situation leads to. Those instances are isolated right now and my testimony to senators is that this situation can continue for only so long. If the re-start of the reactor and production does not occur in the next seven to ten days, we will see severe shortages across the country and cancellation of therapies. We are literally on the razor's edge right now. If we start up tomorrow, I believe we can avoid any of that severe shortage. Leaving it any longer creates that possible scenario.

Senator Carstairs: Minister Lunn, when did you first learn that the reactor would not be fired up?

Mr. Lunn: I was first made aware of this situation late in the evening on Monday, December 3. On Tuesday, December 4, we immediately embarked on a fact-finding mission to determine the facts. We were advised by AECL. We had never received any notification from the Canadian Nuclear Safety Commission. The next day, my deputy minister and I embarked on telephone calls with both agencies to express our grave concern and ask that they work together to resolve this problem. Immediately, the Department of Health and the Department of Natural Resources began to work together to determine what they needed to do to restore the supply of medical isotopes. Our primary and sole focus from that point forward was to restore the supply of medical isotopes.

Senator Carstairs: Minister Lunn, what explanation did you receive from AECL about why it took them from November 22 to December 3 before they contacted you?

Mr. Lunn: They sent an email on November 30, although I never received it. It was a Friday so over the weekend, nothing happened. They sent the email to officials at the department as well and acknowledged that there was an extended shutdown but expected the NRU to resume operations in early December. Of course, they received this email November 30.

For the record, it is unacceptable that either of these agencies did not contact the Government of Canada. I have instructed my officials to take steps to ensure that this situation does not happen. Both agencies had an obligation to inform the Government of Canada of any situation that is not normal or if there is an unusual or unscheduled shutdown.

Let us hope we will never see that again but I can only surmise from what I know now that they were all scrambling to bring the NRU reactor back online, which they thought they would be able to do. They were pushing toward the one-pump solution, which we are doing today. That is all I can surmise, senator.

Senator Carstairs: I am pleased that you have given instructions that this is not to happen again.

Mr. Lunn: I have done so in writing.

Senator Carstairs: The reality is that AECL, as part of their licensing in October 2006, knew they needed these backup pumps to be installed, and they did not do it, and that is why they were not given permission to go back into operation.

Their failure to understand that they produce a product that is medically necessary not only from coast to coast to coast in this country but also around the world is totally unacceptable. Therefore, I commend you for making it clear to them that in the future they are not to allow this reactor to go down without proper notification to the minister immediately, even if they think they can have it up and running in a couple of days. If it will be shut down for more than the four days that they indicated they needed, then you should know that same day.

Mr. Lunn: I agree. If I may respond, I support your comments. Both agencies have a responsibility for any reactor anywhere in Canada that is not on a scheduled shutdown. We expect them to notify the government immediately. Concerning your comments with respect to licence, there is some dispute with AECL and CNSC. Of course, I understand you will hear from those two agencies later. Perhaps you could address a specific question to them directly with respect to their licensing conditions.

• (1710)

[*Translation*]

Senator Nolin: Madame Chair, I am definitely not a scientist, perhaps no more so than Minister Lunn. I want to understand what happened. It seems like a series of horrors. A group of experts decides to shut down a reactor for four days. After the planned shutdown, the officials realize that they cannot restart it because there is a technical problem they did not know about.

I find it inconceivable that we must suffer such irresponsible administrators. As Senator Carstairs was saying, in the end they are responsible for the production of medical isotopes required by a multitude of people — not just Canadians but North Americans who are waiting for these products. Reprimands are not enough,

gentlemen. I do not know to what extent you can hold these people to account. I hope that they will receive more than just a letter of reprimand.

We cannot pass legislation every time an official has not planned his job properly in order to get back to work and then, two weeks later, everyone washes their hands of it, and having swept it under the rug, we celebrate Christmas, eat our turkey and everyone is happy. We cannot operate like that. If that is the situation, we have a serious problem.

My question is for your officials. What happened? What did the officials discover, after four days, that stopped them from starting up the reactor again? I want to understand what went on. It is beyond me. I am just a lawyer and I do not understand this part of the science.

[*English*]

Mr. Lunn: I can understand that, and I will try to put this in lay English.

First, I completely concur with your comments. What has happened is unacceptable by either agency and is something we do not accept. I will say that my entire focus as well as that of the Minister of Health and the Government of Canada has been to restore the supply of medical isotopes. We are hopeful that we can get this bill to Royal Assent so that can happen.

Senator Nolin: We will.

Mr. Lunn: The Prime Minister said very clearly on the record today that we will be ensuring that we gather all the facts and people will be held accountable.

Senator Nolin: Good.

Mr. Lunn: That is obviously not the priority today, but there will be full accountability. We are obviously very displeased about some of the events that happened.

I can tell you that this was, as I understand it, a scheduled maintenance shutdown from November 18 to 22. At some point in time, and this is unclear, they discovered that they were supposed to do seven upgrades to the reactors as part of their new licence condition. They discovered only six had been completed. The seventh was not.

Senator Nolin: They were supposed to do seven upgrades?

Mr. Lunn: That is correct.

Senator Nolin: They had planned seven upgrades?

Mr. Lunn: Not during this outage. This goes back to the August 2006 licence. This was a regular scheduled maintenance that had nothing to do with the upgrades. During this outage, they discovered that the seventh upgrade had not been hooked up, and it should have been done as part of their August 2006 licence.

Honourable senators can question those agencies. I will give you my understanding from the testimony last night. There is a dispute. AECL did not believe it was a licence condition but believed, in fact, that it was an enhancement, and they testified that they have documentation to suggest that CNSC was aware that these were not hooked up and that it was not a big deal and something that could be done later. There are multiple safety systems. There is some dispute as to that, and we need to focus, once we restart this, and get all the facts from both agencies, and then ensure that there is accountability. There is some dispute in that regard.

The one fact of which we are confident is that there is a backup power supply system in the event of an earthquake in this region. Other backup systems would shut the reactor down, but they are not earthquake-certified. This certified earthquake backup power supply system has two pumps. Since the shutdown, they have got one of the two pumps operational. I was advised that one pump is designed at 100 per cent capacity.

The short answer — and all of the witnesses have testified to this, AECL, the CNIC, and the independent advisories that we consulted with — is that if we restarted the reactor today, without question, the reactor would be as safe or even safer than it was operating prior to November 18. They have given us some of the numbers. Everyone has assured us that they would absolutely under no circumstances restart this reactor unless they were 100 per cent certain that they were doing it safely.

That is why we have gone to these extraordinary lengths. I agree with the earlier comments on accountability.

Senator Nolin: You will get the bill, definitely, but I wonder why you need it. If it is so safe to do it, why do it the way you decided to do it?

Mr. Lunn: It is our understanding that the Canadian Nuclear Safety Commission has the authority to restart the licence. The AECL, in their view, presented a case to the Canadian Nuclear Safety Commission on November 30 to restart the reactor with one pump. The CNSC said that they did not believe the safety case was complete, and they wanted more documentation. At that time, they advised that they would not give AECL that permission. Basically, CNSC wants them to do the factual check, the analysis, the flow hydraulics, all the calculations to demonstrate why it would be safe, and CNSC would not be able to hear that case until sometime in January. That is what was said on November 30.

AECL came to the conclusion that they could probably get the pumps in before January, and decided to install the two pumps to make the facility compliant, although they still believe and maintain that they can operate with one pump, and some would argue even without one. They are at an operational state right now with one pump ready to go. It is quicker for them just to get the other pump in, which is probably, I would say, at least two weeks away. They made that decision.

The Government of Canada looked at this information. Our focus was on safety and on the supply of medical isotopes, and clearly all the information before us suggests that this reactor can be restarted and resume production of isotopes with 100 per cent confidence in safety. It was the viewpoint of the Government of Canada that we would not allow an unnecessary delay and put the lives of literally tens of thousands of Canadians at risk, so we are taking this extraordinary measure, and that is why we are here today.

Senator Banks: Welcome, ministers. Is the short answer to Senator Nolin's question that, without this bill, if AECL were to start up the reactor again, it would be in violation of the law?

Mr. Lunn: That would be correct.

Senator Banks: This bill would permit what would otherwise be absent in this bill, a violation of the law that governs the operation of nuclear facilities in Canada; is that correct?

Mr. Lunn: This creates a one-time exemption for only 120 days.

Senator Banks: I should say that I agree with Senator Nolin that this bill will very likely pass third reading here today. As you and your predecessor and his predecessor and his predecessor know, the Senate does not like to do things that quickly, but I think that in this case we will because we are faced with a sort of Hobson's choice between two unhappy options. If you get the word tonight at 8:00 that this bill has been passed and received Royal Assent, or whatever the time might be, how quickly can the reactor be up and running? Can they start the process tonight?

• (1720)

Mr. Lunn: My understanding is they are ready to go. Once the bill receives Royal Assent, they will begin the start-up procedure.

It has gone through a maintenance shutdown, and you will likely hear from the engineers at the AECL that they have to do a number of safety checks on any start-up, especially when they have installed new parts. Therefore, the start-up procedure, to get to full capacity of the reactor, is typically about seven days.

About three days into the start-up, they will start pulling targets — with which they make the medical isotopes — and will be half-full of fuel. That is not the correct technical language, but there would be half. Obviously, they can start producing some radioisotopes out of that. It would not be the full amount of a regular one, but it would take about a week before we actually have usable isotopes — from the time they start until we have an isotope that we can use for procedures.

Senator Banks: You explained that, but the process can start immediately; is that right?

Mr. Lunn: That is correct. They are ready to go.

Senator Banks: Do I recall correctly that the AECL reports to Parliament through you, minister?

Mr. Lunn: That is correct.

Senator Banks: I think Minister Clement said that the government moved with alacrity when you learned about the extended shutdown. There is no doubt of that; you already referred to the timeline.

Can you tell us when you and your department first learned that AECL was operating that reactor in contravention of one of those seven license conditions that it received last August?

Mr. Lunn: I will give you what I know, but I have received conflicting messages over the last week. That comes back to Senator Nolin's question. Beyond this, I can assure you, we are going to get all the facts.

I have been advised that during the shutdown, AECL discovered that it was in contravention and reported this to the Canadian Nuclear Safety Commission, the CNSC. The CNSC advised me of the same. Then, in later testimony, it was suggested that the CNSC discovered that AECL was in contravention when they were on site.

I have also seen some reports that they knew in early November, before the scheduled shutdown, and they were constant discussions about whether, in fact, it was just an enhancement or a licence violation. AECL maintains that at the year ends of 2005 and 2006, in their annual report they have to present to the CNSC, they have documentation that they acknowledged that these two pumps are not critical to the safe operation. Again, I am paraphrasing, but they were allowed to permit without them.

There is some dispute, and we will have to go on a fact-finding mission. However, I think the discussion really got going sometime in November 2007.

Senator Banks: You have said that you and Mr. Clement both learned that it was not going to be started up again. Sometime after, that was apparent to others. You have now nailed the timeline that I was asking about. When the commission and AECL began discussing the problem, whatever the nature of the problem was, did anyone in either AECL or the commission go to the government? Did anyone go to the government in early November to point this out or to bring it to the attentkion of anyone in your department?

Mr. Lunn: Not that I am aware of.

The Chair: Before I recognize Senator Tkachuk, senators, I have just been told that there is a vote at the House of Commons at 5:45 p.m., so the ministers will have to leave perhaps five minutes before that time. However, they will willingly come back after the vote if you need to have them back. We will have a second panel, and then if you express the desire, we will have more questions for the ministers.

Mr. Lunn: That would be agreeable.

Senator Tkachuk: The last time we did this was to stop the strike on the West Coast, if I remember correctly, not too long ago.

I want to spend a minute on risk. Please give us an idea of the amount of isotopes produced for Canadian use and the amount produced for the rest of the world. Please inform us of where we send these isotopes.

Mr. Lunn: There are five reactors in the world that produce isotopes. There are three in Europe — Belgium, the Netherlands and France — one in South Africa and the reactor in Canada. When all the reactors are operating, Canada is responsible for about 50 per cent of the world's supply of medical

isotopes. When other reactors go down for scheduled maintenance shutdowns, Canada has the capacity to deliver 70 per cent of the world's supply.

The Canadian reactor is responsible for about 25,000 medical procedures per day, so it is significant. I do not know the exact distribution breakdown. I suspect, senator, that most of this would be in the North American market, but I do not know that for certain. Obviously, for transporting, that would lead one to that conclusion. However, those are the five reactors on the globe that produce medical isotopes.

Senator Tkachuk: Will this start-up replenish only our supply or will it replenish our supply plus our export supply?

Mr. Clement: I can answer that, senator. AECL has assured us that once it is up and running, it will be able to meet all of its prior commitments. There is no contemplation of triaging one country against another or one region against another. Once AECL gets going, it will be able to meet the requirements and the contracts that are in place. There is no issue.

Senator Tkachuk: In other words, if everything goes on schedule and we have a start-up in eight days, it will not take too long to get the supply going again. As I think Senator Carstairs was getting at — I just want to be more specific — is there a time period after it starts up before those isotopes are being sent out to the hospitals and sent out to their customers after day eight? Let us say it starts on day eight.

Mr. Clement: There is a ramp-up time. There is no question about that. Our experts have told us that they have a start-up triage protocol in place. Obviously, those who are most in need are first of the line, just as our health care system does on a daily basis, but no one will be denied the treatment that he or she needs.

The fact of the matter is — this is my editorial comment — when anticipating that supply would not be available for several weeks, I believe that some institutions in their triaging probably kept a little bit of a supply chain available. Now that it is no longer necessary, they can replenish and it will smooth out the bumps along the way as we ramp up.

Mr. Lunn: Again, it takes three days to pull targets, an overnight cool-down and then they are sent to MDS Nordian to be processed. Another 24 hours is needed for packaging, and then they go out to distribution centres.

AECL has advised me that the slowest demand time is the period between Christmas and New Year's because there are fewer scheduled procedures, which will actually help to some degree.

We have made it clear for parts, for anything they need — because it is so urgent, that we want to get these back up — that government assets would be made available if it helps speed up the process. That includes expediting delivery. Right now, we are not in that situation, but we are doing everything we can to get the isotopes into the medical facilities where they are needed most. We are doing that as quickly as possible.

Senator Tkachuk: Just so I am clear, it is not a choice between an unsafe plant and a production of isotopes, and you are weighing the balance. Is it a choice between a plant that is not as safe as you would like and the production of isotopes? Or, is it a third choice between a very safe plant and the production of isotopes?

Mr. Lunn: I would argue that this is a very safe plant. You can question the engineers and experts from AECL on that subject.

• (1730)

The deputy minister and I have consulted with independent advisers and with AECL throughout this process. They characterize it as a licensing issue. There is no question that when both pumps are installed and operational, that it will be that much safer again. The number that was put out yesterday was an occurrence of one in 50,000. That means that in the next 50,000 years, there would be one occurrence that would not be contemplated.

There are multiple backup systems. If we restarted the reactor this evening, everyone, including the technical experts at the Canadian Nuclear Safety Commission who testified last night, would agree that it would be safer in its current configuration than it was when it was operating on November 18. Therefore, this is a new condition that you are adding to the reactor. They are constantly trying to improve the standards and quality. This is a new condition to make it that much safer, but it has never had this requirement until recently.

Senator Tkachuk: Is the safety issue with regard to an earthquake?

Mr. Lunn: As I understand it, these pumps are specifically designed for an earthquake. It is a shut-down system that is seismically certified; special parts are used so that, in the event of an earthquake, they are seismically certified. That does not mean that the shutdown systems they have would not work as well. There are multiple backup systems. The difference is that these ones are seismically certified, so there was a more rigorous process for those two pumps.

Senator Mahovlich: I want to direct my question to Minister Lunn. How many earthquakes have we had in the Chalk River area in, say, the past century?

Mr. Lunn: For this requirement, my understanding is that there have been zero earthquakes.

Senator Mahovlich: We have not had a single one?

Mr. Lunn: We have not had one that matches the requirements.

Senator Mahovlich: How many tremors have there been?

Mr. Lunn: I cannot answer that, but we can make that information available to you. Regarding an earthquake to the magnitude calculated in the design factor, there have been absolutely zero. If there were any tremors, it is my understanding that the current systems would be more than capable of shutting down the system.

Senator Mahovlich: Is an earthquake our greatest fear, then?

Mr. Lunn: From everything I have learned, I do not have any fears about restarting this reactor. I would quite happily be there the entire time it was starting. I have complete confidence that this reactor is completely safe to operate, without any hesitation.

Senator Mahovlich: Being in the Senate and in committees, we do a thorough study of issues. I was wondering if you had studied Chernobyl and what happened there. Is there any comparison to what we have in Chalk River?

Mr. Lunn: No.

[*Translation*]

Senator Poulin: My question is for Minister Lunn. My question is a follow-up to that of Senator Mahovlich. We are both from Northern Ontario. When we travel along Highway 17 from Ottawa to Sudbury, we always pass by Chalk River. Since we were children, Chalk River has always been an extremely important institution to the people of Northern Ontario. Safety has always been on the minds of everyone up north.

Has there ever been a shutdown at Chalk River? The industry opened in the 1950s.

[*English*]

Mr. Lunn: Scheduled maintenance shutdowns happen regularly. From my understanding, there has never been an incident with this reactor. The experts that advise us tell us it is a remarkable piece of technology. Again, it would be an interesting question for you to ask the nuclear safety engineers from AECL when they come in. It was impressive to listen to them.

[*Translation*]

Senator Poulin: As the Minister of Natural Resources, you are absolutely confident that this reactor is completely safe. You have said that a number of times. What steps have you taken as minister to ensure the safety of the surrounding communities?

[*English*]

Mr. Lunn: First, we have spoken thoroughly with both agencies, the Canadian Nuclear Safety Commission and Atomic Energy of Canada Limited, and they testified before Parliament last night to receive confirmation. Both agencies have confirmed that if we restarted the reactor today, it would be as safe, if not safer than when it was operating on or prior to November 18. This is an enhancement. Even with one of these backup power pumps operational, which did not occur before November 18, it would be safer.

I asked my deputy minister to bring me some nuclear experts who would give us advice. I said, "Let us not just take the word of AECL or CNSC. Let us go out and get a third party." They came back with 100 per cent confidence as well and said the reactor should be restarted. That is what I am basing this information on. Again, the agency that is responsible for licensing also confirmed that it would be safe. This is a requirement of their licence — that is why I have not permitted them to restart because it is a licence requirement. That is how I came to this conclusion.

The Chair: I understand you have to leave the chamber. I still have three senators on my list. Ministers, we will let you know if you can come back after the vote, if you are available.

Mr. Lunn: We will return after the vote and you can tell us then.

The Chair: Thank you very much for your time.

[*Translation*]

Senator Comeau: Honourable senators, I would like to introduce you to another group of witnesses. We have Ken Petrunik, Executive Vice-President, Chief Operating Officer and President of the CANDU Reactor Division, from Atomic Energy of Canada Limited; the second witness will be David F. Torgerson, Executive Vice-President, Chief Technology Officer and President of the Research and Technology Division; and finally we will hear from Brian McGee, Chief Nuclear Officer.

The Chair: Is it agreed that we hear these witnesses?

Hon. Senators: Agreed.

The Chair: It is my pleasure to welcome you to the Senate.

• (1740)

[*English*]

We will hear your preliminary remarks and senators will ask you questions. Will you please introduce yourselves?

David F. Torgerson, Executive Vice President and Chief Technology Officer and President for the Research and Technology Division, Atomic Energy of Canada Limited: I am Chief Technology Officer of Atomic Energy of Canada Limited. With me today is Ken Petrunik, President of the Candu Reactor Division, and Brian McGee, Senior Vice-President and Chief Nuclear Officer.

On behalf of Atomic Energy of Canada Limited, I thank you for the opportunity to be here today. I have a brief opening statement and then we will be pleased to answer your questions.

In my current role, one of my responsibilities is Chalk River Laboratories and the NRU reactor. The NRU reactor is a marvellous piece of Canadian technology. I do not know of any research reactor anywhere in the world that is as good as this research reactor. It has created so much cutting edge technology, including nuclear safety technology, that we have been able to develop the CANDU reactor. We have developed the whole field of medical isotopes. We have used it to solve technical issues such as the Challenger space shuttle failure and to explore the fundamental characteristics of matter. In the latter case, a Nobel Prize was won for the work at Chalk River in neutron scattering.

Chalk River is the birthplace of the Canadian nuclear industry and the home of worldwide achievements in nuclear technology. Thinking back to the days when the facility and NRU was established, I marvel at the vision and fortitude of the people that made the decision to do this.

NRU creates medical isotopes for 25 million diagnoses and treatments per year. Over the last 10 to 15 years, about 250 million people have benefitted from Chalk River medical isotopes. My staff and I and the 2,500 fellow people who work at Chalk River Laboratories take that responsibility seriously.

I have every confidence in our ability to operate the NRU reactor at Chalk River safely. I am not an absentee executive. I live right in that area, and I live closer to NRU than most of the employees. I have raised my children there and have my grandchildren there.

I am convinced that the reactor has operated safely through its entire lifetime, that it operated safely up to the time of the shutdown, and that it will operate safely after the shutdown.

I believe that is the view of all 2,500 people working there. These are scientists, engineers, technicians, tradespeople, support staff — an outstanding a group of people — all working at this nuclear science facility. We have put the safe operation of NRU at the top of our priorities for many decades and we will for as long as we continue to operate into the future. Moreover, if we cannot operate the reactor safely, it will be shut down. We shall not operate any nuclear facility if we believe that it is not safe.

The Chief Nuclear Officer, who is sitting next to me today, has the full unilateral authority to order a shutdown of the reactor if he believes that the reactor cannot be operated safely. I keep mentioning the words "safe" and "safely" because that is the number one priority in every decision made.

Nothing comes close to safety on the priority list. We also have a responsibility to produce medical isotopes. We take that seriously, but operating the reactor safely is the thing we take most seriously.

We will not operate the reactor under any conditions that we think are unsafe. In the matter of the bill you are considering today, I want to state for the record the following.

Atomic Energy of Canada Limited's actions have always been driven by our concern for the health of patients in Canada and around the world who need the medical isotopes that come from our facilities. This will always be done in the context of the demonstrably safe operation of NRU. We have been treating this matter with the highest priority and our employees have been working around the clock. All of our dealings with the government and the CNSC have been driven solely by our desire to ensure the safe restart of NRU.

Let me tell you where things are at this time, operationally speaking. We are pleased to report that the work on one of the pumps is complete, and the pump will be ready to go when the reactor starts up. This pump ensures an unprecedented level of safety at the NRU reactor. We are ready to initiate immediate start-up procedures at NRU should this bill pass. We can assure this committee that NRU is safe to start up and operate in this mode so that we can begin again providing Canadians and people around the world the medical isotopes that they need.

Further, we can run NRU, begin work on the second pump, and complete the connection within 16 weeks. This would satisfy the last of the issues identified in the letter to the minister from the CNSC.

To conclude, Atomic Energy of Canada Limited has an absolute and unwavering commitment to safety. It is an excellent facility with several decades of safe and reliable operations and production of isotopes up to the time of shutdown. We have produced isotopes for medical diagnostics and treatment procedures that have helped hundreds of millions of people. We are constantly improving the unit to operate ever more safely. The NRU has operated safely and is safer today than it has ever been.

Honourable senators, we look forward to your questions and thank you for your time today.

The Chair: Thank you. Does your colleague have an opening remark?

Brian McGee, Senior Vice-president and Chief Nuclear Officer, Atomic Energy of Canada Limited: Thank you, I have nothing to add at this time.

Senator Dallaire: I have been reading your titles and must say they are more complex than some of my American colleagues. Who is the boss at Chalk River?

Mr. Torgerson: I am responsible for Chalk River Laboratories.

Senator Dallaire: Are you the overall authority of that site?

Mr. Torgerson: I have the ultimate overall responsibility for the site. That is correct.

Senator Dallaire: I come from a milieu that has been extensively involved with weapons systems. We often put those systems through retrofits and upgrades. We always put them through an independent double-check to ensure that in the possibility of an error, we would not have live ammunition landing in the wrong place and killing people. When the system does not work well, even though all kinds of engineers and technologists have checked it, we will identify who is responsible and we court-martial that person.

My question is this: If this thing does not work, are you the guy going to jail, or will the government be held accountable?

• (1750)

We are talking about a nuclear facility. If I vote in favour of this bill, what is my responsibility? Will I be held accountable? Will the Prime Minister be held accountable? Will the ministers be held accountable? Ultimately, who will swing when this thing goes up, if it does?

Mr. Torgerson: The operator is responsible for the safety of the facility, not the CNSC or anyone else. We are responsible for the safety of the facility. Perhaps my chief nuclear officer can emphasize that.

Mr. McGee: As the site licence holder and the person ultimately accountable for the operation of the site and the licence facilities on that site, I am ultimately the person accountable for safety at all levels.

Senator Dallaire: Although they are held responsible if something goes wrong, the fact that we are voting on this bill means that we accept that we are going against normal procedure. What responsibility do we have when we vote for this bill and then something goes wrong? I turn to the chair with my question because the process has been a little diffused.

Once we commit to this, who is held accountable? Is it the minister who introduced this bill? Is it the Prime Minister? Who would be responsible? I end my questions to officials because my query to the chair is not insignificant. You are asking us to go against fundamental procedures and my whole education and 35 years in the army has been procedurally based. Independent double-checks are in place so that things will not happen the wrong way. You are asking senators to vote for a procedure that has a 1:100,000 chance of something happening. Is that correct?

Mr. McGee: This is one small piece of the overall safe operation of the facility. When we look at safety in this industry and most other industries like it, often called "high reliability industries," we have to look at risk on an integrated basis. My job is to do that. My job is to be accountable for that risk overall. My job is to ensure that my staff are looking at safety from that perspective. I do not think it is possible to take out this one piece and say that the decision whether the facility operates safely hinges on this one piece. My job is to go beyond compliance with the facility to take operations to a level that ensures operational excellence, which is built on a foundation of safety.

If I can explain further, we are not talking about an earthquake. Prior to upgrade, these pumps have an AC/DC power supply like a typical motor that you would see supplied from the same power system that provides the rest of us with power. They also have a battery power supply to another motor called a "pony motor" that drives them if the AC power from the grid we normally take our power from goes down. In that case, the pony motor transfers to the DC power supply, which is a bank of batteries that is supplied with a diesel generator that comes online at loss of power to supply the motor.

The upgrade we are talking about puts in place a third power supply that is seismically qualified — another independent diesel generator, another independent bank of batteries, and an automatic transfer system. If the first, or normal, power supply is lost and the first class supply, or high reliability power, is lost, then the third power supply kicks in.

The scenario we are talking about — the so-called "design basis event" — is not an earthquake on its own. Assume for a second that the first two power supplies are all they have, and the earthquake is severe enough that it knocks out the AC power and the class one power. Typically, the way safety analysis goes is we do not credit any operator action, so we assume that there is no one there to make things better. After an hour's time of such a scenario, no flow would go to the reactor and we would start to experience dryout of the fuels. In other words, the reactor is not receiving cooling. One hour after this earthquake has knocked out the first level of emergency power, the plant is more or less on its own because we do not credit operator action at all. A scenario that would take us to the onset of fuel dryout might happen once in 1000 years.

The upgrade we have done on pump five changes that probability, because that is the way this probability analysis works. That upgrade on pump five, given that same scenario, takes us to the odds of one in 50,000 years. When we upgrade to the final pump, the odds will be one in 500,000 years.

We are not talking about tremors. We are talking about an earthquake so severe that it knocks out all the normal power supplies. I hope that clarifies the situation.

Senator Dallaire: Very much so. You work within tolerances of plus or minus a micron, et cetera. During my career I worked with the acceptable minimum deviations. The figure for an artillery system is one in 5 million rounds, where all those minimum divergences we are allowed will eventually accumulate to put the system completely off. Will these minimum deviations eventually accumulate, thereby increasing the odds of the scenario occurring?

Mr. McGee: That is not an issue in this case. We are increasing our surveillance programs as part of our normal operations routines and as part of the upgrade to pump five.

The scenario you describe would not be a factor in this case. We design and construct to CSA guidelines N285 and N286, although do not quote me on those numbers because there are so many. We operate the facilities according to these guidelines and these upgrades have been designed against those bases. We are making the final quality assurance checks on installation of pump five. That is a normal practice. During that period, because these installations are complex, we ferret out any of those things that would not align with that. We either fix it then and there or we make a judgment to fix it at some time in the future, or whatever the case may be.

• (1800)

Senator Carstairs: I will support this bill, but I am not very happy, and I am not very happy with AECL. You did a routine shutdown on November 18. You were scheduled to reopen on November 22. You do not let the minister know until November 30 that you are not starting up, and, at that point you let him know by email. Apparently, someone made a phone call on December 3. I know December 1 and 2 were a Saturday and a Sunday, but did anyone at AECL not understand that there were thousands of Canadians and North Americans needing tests and that maybe someone at AECL should pick up a phone and let the minister know?

Mr. McGee: Thank you for your question. That is unacceptable. I can assure you that we were greatly cognizant of the impact this would have on the isotope market. The team that I have at Chalk River, the 2,500 people that Mr. Torgerson referred to, are among the most dedicated. I have only been with AECL two years, but my experience in the industry spans over 30 years and I have worked with many, many wonderful people. I do not think there are more dedicated people anywhere in the nuclear industry than I have met since I have joined Chalk River. They are totally committed to the safe, reliable supply of medical isotopes. They see it as a real sense of purpose.

However, the performance that you have described is unacceptable and I am accountable for that. When my organization fails in any way, you only look in one place and that is to me.

Senator Carstairs: When did you learn that you could not start up again? You did not start up on November 22. When did you actually learn that that would not be possible?

Mr. McGee: I do not have the timeline in front of me, but we held a meeting with CNSC staff on November 30. The decision to hold the reactor down was made, by my recollection, about two days prior to that. When the concern of the CNSC staff was identified to us, we immediately went into a mode of looking into what their concerns were. The indication that they provided to us was that we were not within the licensing basis of the facility at that time, and at that moment I made a decision to keep the facility in a shutdown state until we better understood their concern, and then we went into a phase where we worked with CNSC staff to try to dispose of the concerns and better understand what was required to return the reactor to service safely and reliably.

Senator Carstairs: My understanding, then, is that on November 22 you should have started up; on November 28, six days later, you meet with the nuclear safety people and they say no, you will not be allowed to start up. What happened in those six days, between November 22 and November 28?

Mr. McGee: I apologize; we were just conferring the timeline.

We did not bring the overall timeline with us. The meeting that I referred to on November 30 with CNSC staff was the one I mentioned last night that was designed to look at the safety case for the facility as well as the licensing basis. I am working from memory here because I did not bring a timeline, and I apologize for that.

However, the decision to hold the reactor down was made within the normal shutdown period. If you need more detail on the timeline, we can lay it out and make it available.

Senator Carstairs: I am sitting here as someone whose husband has had seed implants, a daughter who has recently had a PET scan for non-Hodgkin's lymphoma, and I have to tell you that I find the delay to provide isotopes for that kind of thing absolutely unconscionable.

I understand that you had an extension of your licensing, which either took effect in August or October of 2006. At that time you were made aware that there were certain upgrades that were expected of you. You said a few minutes ago that one of the pumps is complete, and that is great, and that the other one will take 16 weeks. Can you explain to me why that was not done between October 2006 and October 2007?

Mr. McGee: We are currently performing what is called a ''root cause'' investigation to understand it more completely. I mentioned last night that the language around what was expected was not rigorous in terms of the correspondence that was being exchanged.

I mentioned last night that we are scanning that correspondence right now. We are intending to do a root cause investigation and to ensure independence in the root cause investigation, normally it would be done by my staff, reviewed by my senior management team and then actions and recommendations would be forthcoming from that.

In order to ensure that we have a completely transparent and objective process, I do have some of my staff on the root cause investigation, but I have augmented the team with people from two different independent companies, people with experience in the nuclear industry but independent from AECL. I have also brought in an independent reviewer to look at the root cause of the investigation, to do what we call a ''whole body review,'' and then, finally, I have augmented the senior management team that will basically accept and review the final report with other senior people within this reactor's experience.

Senator Carstairs: Let me put my final question to you. We are not talking about the family car. We are talking about a highly sophisticated nuclear reactor. It would seem to me that reasonable prudence would imply that any recommendation made, rigorous or not rigorous, would be immediately implemented so there would be a sense of comfort, which we clearly do not have today. This nuclear reactor, by the way, was supposed to have been replaced 10 years ago with Maple 1 and Maple 2 that still have not come along.

You will get your legislation, but I have to tell you, you will get it with much discomfort from many people.

Mr. McGee: Excuse me, chair, would you like a response to that?

Senator Carstairs: I would like to know why you would think the term ''rigorous'' was important and why any single recommendation, rigorous or otherwise, would not immediately have been put into place?

Mr. McGee: If I was sitting in your chair, I do not think I would feel very much differently based on the information available.

When we are talking, again, about this one piece of equipment in a nuclear power reactor with a significant amount of complexity and a variety of other work, it was one piece of seven upgrades that had a series of activities associated with it, along with a licensing strategy that had many other requirements as well. That does not make it right. It does not make it acceptable.

The organization appears to have thought that it was not part of the original upgrades, that it was subsequent enhancement work to those upgrades. Our root cause investigation will make that more clear, but the fact that we got to that point is my accountability and my responsibility. I am very unhappy about that. However, it was not because we were not paying attention, and it was not because we did not care about it. It was a question of our not having an adequate understanding of what was expected to meet the requirements of the seven upgrades.

Senator Segal: Let me first of all congratulate Mr. McGee for the clarity with which he accepted responsibility. It has been my experience that any time a public servant or an employee of a Crown agency accepts responsibility that is the beginning of moving ahead in a constructive and responsible fashion. I am

appreciative of that because I understand, as we all do, the pressures you must be working under in this very challenging period.

That being said, is the 120 days, which is the provision of this legislation, sufficient? Are you comfortable that the 120 days will allow the requisite upgrading to be done in a fashion that does not produce a subsequent interruption in the operation of the reactor?

Mr. McGee: Thank you for the question.

The 120-day schedule is a challenge. Schedules for any sort of thing, of any construction type of activity or whatever, have their challenges, but my organization has assured me that within that period of time we can overcome the challenges adequately to perform the upgrades within that time period, in the available outage time that we have.

Senator Segal: As you indicated earlier, there was some confusion as to whether or not that second pump was required or a suggested and appropriate enhancement to take place laterally.

• (1810)

How would you typify in a structural way, assuming good faith and best efforts on everybody's part, the working, day-to-day relationship between your organization and the regulator?

Mr. McGee: In my opinion, the working relationship with the regulator is very good. We work with them on a frequent basis. We have regular communications with them, both at the local site level as well as at the more senior levels in Ottawa. We have an open, honest working relationship, and I believe we have through this period of time as well.

The people we work with, the CNSC staff, are highly professional, dedicated people. I believe that we have a relationship built on mutual respect and a shared goal to achieve the safe, reliable operation of the facilities.

Senator Segal: When the decision was made after the scheduled maintenance shutdown, upon discovery that some of the licensing terms from the regulator's perspective had not been met, did that come as a surprise to AECL that they were now viewing this as a *sine qua non* of reopening the reactor? Or, was that perhaps a matter of ongoing debate, as one might understand would transpire between a regulator and a regulated entity in the day-to-day operation of the complex proposition?

Mr. McGee: When the problem was first identified, my organization went in to do a technical operability evaluation, which is a technical process performed by engineers and analysts. In this case, these professionals found a difference between the physical plant and the safety analysis that was of sufficient concern to limit our ability to operate. We believe that going through that process was adequate to address the issue when it was discovered. As we went further into the process, it was clear that was not a shared view.

When people I respect in the CNSC inform me that they think we have an issue where we are outside the licensing basis for the facility — apart from the legal implications, once they make that known to me — if I were to restart the reactor, that would, I think, trigger enforcement action, but that is not my place to say. My belief is that would place me in a position where I would trigger enforcement action.

Regardless of the legality of the situation, when people I respect for their professionalism and their technical knowledge tell me that they believe there is a gap in my licensing basis, the only safe and prudent thing I can do is keep the reactor in a shutdown state and investigate further.

The safety of this industry is built on everyone being open to challenge. It is built on a belief that everyone in the organization and people associated with the organization can raise concerns and they are taken seriously.

Setting aside the legalities of the situation, I am trying to drive a culture of safety that takes us to world-class levels of excellence. My behaviour as a leader of the organization is constantly under scrutiny. If I, at any point, make a decision to compromise safety in the interests of any form of production, no matter how worthwhile it is, then I am really sabotaging my own organization's ability to achieve the levels of performance it can. As well, I am sabotaging my relationship with the regulator in telling them I do not respect their opinion when, in fact, I do.

Senator Segal: I want to understand this because I think it helps us understand the conundrum and the professional challenge you face in your very sensitive role. You could have decided to approve the reopening of the reactor because you had a substantive difference of opinion with those people you respect in the regulatory organization. While you might have faced the risk of enforcement, you could have taken the position that because of the isotopes and your obligation to the medical community and to tens of thousands of patients, you would reopen the reactor, face the enforcement issue and then take your case to the Crown for some deliberation thereupon.

I am not suggesting that would have been the right path. I am suggesting you did have the option, as I understand your colleague to have said. Your colleague told us at the outset of your remarkable respect for the long tradition of concern for safety in your organization.

You have the capacity to order the shutdown unilaterally. I therefore assume you have the other capacity, which is to say that in your judgment, this is a safe reactor and should be operating.

You made the decision not to do that. I respect the reasons for which you did that. Does this process lead you to any other conclusions about how that dynamic might work in the future?

I ask that question because in this world of the precautionary principle, if two pumps are required now, it is only a matter of time until somebody says we need seven more. The precautionary principle is an endless demand for more backup, protection and prophylactic intervention in the event of.

I just wondered, because we as a body have a concern about what happens now in the relationship. Can you give us a sense of what process you will go through, based on this experience, to sort through how you and your colleagues at the AECL may deal with this in the future? If you would rather reflect on that before answering, I certainly understand.

Mr. McGee: Can I read the transcript before I answer?

Senator Comeau: Yes or no?

The Chair: Do you want to respond to Senator Segal, Mr. McGee?

Mr. McGee: I am sorry; my earpiece was not picking you up. I apologize.

When there is a question about safety, I have to address that to my satisfaction, and I have to rely on the expertise of others. I talked about the regulatory bodies. I come from a network in the nuclear industry where I have other support as well.

In this particular case, the root cause investigation, I believe, will identify several opportunities for improvement. I do not want to pre-empt that investigation. I want it to operate as an independent entity, but I believe there needed to be more rigour in the discussions and the correspondence to make sure that we clearly understood the expectations.

[*Translation*]

Senator Hervieux-Payette: Of course, as one honourable senator pointed out, this is not about a car, but when you buy a car, you get scheduled maintenance done. Some cars today, even the fairly ordinary ones, have computers that tell the owner what kind of mechanical maintenance needs to be done. In the case of this facility, the equipment is 50 years old. Moreover, it was an external body that recommended changing the pumps.

Why were these upgrades not planned for internally? Upgrading began following a recommendation from an external organization that is responsible for safety. Why did the organization not schedule the upgrades in good time?

[*English*]

Mr. McGee: Thank you for the question. Again, the root cause investigation I believe will eliminate the reasons why it entered into our thinking that these were not part of the upgrades. I mentioned last night that there is correspondence that we are going to provide, documentation that we will provide to Parliament that will show some of the answer to that question.

I will say that setting aside the licensing basis question for a minute, we have the physical plant, we have the design basis for the plant and then we have the licensing basis. In a perfect world, all three of those match. However, in any reactor facility, typically you do modifications and upgrades over its life cycle. As you do those at various points in time, you end up in a situation where the physical plant does not necessarily match the design basis or the safety case. Typically, it is negotiated between the licensee and the regulator, where you make a commitment that you will do those physical plant changes within an agreed upon period of time.

• (1820)

Setting all that aside for a second, my organization knew that these enhancements were required, even if it was not part of the licensing basis. We knew that these were enhancements that we intended to do. We were not moving them along adequately, in my opinion, in a systematic and timely fashion. I am accountable for my organization, and that is a weakness that we will address.

[*Translation*]

Senator Hervieux-Payette: What worries me is this: When you decided to make the changes and delayed making those decisions, was that because of poor financial planning or poor technical planning? I cannot believe that with such a costly facility, you do not have five-year budget plans that include these upgrades. What prevented you from making that decision at the right time? Was the problem a technical one or a financial one?

[*English*]

Mr. McGee: Again, I do not want to deflect the root cause investigation, but we are getting into the heart of things that we are expecting the root cause investigation to reveal.

Not to bias the investigation, I do not see it as a recent financial issue in the last two years, or at least in the period from the time the licence was issued, so I will set that aside. In my opinion, as far as I am concerned, the funds were available to do it.

There are some technical issues associated with the upgrade that you have to work through, but that is typical of any design change.

It is work planning, not financial planning or technical planning. It is a question of inadequacy in our planning of the work and our timing the execution of it.

[*Translation*]

Senator Hervieux-Payette: Your company makes money; you produce and sell electricity. You produce isotopes. Is the revenue from the isotopes significant or minimal compared to your company's other revenue?

[*English*]

Mr. McGee: I wish to correct something: We do not produce electricity. This is not a power reactor; it is a research reactor. While I did come from the power reactor sector, we do not produce electricity, other than through diesel generators for backup power supplies to some of our nuclear facilities.

We do enjoy some revenue from the isotope stream. While it is a significant amount of revenue, it is not our sole source of revenue. We do earn revenue from our research and development work and through some work that we do in deconditioning and waste management. However, the isotope stream is a significant revenue stream for us.

Senator Kinsella: I have two questions. The first relates to the relationship between the Government of Canada and AECL. The second relates to where things are in terms of having a second reactor like yours in Canada. If the production of isotopes produces revenue and we are a net exporter, why would it not be in our imaginable interest to have a second such reactor as the one that you have?

Would you outline what you see as the relationship between yourselves and the Government of Canada?

Mr. Torgerson: We are a Crown corporation. The Government of Canada, of course, owns us 100 per cent, but we have a policy role and we also have a commercial role. My colleague sitting behind me, Ken Petrunik, is the president of the CANDU Reactor Division. That is the commercial division, which designs, develops and builds CANDU nuclear plants all over the world.

My group is the group that is more on the policy side of the research and the development side, including Chalk River laboratories. Our role is, for example, to operate the nuclear facilities, and in particular, a facility like NRU, which is a multipurpose facility. It is not only for making isotopes. It is also for developing technology. It is also a teaching tool. Most major Canadian universities have students working on NRU to learn the fundamental properties of matter. It has many roles: A medical role, a development of technology role and an educational role.

As the policy side of the organization, we provide those facilities for general use and general benefit to Canadians.

Senator Kinsella: Had the minister or the Government of Canada known at a far earlier date than they did know or apprehend what was happening, what could they have done? Is there an operational relationship where you are a Crown corporation? Do you operate in concert with the government that has the responsibility for the national public interest or do you operate in isolation? I wish to understand the nature of the sensitivity of your organization to a public interest issue that has been apprehended by the government.

Mr. Torgerson: We, of course, take anything in the national interest extremely seriously, as we do production of medical isotopes. The answer is that we are very sensitive to the requirements of the Canadian government in every area and every endeavour that we undertake.

For example, we have developed a large number of technologies that we have transferred to Canadian companies as part of government policy in the past, one of them being the medical isotope business. I will tell you unequivocally that we are an agent of the government and we carry out the government's purposes.

Senator Kinsella: To my second question of a second reactor doing the same type of work, reference was made to the Maple Leaf Reactor. If we had a second reactor in operation, we would not have the kind of crisis situation that we have because of being down for refit.

Mr. Torgerson: At one point, we did have two research reactors operating in Chalk River, and, indeed, when one reactor went down the other reactor would be able to produce medical isotopes, but these are research reactors, so they are multipurpose. Many people use these reactors. They are used not only for medical isotopes, but also for the purposes of education, fundamental scientific research and the development of advanced technology.

With respect to having a second multipurpose reactor, many groups in Canada would very much like to see this, ultimately, to augment or perhaps some day even replace the NRU reactor. This subject has had considerable discussion in many groups throughout Canada.

Senator Banks: Mr. McGee, Mr. Torgerson and Mr. Petrunik, we are glad you are here.

• (1830)

Mr. McGee, I am glad that you are here, particularly because I took your name in vain earlier in the sitting of the Senate before we went into Committee of the Whole. I referred to you when I said that you had been quoted in the House of Commons in its consideration of this bill before it came here. I said that I found it odd, or something to that effect, that we were relying on your assurances that the continued operation now of the NRU reactor would be safe, when you were a senior officer in an undertaking, AECL, that had been, and I use the word "knowingly" operating that reactor in contravention of one of its licence conditions.

Was I correct in that characterization?

Mr. McGee: We never knowingly violated the licence. We believe we have documentation that we can provide to Parliament that shows that we were not in violation of our licence. I mentioned that there needs to be some strengthening of the correspondence and the understanding of what is being committed. I believe that is part of the lessons learned coming out of this.

It is clear to me at this moment, based on the information that I have and the documentation — but I am awaiting the final outcome of the root-cause investigation — that we were not in violation of our licence. If it is ever proven that we were in violation of our licence, I can assure you that it was never knowingly.

Senator Banks: There are some people who think that that is a question, at least, because the instrument that is before us now is a bill that will become an act of Parliament. The ministers who were here just before you confirmed that the reason for the existence of this bill and the necessity of its being passed urgently and becoming an act of Parliament is so that the reactor, when it is fired up, will not be operating in violation of the law.

Do you understand that? For that to be the case, that is why we are dealing with what will become a law here.

Mr. McGee: I am not in a position to make legal judgments, but based on my understanding of the current situation, the reactor has operated safely up to and including the time of shutdown. It experienced upgrades through its recent operating history that made it continually safer through that operating period, and it is safer now, with the installation of pump five, than ever before. I have no question about the safety of the facility to operate. Regardless of any legislation, I still have to make decisions based on the safety of the facility given the time at hand. I hope you would want nothing less from me.

Senator Banks: Or from anyone.

Mr. McGee: I am in a position where, with this upgrade completed, I am absolutely confident in the safety of the facility. We will continue to go through the evolution. We have surveillance programs to help us maintain that assurance. My understanding is that this is a licensing basis issue.

Senator Banks: I understand that there are two views, and I gather we will find out from the commission what their view is. Certainly, there is a view abroad that there was a question of whether or not the reactor was operating in violation of a licence condition. You suggest it was not a violation of a licence condition, that it was something else.

I have two questions that have to do with the timeline. The licence conditions, if I recall correctly, were made in August 2006; is that about right?

Mr. McGee: Again, there are a large number of licence conditions beyond the seven upgrades. The seven upgrades date back to 1993. In the period between 1993 and 2005, the upgrades evolved as part of the design change. There was a licence condition in place on the previous licence. I am somewhat foggy on the specifics because I do not have a significant amount of first-hand knowledge about it. Basically, those seven upgrades were intended or expected to be done as part of that licence condition by December 31, 2005.

Senator Banks: I used the wrong word. I should have said: Was there not a licence extension that was granted in August 2006?

Mr. McGee: The site was re-licensed in October 2006.

Senator Banks: October.

Mr. McGee: The NRU was re-licensed for a five-year period as part of that overall site licence.

Senator Banks: The first of my two timeline questions is: Whether it was a violation of a licence condition or a disagreement of some other kind as between the commission and the AECL with respect to that question, when was the first point at which you became aware of that disagreement or shortfall, whatever we would call it? You said that the licence extension was made in October 2006. When did you become aware that there was a disagreement or a conflict?

Mr. McGee: I do not have the exact date. I was on vacation. It was the second full week in November, I believe on the Monday or Tuesday, so it would probably be November 13 or 14.

Senator Banks: Until the shutdown occurred and until you found that the commission would not allow you to restart, you did not know that there was a disparity as between the operation and the licence; is that correct?

Mr. McGee: We knew that there was a need to do, what we considered to be enhancements, but not part of the original seven upgrades. It was work that we believed we could execute during the licensing period. Our intent was to complete the work sometime in the next 12 to 14 months. As I have mentioned, I was on vacation. I received a call from my staff, indicating to me that this issue had arisen. We discussed it and we agreed that the appropriate response would be to bring it into the technical operability evaluation process to see whether or not, out of that process, there was a real operability concern.

Senator Banks: I am sorry to re-plough old ground, but I will re-ask Senator Carstairs' question because I did not quite understand the answer.

You would have learned that there was some kind of problem, disparity or disagreement by November 22 or something like that. On November 18 the reactor was shut down and by November 22 you knew it would not start up again. We heard that the government was informed of this somewhere around November 28 or 29. Senator Carstairs asked you what happened during those six days, between the time you learned that you would not start up again, at the beginning of that period, and the time that someone informed the department that there was a problem. What was happening during those six days?

Mr. McGee: A great deal. We immediately performed modifications to pump five. Recognizing the staff's concern, we immediately went into the modification process associated with that pump. We began a new documentation review, we began to work on the safety case for single-pump operation and we began to review the licensing basis. There was a large amount of activity and a huge effort on the part of my team back at Chalk River.

Parallel to that, there were ongoing discussions with Canadian Nuclear Safety Commission staff to see where we were with the situation. I had a meeting with some of my senior people and senior CNSC staff during which we discussed the situation.

A meeting was held on the morning of November 30. I was not part of that meeting. It was a director or general manager-level meeting, with supporting staff, where they went through the safety case that we had developed to operate with one pump. In the opinion of CNSC staff, there were many issues that they wanted us to go back and address and to do further analysis or deal with their concerns in some form. In the afternoon of that day, we had another meeting with them to discuss the licensing issue. We believed that we were on track and should be heard before the commission. We thought we understood the feedback that we were getting from Canadian Nuclear Safety Commission staff. We documented what we thought we heard, and we have exchanged that information and made sure we were on the right track with their expectations for the safety case. We understood out of that meeting that two things had to happen. We had to address their concerns and take it to what we understood to be called a risk-informed, decision-making process including senior Canadian Nuclear Safety Commission staff within their organization, which would probably be about a seven or eight day wait before we would get access to them because of various other regulatory issues that they had. Then, pending the outcome, we could schedule a hearing and put our case before the commission. As we understood the situation, that meeting would be held in January.

• (1840)

When we received that feedback, we began to work on it. I had discussions with some senior CNSC people and confirmed our understanding of the feedback, not exact timelines but rough timelines. At that point, if the objective was to place the facility back into operation safely and reliably, it became clear to me I could get there faster by doing the upgrade to both pumps than by going the commission-hearing route. As a result, we carried on with pump five and made a decision that we were going to do pump four, although they are serial activities because you have to

have at least one of those pumps available while you are in the shutdown stage as well. We could only make one unavailable at a time, so it became serial activity, hence the long timeline.

Senator Banks: These two pumps were things that were never part of the system included in that that reactor before?

Mr. McGee: These pumps have always been part of the reactor, as far as I know. They are part of the reactor cooling system. Of the eight reactor cooling pumps, four have AC power.

Senator Banks: I am asking you the question because we heard earlier from the ministers that the pumps in question are brand new, were never there, are upgrades and were not ever required, as I understood it, to operate the plant.

Mr. McGee: I do not want to speak for the minister, but as I heard his testimony in the waiting room, what I heard him say and what the situation is, these are enhancements to those pumps to give them that third power supply I referred to earlier.

Senator Banks: So far as you recall, did it not occur to anyone during those six days to call the department, to call the government, to notify the minister?

Mr. McGee: I did not contact the minister, and communications of that sort are my responsibility; that is a shortcoming on my part.

Senator Banks: Did anyone suggest it?

Mr. McGee: I do not recall anyone suggesting it, but there was a lot of activity at the time, so I would not want to say no one did absolutely.

Senator Grafstein: Mr. McGee, I thank you for your testimony and your candour. Candour is important when we are dealing with the public interest and public safety. I do not question your good faith, and I do not question your energy or your commitment. I really want to question the system, and I mean the government system. Perhaps are you not the best one to answer, but if you can, it would be helpful. Before I do that, I would like to ask a financial question of Mr. Torgerson.

We have heard now that if a system breaks down, there is no redundancy. We do not have another pump. All of us are now taught that even if it is telecommunications, we need a redundant system. If the telecommunication system goes down, there is now a process of providing a redundant system when it is an essential service.

What is the cost of an additional reactor that would provide pure redundancy so Mr. McGee would not find himself in the problem he has, which is to keep it going while he is repairing it?

Mr. Torgerson: I believe that to replace a reactor like NRU, which is, in my view, if not the world's best research reactor, pretty darn close to it, the number would probably be several hundred million dollars.

Senator Grafstein: That is not a huge figure. I thought you would be giving me a number in the billions.

Mr. Torgerson: I was close, senator. I said several hundred million.

Senator Grafstein: Several hundred million or billion?

Mr. Torgerson: Several hundred million.

Senator Grafstein: Is that $200 million or $300 million?

Mr. Torgerson: I would say that to replace the NRU reactor, it would be closer to $800 million.

Senator Grafstein: How long would it take to do that? If, in fact, the ministry decided today to provide for redundancy, how long would it take to get it up and going?

Mr. Torgerson: I would suggest it would take something like eight to 10 years.

Senator Grafstein: Is there any plan you know of to provide a redundant service in the next decade or so?

Mr. Torgerson: We have had discussions with the National Research Council of Canada, universities and other stakeholders over the years on the possibility of replacing NRU with a new multi-purpose reactor. To this date, we have not been able to proceed beyond the conceptual stage of how the funding structure would work for such a major scientific project.

Senator Grafstein: Is that not clearly the responsibility of the ministry?

We have been told in this chamber that there is new mantra in Ottawa, namely, accountability. Let us talk about accountability. I assumed, based upon reading your act that the person responsible to Parliament for the activities of your organization is the minister, having in mind that you are a Crown corporation and one-step removed from direct direction. However, the minister can direct you through a number of mechanisms. For the moment, without getting into that, the minister is responsible for the question of redundancy. I know you are having debates with your stakeholders, the operators and your research people, but at the end of the day, getting back to Mr. Harper, Mr. Harper believes in accountability, so is the minister not responsible for the lack of accountability and for redundancy, with a precise date? This is the new mantra. It is not mine. I do not buy it. I am just echoing what I have heard from the other side.

Mr. Torgerson: That kind of expenditure comes down to the policy of the government. It is obviously not a ministerial decision. Many other ministries would have stakeholders in such a facility.

Senator Grafstein: Is it a cabinet decision?

Mr. Torgerson: I am not an expert in the decision-making process. I do not know how it would be handled.

Senator Grafstein: You get my point. Somewhere, someone has to be responsible for something. I take it that if you start by saying it is very difficult, and we have heard Mr. McGee struggle with the problem that he has to fix the situation, with a number of oversights which we will get into in a moment. However, at the

end of the day, for long-term planning or short-term planning, there should be a redundancy plan as soon as possible, and particularly if it will take a decade.

Mr. Torgerson: Again, you are asking me a policy question. Should there be two multi-purpose research reactors in Canada? I cannot answer that in terms of the policy.

Senator Grafstein: Fair enough. Let me go back to the question of accountability and deal with it in the terms that we have been lectured to by this government. We have been lectured by this government that to be accountable, you have to be able to source out the responsibility and you need to have set up a system of accountability. We spent the better part of some months here with a new accountability bill, which many people say is overly protective and complicated.

Let me make it simple. We have the minister. We have a Crown corporation. Do you have a chairman of your board?

• (1850)

Mr. Torgerson: Yes.

Senator Grafstein: Do you have board members?

Mr. Torgerson: Yes.

Senator Grafstein: Did you inform the board members or chairman of this problem?

Mr. Torgerson: The chairman was aware of the issues. I do not know how the communications to the board were handled.

Senator Grafstein: When was the chairman informed and what did the chairman do?

Mr. Torgerson: I do not know that information.

Senator Grafstein: Based on simple corporate governance, the chain of command is pretty straightforward. Going back to what Senator Dallaire said, Mr. McGee has a problem, he confronts it as best he can and he reports it up the chain. To whom did he report it? Did he report it to you? When did you become aware?

Mr. Torgerson: Mr. McGee reported to me that there was an issue with the CNSC with respect to the licensing basis of the reactor.

Senator Grafstein: That came later. Based on the examination by Senator Carstairs, that came on November 28 or 30. This problem became evident around November 22. When were you informed of the problem?

Mr. Torgerson: I believe I was informed that the outage would be extended at some time during the outage. That is my recollection.

Mr. McGee: I cannot say specifically when I notified people, but the notification of an event on my site of any sort is my responsibility. The shortcomings and the notifications to people are my responsibility.

Senator Grafstein: I understand that, Mr. McGee. My question is: When did the person you report to, which I assume is Mr. Torgerson, know about the problem? Whether it was a regulatory or a mechanical problem, when did Mr. Torgerson know?

Mr. Torgerson: I believe it was when we became convinced that the Canadian Nuclear Safety Commission had a position stating that if we started up the reactor, we would be outside our licensing basis. I was informed at that point.

Senator Grafstein: Was that on or before November 28?

Mr. Torgerson: It was before November 28. I would say November 22. It must have been, because the scheduled outage went from November 18 to 22, so it must have been within that time frame.

Senator Grafstein: Therefore, between November 22 and November 28 when the government was advised, was the chairman of the board and the board of the Crown corporation informed of a problem? If so, did they meet? Did they discuss this problem?

Mr. Torgerson: The chairman of the board was aware of this problem. The board was updated but there has been no meeting of the board between this particular event and today. The board did not meet, but I believe information has been given to the board on this subject.

Senator Grafstein: I am attempting to understand this situation. We have a Crown corporation who, by law, is accountable and independent. The legislation invests in that board and in the chairman of that board independence from the government, with a responsibility for fulfilling their mandate, which is to ensure a culture of safety, as Mr. McGee said.

I do not quarrel with that. I am questioning what the board was doing. Were they only pieces on a chess board that were not in play?

I want to address the question of accountability here. My understanding is that corporate governance is not complicated, regardless of whether it is a private or public company. A board is established, it is responsible to its master for breaches and, therefore, the board must take responsibility, as well. It takes responsibility before the minister. That is before we come to the minister; we have not dealt with him yet.

Mr. Torgerson: There is no doubt that the board takes its responsibilities seriously.

Senator Grafstein: They did not take them seriously here. They had no meetings. They did not discuss this problem, other than being informed on a one-to-one basis.

Mr. Torgerson: The board has periodic calls, organized by the chairman, in which the chairman communicates with the board. Unfortunately, I do not know what communications took place between the chairman and the board members. I have no knowledge of that.

Senator Grafstein: I find it curious that the board did not deal with this problem as an urgent matter, as any other public board would do if there was a suggested breach of regulations.

Mr. Torgerson: The board has been aware of this matter, and we have updated the board when we have our telephone calls with them. The board obviously has concerns over this issue.

Senator Dyck: My question is in regard to the relationship between safety and licensing. We heard earlier this evening from the ministers that the facility is safe, and that it is safer now than it was prior to being shut down.

I believe Mr. McGee outlined the various levels of fail-safe mechanisms: various numbers of pumps, a battery system if the AC power goes down, a system in case of a minor earthquake and another for a major earthquake, et cetera. How do those mechanisms relate to the licensing requirements? When you made the decision not to restart the reactor, did the licensing requirement indicate that, from the licensing perspective, the reactor was not safe? How does that relate to your definitions of safety?

Mr. McGee: The licence is not specific in that regard. It refers to the seven upgrades. It is not specific to that level. That is not uncommon of licensing basis documentation. It refers to a lot of other documentation. Licensing basis documentation can be huge, in fact, and so the licence itself talks about the seven upgrades. Actually, the appendix talks about the seven upgrades but it does not specifically talk about the composition of those seven upgrades.

Senator Dyck: Sorry, I did not catch the last part of your statement.

Mr. McGee: It does not specifically define the detailed scope of those seven upgrades. Each of those upgrades is a complex design system, and so it talks about them in general terms as a system.

Senator Dyck: In terms of licensing, are safety considerations taken into account in defining whether the facility should be licensed or not licensed, or what types of upgrades the facility needs?

Mr. McGee: That is correct. That is the way it works. The safety analysis is part of the design basis of the facility, and the licensing basis.

Senator Dyck: When you made the decision not to restart the reactor, what is the definition of safety from your perspective versus the licensing agreement? Are they concurrent or are they different?

Mr. McGee: I want to give you an answer without delving into a lot of unnecessary detail.

• (1900)

In a perfect situation, there is a complete match between the physical facility, the design basis and licensing basis. Maybe I can use a metaphor. Someone buys a new car. Typically, the tires that come with it are part of that design basis for that facility. They have done all the engineering and design work associated with that car and how it will handle. A lot of us go to Canadian Tire when the tires wear out and put a different type of tire on the car.

In the nuclear world, at that point, we have gone outside our design basis. It does not necessarily mean that it are unsafe. Those tires may be as good or better as the original ones, but they are outside the design basis. What is different in the nuclear world is we go through a change control process.

If we think about that car being licensed by someone somewhere, if they have made those tire changes and not gone back to make them match again to the licensing basis, they are outside their licensing basis.

Senator Dyck: Yes, I understand that analogy, but my question then would go back to nonetheless you have made the decision not to restart the reactor. Is the basis for that decision, then, not one of safety but of another concern? Is that what you are saying?

Mr. McGee: That is correct, but it has safety implications. I had total confidence that the reactor operated safely until the time of shutdown. I was still confident that it could operate coming out of the outage, but when the CNSC staff identified a gap and believed we had a gap in our licensing basis, it was incumbent on me, again for the reasons I talked about earlier, I must address that and go through a process where I satisfy myself, and ultimately satisfy them and other stakeholders, that it is safe to operate. When that gap is identified to me, there is not a do-nothing option for me. I must act on that. To be responsible, I must act on that information. Until I disposition it, I have to accept the professional judgment.

Senator Dyck: At that stage, when you made that decision then, are you saying that you felt there may have been safety concerns and at this point in time there are not safety concerns?

Mr. McGee: At the point in time that I made that decision, we had already gone through our technical operability evaluation that I referred to earlier. We were confident the reactor was safe. However, we still had the licensing issue to dispose of. If I had proceeded to start up, as I mentioned earlier, I am confident that action would have attracted enforcement attention.

Senator Brown: Mr. Torgerson, we are dragging you over the same ground over and over again. To simplify what this chamber needs to know to pass the bill that allows you to start this reactor again, comes down to what my colleague was asking. It is simple; it is a two-part question that I believe you have answered, but I would like to hear the answer again.

It seems like this reactor has been shut down for over two weeks not because anyone believes it is the least bit unsafe. Is that correct?

Mr. Torgerson: We do not believe the reactor is unsafe, not a bit unsafe.

Senator Brown: The second part of the question, then, for us to reach a level of comfort in which we can pass this bill that would allow you to start up this reactor is that it is simply because it was out of compliance with all the upgrades and such that were technically required. Is that true?

Mr. Torgerson: That is the view of CNSC staff. As you can see, it is not necessarily the view of the AECL staff.

Senator Brown: I wanted to clear up those two things. So many of my colleagues here tonight have expressed the view that we need to pass this bill and we will pass this bill, but we need to reach a level of comfort. I believe that is what you have been striving to do ever since you came here, along with the ministers as well.

Senator Downe: Which agency, CNSC or AECL, was responsible to advise the government of the problem?

Mr. Torgerson: I will not speak for the CNSC, but I believe that if there are any communication issues, then I think it was incumbent upon AECL to communicate these issues to the minister.

Senator Downe: The ministers, when they were here, indicated AECL and the second agency, CNSC, were both responsible, but it is your view that you have the primary responsibility?

Mr. Torgerson: As I say, I cannot speak to the CNSC, but I know what our responsibilities should have been.

Senator Downe: Were you involved in or consulted in drafting this bill?

Mr. Torgerson: I did not see a draft. I did not see the bill until I arrived in the House of Commons yesterday and it was sitting on my desk.

Senator Peterson: To sum up, AECL feels confident that starting the reactor is safe. The ministers have told us it is probably safer now than before to start the reactors. From a safety perspective, does the regulator agree with this view?

Mr. Torgerson: I believe that the regulator was asked the question: "Is the plant as safe as, or safer than, when it was shut down, November 18." What I heard the regulators say was, "Yes, that is correct." I think that they would agree that the plant is as safe as, or safer than, when it was shut down.

Senator Peterson: There are other issues, then, with the regulator but not from the safety aspect. Is that what you are telling me?

Mr. Torgerson: I do not know whether they have other safety issues. They would need to answer that.

Senator Peterson: Are there other issues not necessarily related to safety? From the safety perspective, is the regulator satisfied that it is safe?

Mr. Torgerson: You need to ask the CNSC that question. I do not want to speak for them.

Senator Comeau: They are the next witnesses. Ask them.

The Chair: Thank you, gentlemen, for taking time to come and help senators with this bill.

Senator Comeau: That last question leads us right to the people who can probably respond to the last question. We now have, as our third panel, Linda Keen, President and Chief Executive Officer of Canadian Nuclear Safety Commission; and Barclay Howden, Director General of Nuclear Cycle and Facilities Regulation, Canadian Nuclear Safety Commission.

If honourable senators agree, we could invite these witnesses to come in at this point.

The Chair: Is that agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

The Chair: I am pleased to welcome Linda Keen and Barclay Howden to the Senate. I invite each of you to make an opening statement.

[*English*]

Linda Keen, President and Chief Executive Officer, Canadian Nuclear Safety Commission: Good evening, honourable senators. Thank you very much for inviting us today.

I would like to start with an opening statement. I am pleased to meet with you here today to talk about the important role that the Canadian Nuclear Safety Commission plays; that is, to assure Canadians that the health, safety and security, and the protection of the environment is done under our legislation. This proposed legislation was given to us by Parliament in 2000. The Nuclear Safety and Control Act created the Canadian Nuclear Safety Commission. I will specifically address the situation of the NRU.

• (1910)

I begin today by talking about my personal commitment to the health and safety of Canadians. The CNSC does understand the seriousness of the shutdown of the NRU reactor. We do understand that this resulted in a shortage of radioisotopes. We regulate all the hospitals and clinics in Canada that use these radioisotopes, so we are in contact with these facilities. We did our part, as we are allowed to under the Nuclear Safety and Control Act, to help these hospitals and clinics to get licence amendments to use different procedures and to import as they could.

As I said, the Canadian Nuclear Safety Commission was created by Parliament in 2000, but nuclear substances and facilities have been regulated in Canada for over 60 years. This was new, modern legislation put in place by the government to meet modern standards. In fact, our legislation is often used around the world as a model of good nuclear safety legislation.

There are over 2,500 licensees in Canada, and we regulate them all. They include uses for mining, refining, power reactors, research reactors, clinics and industry. One could argue that this is the broadest mandate, along with the responsibility for non-proliferation and ensuring safety and security in Canada.

I emphasize that Canadians are the only client of the CNSC; we work for Canadians. There are no nuclear facilities in Canada that are not regulated under the Nuclear Safety and Control Act, and this has been the case for many years. Nuclear regulation is a federal responsibility and there are no provincial regulators in place to back us up on these important matters.

I assure the Senate that the CNSC is made up of very highly skilled, competent and dedicated nuclear scientists and engineers, like Mr. Barclay Howden, who has over 26 years of experience in this field. We are proud to support their judgment, their competence, their professional qualifications and their values and ethics. The staff at the CNSC are nuclear experts.

As the leader of the CNSC, I have been entrusted with the obligation to fulfill this mandate under the act. The commission is a quasi-judicial administrative tribunal, and sometimes tribunals are called the cousins of the court. The CNSC is nonpartisan, is a court of record, and has a long history of regulating nuclear facilities.

Our members are appointed for their expertise. They are scientists, engineers, business people and dedicated servants of Canadians. I am a scientist.

The commission has a brand new, recently appointed member, whose confirmation I received today. Dr. Ronald Benil is a medical doctor from New Brunswick. I spoke to him today, and he is excited about joining the commission.

As I say, at the beginning of every hearing, the commission is independent of all influence. It is independent from political, governmental, private sector and non-governmental organizations. We do not have an economic mandate. We do have the important mandate of the health and safety of the facilities, but we do not have a mandate for the health consequences of their use.

As a quasi-judicial administrative tribunal, the commission must act within the specific authority and powers given it by Parliament. We cannot move outside the Nuclear Safety and Control Act. This mandate was broadened as of December 11. Yesterday the commission received a Governor-in-Council directive issued pursuant to section 19 of the Nuclear Safety and Control Act directing the commission to take into account the health of Canadians who, for medical purposes, depend on nuclear substances produced by nuclear reactors.

The commission will review this directive and will give it due consideration in future licensing actions. The commission is well placed to understand the need for balance of issues in executing its mandate because we regulate both nuclear facilities and hospitals. The commission currently balances health, safety, security — which has been very important since 9/11 — and the protection of the environment in a risk-informed decision making process.

The commission has received a copy of the tabled legislation, Bill C-38, and if it becomes law we will act according to it.

I will now address the NRU. The commission had serious concerns regarding the safety of this 50-year-old nuclear reactor when its former licence was close to expiry. When the commission considered the licence renewal application in the spring of 2006, it seriously questioned the safety of this reactor. Its decision, which is published with reasons, was effective August 1, 2006.

The granting of this licence, confirmed in the reasons for decision that we have with us today, was based on specific assurances by AECL that its safety case was complete and that the seven key safety updates were complete. This is recorded in the reasons for decision.

As has been discussed earlier today, on November 19, during a safety inspection by on-site staff and staff from Ottawa, it was discovered that a significant safety upgrade to the reactor had not been carried out; specifically, the connection of the emergency power supply that you have heard about today to ensure emergency backup to the other system upgrades. We are prepared to talk to you further about this.

This would have been a violation of the operating licence, but the reactor was down. It is our understanding that upon discovery of this non-compliance, AECL announced voluntarily its decision to shut down the reactor to connect these two critical pumps.

It is important to emphasize that the commission did not shut down the reactor in November. The staff discussed their findings with AECL staff and AECL management chose to keep the reactor shut down.

This may seem like a technicality, but it is not. We think it is important for companies to take account of the safety of these reactors and to take the action that they believe is right, because they are in charge of the safety of this facility.

We asked AECL to come to a pre-announced commission meeting on December 6 due to what we call a significant development report. This is the way the commission staff puts forward concerns about an incident at any of the facilities. These significant development reports are put on the agenda of the commission meetings, which are open to the public. A transcript of the meeting is available and the commission keeps minutes of it.

The commission and CNSC staff are committed to expediting the resolution of health and safety matters.

• (1920)

We talked last night to members of the House about the fact that the commission had been willing, in this exceptional circumstance, to move from a 60-day requirement to post the information to allow interveners and communities to read what is being suggested to one day. We were willing to expedite this, but we cannot expedite safety. The commission staff would have had to review the safety case and make a judgment.

Again, I reiterate our personal interest and commitment, my personal interest and commitment, and that of the commission members to whom I spoke today about this incident, and my personal appreciation of the importance of this issue to the medical community.

We would be pleased to answer the questions of any of the senators on this important matter.

Senator Carstairs: Thank you and welcome to both of you.

Let me begin by referring to your own opening statement in which you said that, before you granted the extension of the licence in August 1, 2006, you had identified seven safety requirements.

When did you anticipate all of those safety requirements would be met?

Ms. Keen: I would ask that Mr. Howden start with that question, and then I will speak from the commission's point of view.

Barclay Howden, Director General of Nuclear Cycle and Facilities Regulation: Honourable senators, for this situation, you would have to go back to the early 1990s, when AECL made a decision to undergo a series of upgrades for the NRU reactor to bring it up to modern safety standards. Within that were the seven safety upgrades.

With regard to the timing of putting those upgrades into service, they had been delayed over time, but, ultimately, AECL declared them in service on December 31, 2005, in preparation for relicensing in 2006.

When the licence renewal was brought before the commission, the decision of the commission was that the licence could be renewed with the upgraded NRU reactor in operation with the seven upgrades in service. From a staff perspective, the expectation was that the upgrades were serviceable on that particular date, namely, August 1, 2006.

Ms. Keen: I reiterate that that was the recommendation of the CNSC staff. We questioned AECL at the same time and we had interveners. The reason for the decision for this licence renewal — let me make it very clear — was that the commission believed that those seven safety areas were essential and that they were in service.

These are interrelated and integrated safety upgrades. They do not stand alone; they need to be done together. The one that we are talking about today was integral to the safety of the other six. It really was seven together.

Senator Carstairs: Just so I am absolutely clear, AECL began upgrades or identified the need for upgrades in the early 1990s. Before they applied for the renewal of their licence, they indicated that, as of December 31, 2005, these upgrades were done. When you granted them the extension of their licence in August 2006, it was with the understanding that they had completed these upgrades. Is that what you are telling me?

Ms. Keen: That is correct.

Senator Carstairs: In a safety inspection on November 19, 2007, you then discovered that these upgrades had not all been completed?

Ms. Keen: Yes. I will turn to Mr. Howden, but it was the very specific seventh upgrade that we are talking about that was not completed.

Mr. Howden: Yes, it was the seventh upgrade, the emergency power system. One of its purposes is to provide power to the other upgrades. One of the important things is that the NRU reactor requires its main heavy water pumps to be operating at all times. Part of the upgrades was that this final connection to the main heavy water pumps would be done. It was our view that this was an integral part of the upgrades and that it needed to be completed. In November 2007, our inspectors were reviewing some documentation at the reactor which had suggested that, perhaps, the upgrade had not been connected. They entered into discussions with AECL to confirm whether or not this was the case. Eventually, it was determined that this final connection had not been made. I believe you are aware of the rest of the timeline.

Senator Carstairs: Did they provide the CNSC with an explanation as to why it had not been completed?

Mr. Howden: The explanation that they had provided was that they felt that this particular connection was not part of the upgrades but was an enhancement to the upgrades. The licensing basis that we had been operating under, which is based on documentation and discussions dating back to 1993, was that this was an integral part of the upgrades. Therefore, when the commission issued the new licence in August 2006, this was part of it.

We also were using the declaration by AECL at the end of 2005 that all the upgrades that were in service were indeed the case, with the understanding that this connection was part of the upgrades.

Senator Carstairs: The Canadian Nuclear Safety Commission has safety concerns. They express those safety concerns to AECL. AECL informs them that those safety concerns have been met, and so you extend the licence until 2011. You then discover, however, that those concerns have not been met.

What is your sense of the safety of this reactor?

Mr. Howden: There are two important points: Safe operation versus risk to safety. Those are very important to keep in mind with many of the things that people are saying.

"Safe operation" means that the reactor has operated safely, that it has not suffered any accidents or incidents that have been significant enough to overcome any of the defence in-depth barriers of the reactor's systems. The defence in-depth was described by AECL, where you put in many different barriers so that if you have a failure or a weakness of a barrier, there is another barrier. From an operational standpoint, this is good and is something that we consider.

The other factor that we consider is risk to safety as it relates to the reactor's ability to withstand an accident that has certain likelihood to occur.

In the case of the NRU reactor, the reactor is vulnerable to certain events because some of its original safety systems were not designed to withstand these events. Thus, they may not be available when needed during an event. This is the fundamental reason that AECL undertook the upgrades: to bring reactor up to safety standards and to provide robustness to ensure that the reactor can survive accident conditions.

In this particular case, seven upgrades were put in place, including the emergency power system, which is intended to provide uninterrupted power to the reactor's two critical main heavy water pumps. These pumps are critical for safe operation. Thus, the emergency power system is critical for safe operation, in the event of an external event, such as an earthquake. You are talking about an external event occurring. This was the licensing basis for the reactor. However, in November 2007 this connection had not been made.

Without this connection, there was a likelihood of approximately one in 1,000 that a seismic event could cause damage to the reactor core. Please recognize that these numbers are approximations. This is the same number that Mr. McGee provided to you earlier.

The licensing basis for the reactor, which is intended to provide protection for people in the environment, was to have the emergency power system connected to the two critical pumps to bring the reactor up to acceptable international norms. As you are aware, the nuclear industry strives to have the likelihood of these events as low as reasonably achievable, with a target of one in 1 million in the case of a serious accident. This is the international norm that I am speaking about.

The licensing basis was aimed at bringing the entire reactor operation as close to this norm as possible. Mr. McGee provided some numbers to let you know that with two pumps, it does approach this norm.

• (1930)

The situation is that AECL has hooked up pump number five to the emergency power system, and my staff was on site reviewing it. They were there today. They are also proposing a "time at risk" argument whereby, with this connection, you can operate for a limited period of time and that the risk would be acceptable. Their proposal is one pump is time at risk. Up to this point, we have been reviewing the facility to ensure that the pump is connected correctly. Initial indications are that it has been done well and that the safety case to run the pump and the whole reactor is acceptable, as well.

We have been reviewing that from a due diligence perspective. We do have a regulatory document which is called "Safety Analysis for Non-Power Reactors" which describes what is expected in a safety analysis. It is based on international standards, worked on by the International Atomic Energy Agency, and it talks about what you have to do. Quality assurance of the robustness of the safety case is one of the most important things that must be ensured. We have been working on making sure that safety case is robust. That is what we have been doing to assure ourselves that it is safe to go forward with one pump if Atomic Energy of Canada Limited chooses to go forward with that.

Senator Carstairs: The Minister of Natural Resources indicated to us that he was, I think, disturbed and even angry that neither AECL nor the Canadian Nuclear Safety Commission had informed him in a timely manner that this reactor had been shut down and not restarted.

What do you believe to be your responsibility regarding informing the minister if a reactor is not operating?

Ms. Keen: CNSC is an arm's-length agency from the government. We regulate all the power reactors as well as research reactors. These reactors, as was described, do go through shutdowns for maintenance on a normal basis. All the power reactors as well as the research reactors in Canada are older, so they go down for regular maintenance quite frequently.

Unless there is a significant development that needs to be brought to the attention of the commission, we do not inform them. This is a normal operation of the Canadian Nuclear Safety Commission staff. Normally, they do compliance. We have people at all reactor sites and they undertake these communications. What we require in guidelines is that the companies inform the communities if there is a significant issue. That is part of our guidelines for public information by the licensees, as well.

Therefore, we would put up the significant development report on the website. We would inform people for a meeting and inform everyone that there was a significant development report to be discussed, and that the report was available. It is a two-page report that we do. We quite often get people from communities or groups that are worried about this coming to meetings. It is available as a transcript and put on the Internet. There are minutes from the meeting available. That is what we have been doing.

Certainly the Canadian Nuclear Safety Commission would be prepared to look at this further, but our responsibility would then be for everyone, not this reactor specifically. We would have to re-look at the policy. We have not had any specific requests, but we certainly would be prepared to look at that.

Senator Carstairs: Your short answer would be that your operating systems would not indicate to you that you should inform the government when a reactor, which is producing medical isotopes and therefore in great demand across the country, is not operating. It would not be your responsibility, but rather the responsibility of the operation of the reactor?

Ms. Keen: Yes, that is correct. During the blackout and the security issues around 9/11, it was the company that informed the owners of what was at issue. This included boards of directors, the government or whoever was the shareholder. We have had a number of events. That would be our understanding.

Senator Poy: Thank you very much for your presentation. I am glad you are here because for the last two hours before you arrived we have been hearing about how safe it is to start the reactors again.

We have been given the responsibility to pass this bill due to the need for medical isotopes. Am I correct in saying that the seven upgrades are not completed at this point?

Ms. Keen: That is correct. As discussed, six are done. There are two pumps required. As Mr. Howden said, one pump has been connected without a complete analysis. As the AECL said, the other pump has not been connected. That is what they would do during the 120 days.

Senator Poy: If they can do that in 120 days, why had it taken so long to the point that you had to shut them down?

Ms. Keen: Just to clarify, we did not shut them down; they kept the reactor down themselves. However, that is a question best answered by AECL.

Senator Poy: How fast can the seventh step be completed? Perhaps that is not within your realm of expertise.

Ms. Keen: I believe that AECL did address that. It would be AECL's responsibility to set the timelines. The Canadian Nuclear Safety Commission is results-based, so the period of time would not be specified. It would be based on how safely the connection was completed. We would be measuring whether it had been safely done, rather than measure by time. This is a matter for Atomic Energy of Canada Limited.

Senator Poy: Am I correct to say that August 1, 2006, was when you informed them that these upgrades had to be completed to renew the licence?

Ms. Keen: In fact, the commission received testimony over a period of time. The final licence was given in August, but the commission had public, two-day hearings where AECL and the staff made recommendations. When the licence was issued, we were reflecting what we understood was the commitment made by AECL. It was not for them to start to put the upgrades in place. Our understanding was that the upgrades, as Mr. Howden had done, were committed to. That is in the reasons for decision of that licence, which is publicly available.

Senator Poy: Mr. Howden mentioned a seismic event. Aside from a seismic event, what other accidents can happen?

Mr. Howden: There are a number of different accidents that can occur. There are things called "loss of coolant accidents" in which pipes break, cooling is lost and you need emergency core cooling. There are also loss of regulation accidents where the control system does not function properly and the power goes up at an uncontrolled rate. In that case safety system action is needed. There are loss of flow accidents, which means you have not lost the coolant but the flow has stopped flowing across the fuel rods. That is actually the primary accident of concern we are talking about tonight. Any number of other accidents can be caused by various things. They can be caused by internal problems, like failure of systems. They can be caused by operator errors or by external ones.

Our view of the situation is that when AECL undertook the seven upgrades, they focused on two things: First, the prevention of accidents; and, second, if an accident occurs, the mitigation of it. The purpose was to make the reactor much more robust. The intention was for them to work as a unit along with the systems that already existed beforehand so that if there was an event, the reactor would be robust enough to withstand that event, such that there would not be releases of nuclear substances to impact people.

• (1940)

What we are looking at from a design basis is that with this final connection, the reactor would meet the licensing basis that is expected and would be safe to go forward, "safe" meaning it meets international standards of expectations for safety.

Senator Poy: Are you saying that the 50-year-old reactors will be up to modern standards, or is it only international standards?

Mr. Howden: International standards are considered modern standards. The recognition is that with old reactors, when they are refurbished or upgraded, the goal is to bring them as close as possible to international standards because it is not always easy to retrofit an old design. However, the focus is making sure that whatever level it is brought up to, the risk posed to people and the environment is reasonable, and that is done through safety analysis and then, good judgment by professionals. Our opinion, with this reactor, when we recommended to the tribunal portion of the commission back in 2006, was that with the upgrades in place the reactor was safe to go forward into the future.

Senator Poy: Am I correct that if we were to pass the bill tonight, it is a huge leap of faith, depending on what happens to the seventh upgrade?

Ms. Keen: It is important that we do not give a sense that there are not a lot of safety systems in this reactor. A great conversation is often, "What is safe enough?" What we are trying to do is reduce the risk to an acceptable level that Mr. Howden said has been designed.

If you take the reactor before any upgrades were done, move forward to the fact that six upgrades were done, plus one of the pumps, it is safer than it was. I would not call it before August; I would call it before the year 2000. In our view, the agreement was that we were aiming for a safety envelope that was all of this, and that was the agreement that AECL had. That would be the modern standard, and we would like to be able to tell Canadians that this reactor is up to modern international standards.

[*Translation*]

Senator Nolin: At the end of your statement, Ms. Keen, you said that you had read the bill and that you agreed? Did I understand that correctly? No? That is not what you said?

[*English*]

Ms. Keen: No, what I said is that the CNSC is respectful of Parliament, and it is respectful of the right of government to make acts, put bills into order, and if the government decides to put this bill into order, the CNSC will follow the rule of law of the government.

We were not presented with the act. The act is the act of government in terms of decision. I pointed out to the House yesterday that it is unprecedented. We are talking about 180 days, but it is unprecedented to have a facility have a component without regulatory control; therefore, no, but I wish to be respectful of Parliament and if Parliament decides to do that, we will obey the rule of law.

We are a creature of Parliament. The Nuclear Safety and Control Act creates us and that is one reason we follow the law there, too, so we are respectful of that.

[*Translation*]

Senator Nolin: Let us be clear. We have to evaluate the risks and weigh the pros and cons. There are two issues before us: medical isotopes and bringing your safety levels up to international standards.

You will understand that the scales are strongly tipped towards the availability of medical isotopes, especially since Canada supplies medical centres in Canada and throughout North America.

You know very well that this pressure will lead us to vote in favour of this bill.

I understand your hesitation in saying that you support the bill, but according to the act which established your agency, you are responsible for overseeing nuclear safety with respect to atomic energy in Canada.

Are we making the right decision in passing this bill?

[*English*]

Ms. Keen: I have respect for the Senate. I have respect for the House. The moves that have been made over the last two days have sought to inform, first, the House and now the Senate as to the issues at play in terms of the risks.

We believe that the situation, as Mr. Howden has expressed it to you, is that we have sought to put before you our point of view as to the risk so that you can make a risk-informed decision.

The view of the commission would be that we would much prefer that all facilities were under regulatory control, including the connections to the pump, which will be removed in this act, and it is only by being under that control that we can assure Canadians. We take that control seriously. I go out to communities often, and I spend time with mayors, boards, citizens and groups, and I must be able to stand up in front of those groups and say, "You know what? I and my staff are doing everything we can with all the knowledge we have and with international norms to keep you safe by the regulator."

Clearly, we will not be in that situation of being able to assure, but I will assure you that we will be on that site. We are on that site; we will be on that site; and, we will be looking at the facilities. However, the government's bill has specifically said to us that we are not to be involved in the regulation of this part of it. It said that we are, by this bill, removing you from that responsibility.

The government has then said that they will have AECL resume that responsibility and the government. I cannot say I agree that it is good to be outside the act, but we respect Parliament and we respect the rule of law.

Senator Moore: Can I ask each of you to put on record your qualifications and your experience, please?

Ms. Keen: I am a professional chemist. I have a bachelor's degree in honours chemistry, a master's degree in food and agricultural sciences, both from Alberta, from my native province. I have about 35 years of experience in science and in management of science, which I performed in a number of areas. I came to the Government of Canada, and I have been with the Government of Canada since 1986, until my appointment by the Governor in Council, so I was a bureaucrat in the government. In Agriculture and Agri-Food Canada, I was the director general of agriculture in the Prairies.

• (1950)

I then moved to Industry Canada and became an assistant deputy minister in mining, where I did material science and ran the Can-Med laboratory. I am a scientist. Those are my qualifications and that is my background.

Mr. Howden: I graduated from Queen's University in 1981 as a chemical engineer. I am a professional engineer. My first seven years of work was at AECL at Chalk River in the NRU reactor. I left AECL in 1988 and worked for three years in private industry, providing nuclear safety services to industry.

I joined the Canadian Nuclear Safety Commission in 1991, initially responsible for emergency preparedness at the commission. I went on to work as an inspector and then a project officer within research facilities, which dealt with facilities like this. I was the director of the Uranium Facilities Division, which is responsible for regulating uranium mines and fuel fabrication facilities. I was the director of the Research Facilities Division, which takes care of all research reactors in Canada.

As the director general, I am responsible for regulation of the front end of the fuel cycle, which includes mines, mills, conversion plants, fuel fabrication and the back end of the fuel cycle, which is decommissioning and waste management, as well as large nuclear facilities, including Chalk River and all the research reactors in Canada.

Senator Moore: I was interested in the line of questioning of Senator Carstairs with regard to the timing of events with respect to this re-licensing. Has this happened before? Have you had an application before from AECL for a licensing or re-licensing and gone back and found that things that were made conditions of the re-licensing had not been completed pursuant to your direction? Has this sort of thing happened before? If so, how did you handle it? What did you do with it?

Mr. Howden: The commission has issued licences where we have had to do follow-up on various issues. None of those occasions was as significant as this, with the exception of one issue, the licensing of the Maple reactors at the Chalk River site, where the reactors were licensed based on a certain safety case. The facility then underwent initial commissioning and it was found during the commissioning test that the reactors were not operating as designed. At that time, AECL again voluntarily shut down the reactors in order to investigate the issues related to that.

That process continues today. AECL has been conducting a number of tests on this reactor to try to determine the causes of the issue that they are trying to deal with, but that was an issue where an unexpected finding came forward after a licence had been issued.

Senator Moore: This was a finding that your commission discovered?

Mr. Howden: No, in that particular case, AECL ran through their commissioning tests and then compared the commissioning results against the expected results, and found that there was a deviation between the two. Of course, there was a significant amount of technical discussion back and forth with us, but Atomic Energy of Canada Limited, recognizing that they had a safety issue with those reactors, voluntarily kept the reactors shut down. We have been working with them to go forward on regulating them as they try to rectify the problems with those reactors.

Ms. Keen: In general, that is what happens in the nuclear industry. These are big companies that want to be seen as good safety companies. In the vast majority of cases, they take action themselves. That does not mean that that is not reported to the commission. As I mentioned, when there was a significant issue, as we have had, for example, in a number of areas, including the Maple reactors, that would come before the commission. The commission would know about it. However, unless they were violating their licence, we would not be, for example, issuing an order or taking a compliance action. We prefer them to do it themselves.

Senator Moore: In the situation of the Maple reactor that they are working on, does AECL notify the appropriate minister of the condition of that reactor? Is that something that they do on an ongoing, updating basis? Would you know?

Ms. Keen: That would be a question best posed to AECL. We would not perform that notification.

Senator Moore: At the time of 9/11, did AECL notify the appropriate minister?

Ms. Keen: At the time of 9/11, I was in charge of CNSC and I brought all the facilities together. We made a risk assessment and we moved forward to put in place a vigorous set of security areas. I brought the CEOs of all the power reactors together, as well as AECL, and said: Let us look at what will have to be done. We looked at international standards and we moved forward.

Senator Moore: Did you give that report to someone?

Ms. Keen: I was asked at that time by the government security committee to brief the government, but it was my responsibility under the act to order those. I was informing them because it was a national security crisis. We needed to involve CSIS and the RCMP. In essence, they understood that I was accountable for requiring the security upgrades, and I did that.

Senator Comeau: Honourable senators, this is to give you an update as to what we are facing for the rest of the evening. I think it is important for all of us to understand the time constraints we face. If we wish to have Royal Assent this evening, the table officers would have to leave here at 8:30, at the latest, in order to be able to reach the Governor General for her signature. This is not meant in any way to attempt to slow down the debate. However, given the importance of the bill to all of us and to Canadians, I wonder if I could ask the indulgence of all honourable senators.

We have a list of questioners now that would put us way over the time constraints that we are facing. I am wondering if all honourable senators would pass the information to the Clerk to be able to reduce the number of questions so that we can meet our deadline. I do not know whether I am asking this as a kind of time allocation, but I suppose that is what it would be, so that we could get this bill through tonight.

Senator Tkachuk: I wish to understand the timeline. Am I correct that on December 31, 2005, you were assured that the seven safety upgrades were completed?

Mr. Howden: Yes, that is correct.

Senator Tkachuk: My understanding is that the licence was granted in August 2006; is that correct?

Mr. Howden: That is correct.

Senator Tkachuk: How did the agency know it was completed? Did someone go down there and check it?

Mr. Howden: Within our compliance program, we have had ongoing oversight with the connection of the upgrades. With the declaration on December 31, 2005 of in service, we accepted that as a fact. In February-March, 2006, the CNSC conducted an audit on the upgrades at NRU. It was a broad-based, high-level audit that looked at high-level documentation.

• (2000)

Through that audit we did not find any evidence that this was not connected at that time. With that in mind we went forward and made the recommendations to the commission that this was done.

Our site staff does much more in-depth inspections. They were doing one of their routine inspections in November 2007. During that process they found some documentation that, in their view, suggested that perhaps the connection had not been made. It was not definitive. They had discussions with AECL over a couple of days, and finally the confirmation was received that this final connection between the two pumps and the emergency power system had not been made.

That was the timeline. We have looked at our due diligence. We started doing lessons learned because the question we are asking ourselves is should we have caught that earlier.

Senator Tkachuk: Are you telling me there was no oversight up to the time of December 31, in the sense that there were no people on the site? Then there is no one checking between January 1, 2006 and August, when they received their licence, nobody bothered to check, they just took their word for it. Are you an oversight agency or what?

Ms. Keen: As Mr. Howden said, first we started out with the assurances of AECL. I wish to make this clear, that the act and the licence requires that the company put forward that they have done this work. We have this work on the requirements on record. Then what takes place, we do have staff on site, and in fact the commission ordered the staff to put staff on site. We did not have this a couple of years ago because we felt that there was significant oversight needed of this facility.

This was during this period when we were putting staff on site. We start always at a high level of enforcement and looking at the compliance area. If you discover something in terms of looking at the quality management program and those kinds of things, if you find that there are some discrepancies, then you start working your way back down into the details of this.

When the reactor is in a shutdown state, as it was in November, it is an opportunity to do some very in-depth work. This really is an opportunity that does not arise all the time to do this.

As Mr. Howden said, the commission, when it heard about this SDR, the significant development report on December 5, requested that the staff do a lessons-learned to find out exactly what happened here and what we could do better.

Senator Keon: I am satisfied from what I have heard that upgrade 7 will be met and that the current NRU will be pronounced safe until 2011.

What really concerns me are the difficulties with Maple 1 and Maple 2. As you stated, you are a regulator for Canada only. My concern relates to beyond 2011. There does not seem to be anyone in charge of any kind of global backup if the system goes down again to supply the medical needs of isotopes for Canada.

I realize that is outside your jurisdiction, but it is within your jurisdiction to start looking down the road as to whether the current NRU or Maple 1 and Maple 2 supplements can supply the isotopes within your safety regulations.

Ms. Keen: The question is, with a 50-year-old reactor, the CNSC was concerned even on this last licence if it could make the upgrades. The record will show that we extended the licence a number of times to allow them to get to these upgrades. We understood that we were shutting down the source of isotopes if we shut down the NRU.

Therefore, the commission really took very hard decisions, even to extend the licence a couple of times before all these upgrades were done. We have licensed the reactor for this five-year period and we require updates to the commission regularly on how it is doing.

The question of what will happen in the future is such that the commission has continually — when the AECL has requested any kind of licence discussion of Maple — put that on a priority list to discuss. The commission has continually made sure that it is being responsive in terms of the requests from AECL; but as you note, this is not within our jurisdiction to look at the future of any part of the energy area, and so that would be outside the Nuclear Safety and Control Act requirements.

Senator Trenholme Counsell: It is very good to have our honoured guests here. Thank you very much.

I trust that this question has not been asked before. I am not sure because I was out for a short time. I am very worried about whether this is a political discussion or a scientific discussion. I could go on with that line of thinking, but I just want to preface what I will say by the following: It seems to me that I have heard from our guests, the experts here, that they are being told to resume operations. It would not be their choice, but when I read this bill, clause 1(1) says "may resume . . . continue the operation . . . for a period of 120 days . . . despite the conditions," et cetera, but then in clause 1(2), "may resume and continue the operation . . . only if it is satisfied that it is safe to do so."

Are you being commanded or told to do this? Are you giving permission, if you choose to go beyond what is considered safe, or is the decision yours? When I listened to you a little while ago, it seemed to me that you said that you would do this if Parliament told you to.

Ms. Keen: It is important to clarify. The bill specifically talks about Atomic Energy of Canada in terms of this. We are the Canadian Nuclear Safety Commission. The bill neither talks about us taking this action to resume it, nor does it talk about what we would do in terms of the operation.

We are not involved in this bill. Atomic Energy of Canada Limited is involved in this. We are the safety regulator, which, in fact, would be not involved in the oversight of the pumps in this specific area. I would just clarify that.

Senator Trenholme Counsell: You are involved in the safety, but clause 1(2) says only if "Atomic Energy of Canada Limited" and ". . . continue the operation of the National Research Universal Reactor" — well, you are not that — ". . . only if it is satisfied that it is safe to do so." Who decides the safety?

Ms. Keen: I am not a lawyer; I am a scientist, so you would have to ask for that.

However, I think the bill makes it clear that Atomic Energy of Canada Limited is cited as making the decision, and the CNSC would not be involved in that decision.

Senator Andreychuk: I want to make a clarification. You indicated that if the bill passes then your role is limited and your job here tonight was to tell us what the risk would be of that. If I understood, you said you were respectful of our role. Our role is to weigh all the risks, the medical risks to Canadians as well as perhaps some risk if you do not do your regulation. Am I correct on that?

Ms. Keen: Yes, you are correct. The role of the CNSC is on the safety side in terms of this facility and the regulation. Our role is not to get involved in the decision about supplying radioisotopes. It is to assure you that it is safe.

[*Translation*]

The Chair: Ms. Keen, Mr. Howden, on behalf of all honourable senators, I want to thank you for the information you have provided to help us in our work on this bill.

• (2010)

[*English*]

Honourable senators, is it agreed that we move to clause-by-clause consideration of Bill C-38, An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River?

Hon. Senators: Agreed.

The Chair: Shall the title stand postponed?

Hon. Senators: Agreed.

The Chair: Shall clause 1 carry?

Hon. Senators: Agreed.

[*Translation*]

The Chair: Shall clause 2 carry?

Hon. Senators: Agreed.

The Chair: Carried. Shall the title of the bill carry?

Hon. Senators: Agreed.

The Chair: Carried. Is it agreed that this bill be adopted without amendment?

Hon. Senators: Agreed.

The Chair: Adopted without amendment. Is it agreed that I report this bill without amendment?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rose-Marie Losier-Cool: Honourable senators, the Committee of the Whole, to which was referred Bill C-38, An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River, has examined the said bill and has directed me to report the same to the Senate without amendment.

[*English*]

THIRD READING

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

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(b), I move that the bill be read the third time now.

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

Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO STUDY CANADIAN ENVIRONMENTAL PROTECTION ACT AND RECEIVE PAPERS AND EVIDENCE FROM PREVIOUS SESSION

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of December 11, 2007, moved:

> That the Standing Senate Committee on Energy, the Environment and Natural Resources be authorized to undertake a review of the *Canadian Environmental Protection Act* (1999, c. 33) pursuant to subsection 343(1) of the said Act;
>
> That the papers and evidence received and taken and work accomplished by the Committee on this subject during the First Session of the Thirty-ninth Parliament be referred to the Committee; and
>
> That the Committee submit its final report no later than February 29, 2008.

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

Motion agreed to.

THE SENATE

COMMITTEES AUTHORIZED TO MEET ON MONDAYS DURING ADJOURNMENT OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of December 11, 2007, moved:

> That, pursuant to rule 95(3), for the remainder of this session, the Standing Senate Committees on Human Rights, Official Languages, and National Security and Defence, as well as the Special Senate Committee on Anti-terrorism be authorized to meet at their approved meeting times as determined by the Government and Opposition Whips on any Monday which immediately precedes a Tuesday when the Senate is scheduled to sit, even though the Senate may then be adjourned for a period exceeding a week.

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

Motion agreed to.

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-13, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments), with amendments and observations), presented in the Senate on December 11, 2007.

Hon. Joan Fraser moved the adoption of the report.

She said: Honourable colleagues, it is my duty under rule 99 to explain the amendments that your committee has proposed to Bill C-13, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments), and I shall try to do so as succinctly as possible.

This bill, as its title suggests, addresses a number of areas, but the amendments that your committee adopted concern only two of those areas. The first is the rights of accused persons to trials and other parts of the judicial process in their own official language, that is, minority language rights before the courts.

The first amendment we recommended in this connection was to clause 18. Currently, when a person appears before a judge unrepresented by a lawyer, the judge must advise that person of his or her right to a trial in that person's minority official language, or indeed majority official language.

Bill C-13 proposed to broaden this protection to provide the same information to all accused regardless of whether they are represented by a lawyer. It also proposed, however, that the judge be not personally required to provide that information, but that the judge be required simply to ensure that the information had been provided.

In significant part because of carefully reasoned advice from the Barreau du Québec, your committee has restored the present system whereby the judge advises the accused of their right to a trial in the language of their choice.

The second amendment is to clause 19, and is a very small linguistic amendment. It adjusts the English version very slightly to ensure that it is exactly the same as the French version. The French version says "les passages" of certain documents — informations, indictments, et cetera — that are not in the official language of the accused shall, upon request by the accused, be translated for that person. The English version says "any portion," which might have led to some ambiguity. We have recommended amending the text so that it reads "the portions," plural, which is an exact reflection of the French text.

Further, two amendments were largely drawn up in the light of a very compelling brief by the Barreau du Québec — properly, since it represents Quebec — concerned about the effect this bill may have, directly or indirectly, intentionally or unintentionally, on the rights of anglophone Quebecers before the courts in Quebec.

I am sure all senators know that in Quebec, for 140 years, if not more, the rights of the anglophone minority before the courts have been absolute. If you are an anglophone in Quebec and you find yourself in the toils of the justice system, you get a trial in English. The judge, the prosecutor and everyone else speaks English in order to guarantee the accused full and perfect minority rights.

This is, unfortunately, not the case in other provinces of Canada for francophone minorities. Little by little over the years we have been expanding the range of rights of francophone minorities. However, of course, every time you codify something, a bureaucrat somewhere may say, "I only have to do what is required in the code."

The Barreau du Québec was concerned that, as we move forward with this bill, legislative requirements that represent a real and significant advance for francophone communities in provinces other than Quebec and New Brunswick, might one day be translated by a zealous or cost-cutting bureaucrat into a diminution of the rights now enjoyed under the wonderful practice in the Province of Quebec.

There is no evidence that this is about to occur. No one has said it is about to occur, and there is no evidence of it at all. The people representing the Barreau were very clear that they were not saying that danger is imminent. They did, however, fear the creation of a climate as time went by.

Your committee decided to recommend two changes. First, in order to give parliamentarians an informed basis for understanding what happens as time goes by, we recommended an amendment to require the Minister of Justice to report annually to Parliament on the number of orders granted for trials in minority languages, the number of trials that are actually held in English in Quebec and in French in the other provinces. Those statistics would be required in the report from the Minister of Justice.

• (2020)

We made a following amendment, namely, that three years after this act comes in to force, a review of the provisions of this part of the act should be undertaken by Parliament. That is, after three years we should have some firm data to indicate what the evolution of practice is, and to be able to reach further judgments on the basis of that data.

We believed that was the appropriate way to respond to the serious concerns raised in an admirable brief from the Barreau du Québec. Those are our amendments as concerns the minority language rights of the accused.

Another amendment was presented by the government. I will try to explain this amendment; it is complicated. It relates to section 255 of the Criminal Code, which concerns the sentencing regime for impaired driving offences. There has been ambiguity in the way the Criminal Code now addresses this matter. It is possible to infer, from the way the Criminal Code is now written, that there are real oddities in the way the sentencing regime works so that, for example, convictions for impaired driving causing bodily harm, or even death, might receive a lower sentence than convictions for simple impaired driving. This situation was clearly not the intention of the legislators when that section of the Criminal Code was written.

Bill C-13 contains an amendment to make it clear that the same sentencing regime applies to all the offences listed in section 255: so far so good.

However, we have before us at second reading in the Senate, Bill C-2, which will add, if it is passed in its present form, more offences to the list in section 255, which would conceivably lead us back to a similar ambiguity to the one I previously described. Therefore, the government proposed amendments to the effect that if Bill C-2 comes into force before this bill, then this bill will

be amended to ensure that all the offences under section 255 will be covered by the sentencing regime. Some consequential renumbering and whatnot are required.

I should tell you, honourable senators, another part of the government's proposed amendment would have had the effect of amending Bill C-2, which is now before this chamber. Your committee, upon reflection, thought perhaps that was not the way to go, namely, to use Bill C-13 to amend Bill C-2 when Bill C-2 was not approved yet in principle in the Senate. Therefore, that portion of the amendment was withdrawn on a motion by members representing the government side. I therefore think that the package of amendments now before you is entirely appropriate within the traditions of the Senate.

We also made a number of observations, which are attached to our report and which we consider to be important. They concern, in particular, the special situation of Aboriginal people before the courts, and the need to address their needs as well, particularly in the training of specialists and lawyers in Aboriginal languages. We also called for more training of defence personnel and other judicial personnel in French outside Quebec.

Finally, we tried to allay concerns that were raised by one group of witnesses regarding the possible extraterritorial application of clause 5 of this bill, which concerns the gaming industry in particular. We are satisfied, upon assurance by, among others, Senator Oliver and the minister, that this concern is not the effect of this bill. Therefore, we made that view plain in our observations.

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?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

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

Senator Comeau: We have time on our hands right now. What about right now?

Senator Fraser: At the next sitting, please.

Senator Comeau: At the next sitting.

Senator Carstairs: Nice try. No cigar.

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

On motion of Senator Comeau, bill placed on the Orders of the Day for consideration at the next sitting of the Senate.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Callbeck, for the second reading of Bill S-210, An Act to amend the Criminal Code (suicide bombings). —(*Honourable Senator Andreychuk*)

Hon. Jerahmiel S. Grafstein: Honourable senators, I wish to speak to this matter briefly.

This matter has been on the Order Paper for more than two years now. It has been seized by the other side for some months. I understand that Senator Andreychuk wants to address it. Can she give me some indication when she might address this matter so we can refer it to committee? She may recall that within the previous Parliament it passed second reading and was then referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Senator Grafstein and I talked about this item earlier this afternoon. There are two bills that Senator Grafstein is interested in moving forward — this one as well as one that we will look at later on, namely, the bill about turning water into food.

I have indicated to Senator Grafstein that we would probably deal with the water into food bill —

Senator Oliver: The loaves and the fishes.

Senator Segal: Water into wine!

An Hon. Senator: It is Christmas, not Easter.

Senator Comeau: I am playing to a tough crowd here tonight, and we have not even been to the bar yet!

Senator Banks: Speak for yourself!

Senator Comeau: Regarding the water bill, I think we are extremely close. As soon as we come back — if we have a prolonged adjournment — we will deal with it almost immediately.

On Bill S-210, dealing with suicide, I would like to discuss it more with Senator Andreychuk. I would say that it is not too far into the future. We are seriously looking at speeding up this bill and sending it to committee.

Senator Grafstein: If this is an undertaking to proceed with the bill as soon as possible when we return, the matter has been before the Senate. It received second reading without division, and the bill has not been changed. In the meantime, there is tremendous pressure from public citizens of all parties to support this

particular bill. I have been inundated with requests, as you are, to proceed with it. I hope that we would have an undertaking from Senator Andreychuk, who understands this issue, to deal with this matter as quickly as possible.

I do not think it is reasonable, frankly, to hold up a bill. Let her speak to it, and then I hope that the Senate will opine, and then I will take the decision of the Senate after we have heard her speech. I do not think we should hold up this bill. She will have four weeks now to think about it.

• (2030)

I have presented a long and lengthy speech which the honourable senator can comment on or oppose. Let us move forward and have a vote.

Order stands.

BANKRUPTCY AND INSOLVENCY ACT

BILL TO AMEND—SECOND READING—
ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Goldstein, seconded by the Honourable Senator Chaput, for the second reading of Bill S-205, An Act to amend the Bankruptcy and Insolvency Act (student loans).—(*Honourable Senator Comeau*)

Hon. Yoïne Goldstein: Honourable senators, I understand that Senator Tkachuk wishes to deal with this matter in the immediate future. Am I correct about that, honourable senator?

Hon. David Tkachuk: I am not sure what he honourable senator means by "immediate future." I think early February should suffice.

Order stands.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tardif, for the second reading of Bill S-209, An Act to amend the Criminal Code (protection of children).—(*Honourable Senator Cochrane*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, before Senator Poy takes the floor, I wish to suggest the following: Given that Senator Cochrane has not made her comments yet, that we reserve the 45 minutes for the critic of the bill.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Vivienne Poy: Honourable senators, I wish to speak briefly in support of Bill S-209, an Act to amend the Criminal Code, by repealing section 43 of the Criminal Code which allows for the corporal punishment of children.

Section 43 of the Criminal Code became law in 1892 and is based on English common law that permitted the corporal punishment of wives, servants, apprentices and children. To date, children are the only group that remain subject to this outdated form of discipline.

If you hit an adult, it is considered assault. Why is it acceptable to hit a child? As Senator Hervieux-Payette has indicated, the Standing Senate Committee on Human Rights, of which I am a member, has examined this proposed legislation exhaustively and is fully in support of this proposal.

Our committee has done a considerable amount of work in examining Canada's international obligations with respect to children's rights. We concluded that section 43 violates the United Nations Convention on the Rights of the Child, which Canada ratified in 1991. Article 19 of the convention mandates the protection of children from all forms of physical or mental violence, injury or abuse.

In its reports to Canada on its implementation of the convention, the United Nations recommended that Canada remove section 43 from the Criminal Code. Honourable senators, we are ignoring our international obligations.

Today, no child development expert would recommend hitting a child as an acceptable form of discipline. Almost 200 organizations in Canada have asked the federal government to repeal section 43 of the Criminal Code. Most of these groups work directly with children who have been abused. They understand the negative impact that corporal punishment has on children, families and society as a whole. Recently, the Regional Municipality of Peel, Ontario, passed a resolution for its repeal, as well. Even Health Canada advises parents that: "It is never okay to spank a child. It is a bad idea and it does not work."

Canadians support an end to corporal punishment of children. According to a national survey conducted in 2003, most respondents supported the repeal of section 43 and many did not even realize that corporal punishment of children was still legal.

Canadians are ready for this change since most parents and teachers already deem striking a child to be a totally unacceptable form of discipline. As Senator Hervieux-Payette has emphasized, children raised in households where violence is the norm are more likely to copy these patterns with other children through bullying. As adults, they are more likely to see violence as an acceptable response to resolve problems.

Parents and teachers are our primary role models. Is this the kind of behaviour we want to model for our children? Should we not be teaching them how to communicate, understand and respect others as well as to have self-control?

Having raised three sons, I have never believed that corporal punishment was an effective way to discipline them. Boys can be difficult, but striking a child is disrespectful to that child. Beyond the physical harm inflicted, I believe children are psychologically hurt when their parents strike them. Although the consequences of such harm are sometimes difficult to measure, I believe many troubled adults in our society are suffering from their parents' or teachers' abuse of their trust.

Senator Hervieux-Payette has listed many countries that have banned any form of corporal punishment of children. It is difficult to believe that Canada, a country with a record of advocating peace throughout the world, still allows corporal punishment of children. We need to teach future generations that violence is unacceptable for resolving problems. Repealing section 43 is a step in the right direction.

Honourable senators, the tragic death of a 16-year-old girl this week speaks for itself. Corporal punishment must be eliminated as a form of discipline so that parents, guardians and teachers understand that it is unacceptable in Canada. I appeal to honourable senators to support Bill S-209.

On motion of Senator Comeau, debate adjourned.

FOOD AND DRUGS ACT

BILL TO AMEND—SECOND READING—
ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Day, for the second reading of Bill S-206, An Act to amend the Food and Drugs Act (clean drinking water). —(*Honourable Senator Cochrane*)

Hon. Jerahmiel S. Grafstein: Honourable senators, again, I seek an undertaking from the Deputy Leader of the Government in the Senate that this matter will be expedited as soon as we return.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Yes, this item will be expedited.

Order stands.

ACCESS TO INFORMATION ACT
CANADIAN WHEAT BOARD ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Grant Mitchell moved second reading of Bill S-216, An Act to amend the Access to Information Act and the Canadian Wheat Board Act.

He said: Honourable senators, I wish to have more time before speaking to this item. I believe there is something else I need to say, but at this time I am not prepared to do so.

On motion of Senator Mitchell, debate adjourned.

IMMIGRATION AND REFUGEE PROTECTION ACT

BILL TO AMEND—SECOND READING—
ORDER STANDS

On the Order:

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

Hon. Yoïne Goldstein: Honourable senators, I understand that Bill C-280 has been adjourned in the name of Senator Tkachuk. We have already had the pleasure of hearing from Senator Di Nino on the other side. Does Senator Tkachuk intend to address this bill shortly?

Hon. David Tkachuk: Honourable senators, I will speak to this item in the immediate future.

• (2040)

Senator Goldstein: Honourable senators, is the "immediate future" defined as the honourable senator defined it earlier?

Senator Tkachuk: Close to it, Senator Goldstein.

Order stands.

[*Translation*]

DEVELOPMENT ASSISTANCE ACCOUNTABILITY BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Dallaire, seconded by the Honourable Senator Moore, for the second reading of Bill C-293, An Act respecting the provision of official development assistance abroad.—(*Honourable Senator Di Nino*)

Hon. Roméo Antonius Dallaire: Honourable senators, I move second reading of Bill C-293.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*English*]

STUDY ON PRESENT STATE AND FUTURE OF AGRICULTURE AND FORESTRY

REPORT OF AGRICULTURE AND FORESTRY COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Agriculture and Forestry, entitled: *Livestock Industry*, tabled in the Senate on December 11, 2007.—(*Honourable Senator Fairbairn, P.C.*)

Hon. Joyce Fairbairn: Honourable senators, I know it has been a long night, but I thought I would put some zip into it by giving you the latest information that we have in our Standing Senate Committee on Agriculture and Forestry on the issues of cattle and pork.

This is important to discuss because there is a significant amount of concern across this country and we have just completed our report. I presented the report in the Senate yesterday, and I will just say a few words about the situation in our industry today.

This fall, a series of factors has been kicking in at the same time to the point that we are now talking of a perfect storm hitting the livestock industry. Farmers are resilient, and the beef and pork industries are used to price volatility marked by hog or steer prices falling sometimes below the cost of production.

However, this year the situation has been quite different. Grain prices, which have steadily declined for the last decades, made a spectacular recovery at the end of 2006. Feed prices increased by more than 40 per cent by the end of that year. While that was very good news for our grain farmers, it has become a cruel situation because of the impact on other agricultural sectors.

Grain prices, however, are only one part of the equation. In fact, livestock producers need a strong grain production base, and grain prices would not be a problem if there was a corresponding rise in livestock prices.

On the contrary, livestock prices have been falling drastically. At the same time, the Canadian dollar rose from 85 cents to $1.10. Since most agricultural commodity prices are set on a North American basis, every time the Canadian dollar rises the equivalent amount is taken away from the revenue of livestock producers. Rising energy costs have also led to increased input prices, and those combined elements have put farmers in a tight situation regarding their liquidity.

To address the situation, the committee has asked for an immediate cash injection, which would take the form of an interest-free loan to address the cash flow squeeze. Money needs to be available as soon as possible, since many farmers, particularly those in the hog industry, are already being forced to close their businesses. Our livestock producers know more than anyone else how sensitive our friends to the south can be when it comes to agricultural trade. An interest-free loan would minimize the potential for countervailing action from the United States.

The livestock industry exists in a North American market. That means that any differences between the United States and Canada in regulation or access to a third country market can have huge competitive disadvantages. That is especially true in this time of high value of the Canadian dollar. The committee, therefore, made two recommendations that will help to narrow the competitive gap between the Canadian and the American livestock industries.

Canada's federally inspected meat processing plants currently face additional regulatory costs relative to their American counterparts. For example, Canada's enhanced ruminant feed ban, which means the prohibition against specified risk materials, or SRM, in all of the animal feed has cost Canadian packers an additional $23 million per year, two to three times the cost estimated by the government.

These requirements do not exist in the United States, which puts Canadian packers at a disadvantage. The government has already put in place a program, cost-shared with the provinces, to help packers with the additional capital investment needed to comply with regulations. However, the program does not cover ongoing disposal costs, which puts Canadian packers at a real disadvantage relative to U.S. packers. The committee has, therefore, recommended improving the funding of the current program to cover the ongoing cost of the disposal of the SRMs for the next two years.

Another disadvantage faced by the Canadian industry is the unequal access to some third-country markets. Witnesses indicated to the committee that the United States has recently been successful in concluding a trade agreement with Korea to cut some of its tariffs on pork and beef, which gives U.S. producers a real competitive edge.

Therefore, the committee has recommended the establishment of a new trade directorate whose mission would be to focus on special market access agreements for Canadian livestock and meat products. To do this, the directorate would combine funds and personnel from CFIA, Agriculture and Agri-Food Canada, and International Trade Canada.

As tough as the situation currently is, I do not wish to sound overly pessimistic. Some major markets, such as China, are opening up, and meat demand will increase in the long term. The level of investment in the Canadian livestock industry in recent years has built solid foundations for the future, and we can count on Canadian farmers to produce internationally recognized products to meet this increasing demand.

Therefore, it is the committee's conviction that these recommendations will help the livestock industry to be part of this future.

Finally, honourable senators, I happened to be in the other place this afternoon and was listening to their Question Period. The Minister of Agriculture was being asked some pretty vigorous questions on possible help at this time of the year. It is always tough for people who produce pork as well as the other meat sector. Gerry Ritz, Minister of Agriculture and Agri-Food and Minister responsible for the Canadian Wheat Board responded

that he had full support of the Prime Minister as we move forward to address agricultural crises in this country. He said:

> I have had tremendous discussions with the pork sector and with the provinces. I have another federal-provincial call tomorrow morning. I am meeting with the pork producers tomorrow. We have put $600 million of new federal money only into play that will be delivered to this sector in January.

• (2050)

Honourable senators, that is good news for the pork industry and we are hoping, as time moves on, there will be a similar kind of support for the cattle industry, which is indeed in deep trouble in this country.

Thank you very much for your patience.

Hon. Pierrette Ringuette: I have a question, if the honourable chair of the committee will kindly answer.

I commend the committee for putting forth this report and being energetic in regard to the agriculture problems, and recommending solutions to this house and to government. However, I highlight the fact that in the last 18 months, Canada and its forest industry has been losing jobs by the thousands. Will the committee undertake, when it resumes after the Christmas break, to look into the forestry sector issues with the same energy as in agriculture, because they are doing a great job.

Senator Fairbairn: I thank the honourable senator for the question. Obviously, I cannot give an answer to that question without the support of our fine Standing Senate Committee on Agriculture and Forestry, co-chaired with me by my friend Senator Gustafson across the way. We will put this issue before our colleagues. As the honourable senator can see by what I have been talking about tonight, we have been in bad situations, frightening situations, in the last month in these particular areas of which I have been speaking. There seems to be a pocket of light that is shining at least on the pork folks, and now we must see if we cannot twist it over a bit to the cattle. I will certainly draw this matter to the attention to our colleagues in the committee.

Senator Ringuette: Honourable senators, I highlight again that maybe there is a small pocket of light in the sector that you were looking into. However, I stress that there is absolute darkness in the forest industry.

On motion of Senator Gustafson, debate adjourned.

[*Translation*]

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

December 12, 2007

Mr. Speaker:

I have the honour to inform you that the Right Honourable Michaëlle Jean, Governor General of Canada, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 12th day of December, 2007, at 8:36 p.m.

Yours sincerely,

Sheila-Marie Cook
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill Assented to Wednesday, December 12, 2007:

An Act to permit the resumption and continuation of the operation of the National Research Universal Reactor at Chalk River (Bill C-38, *Chapter 31, 2007*)

[*English*]

HUMAN RIGHTS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON ISSUES RELATED TO NATIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Human Rights (budget—study 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—power to hire staff and to travel), presented in the Senate on December 11, 2007.—(*Honourable Senator Munson*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Human Rights (budget—study to monitor the implementation of recommendations contained in the committee's report entitled *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*—power to hire staff), presented in the Senate on December 11, 2007.—(*Honourable Senator Munson*)

Hon. A. Raynell Andreychuk moved adoption of the report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON CASES OF ALLEGED DISCRIMINATION IN HIRING AND PROMOTION PRACTICES AND EMPLOYMENT EQUITY FOR MINORITY GROUPS IN FEDERAL PUBLIC SERVICE—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Human Rights (budget—study to examine cases of alleged discrimination in the hiring and promotion practices of the Federal Public Service and to study the extent to which targets to achieve employment equity for minority groups are being met—power to hire staff), presented in the Senate on December 11, 2007.—(*Honourable Senator Munson*)

Hon. A. Raynell Andreychuk moved adoption of the report.

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

Motion agreed to and report adopted.

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Human Rights (budget—study on Matrimonial Real Property—power to hire staff), presented in the Senate on December 11, 2007.—(*Honourable Senator Munson*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

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

Motion agreed to and report adopted.

THE SENATE

MOTION URGING GOVERNOR GENERAL TO FILL VACANCIES—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Cowan:
>
> That the following humble Address be presented to Her Excellency, The Right Honourable Michaëlle Jean, Governor General of Canada:
>
> MAY IT PLEASE YOUR EXCELLENCY:
>
> WHEREAS full representation in the Senate of Canada is a constitutional guarantee to every province as part of the compromise that made Confederation possible;
>
> AND WHEREAS the stated position of the Prime Minister that he "does not intend to appoint senators, unless necessary" represents a unilateral denial of the rights of the provinces;
>
> AND WHEREAS the Prime Minister's disregard of the Constitution of Canada places the Governor General in the intolerable situation of not being able to carry out her sworn duties under section s. 32 of the *Constitution Act, 1867*, which states, "When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.";
>
> AND WHEREAS upon the failure of the Prime Minister to tender advice it is the duty of the Governor General to uphold the Constitution of Canada and its laws and not be constrained by the willful omission of the Prime Minister;
>
> Therefore, we humbly pray that Your Excellency will exercise Her lawful and constitutional duties and will summon qualified persons to the Senate of Canada, thereby assuring that the people and regions of our country have their full representation in a properly functioning Parliament, as that is their undeniable right guaranteed in the Constitution of Canada;
>
> And on the motion in amendment of the Honourable Senator Tkachuk, seconded by the Honourable Senator Comeau, that the motion be amended by deleting all words after "MAY IT PLEASE YOUR EXCELENCY:" and replacing them by the following:
>
> We humbly pray that Your Excellency will continue to exercise Her lawful and constitutional duties and summon qualified persons to the Senate of Canada, upon the advice of the Prime Minister which has been the practice since Confederation.—(*Honourable Senator Oliver*)

Hon. Tommy Banks: Honourable senators, I rise to propose a subamendment to the amendment that is before us. I move:

> That the motion in amendment be amended by deleting all words after "Canada," and replacing them with the following:
>
> thereby assuring that the people and regions of our country have their full representation in a properly functioning Parliament, as that is their undeniable right guaranteed in the Constitution of Canada.

• (2100)

Hon. Gerald J. Comeau (Deputy Leader of the Government): I have a point of order.

Honourable senators, this amendment attempts to get this chamber to adopt a motion that requires the Governor General to take an action, which is against the Constitution of Canada. The motion as proposed by Senator Tkachuk is completely compatible with the Constitution. The Speaker may wish to look at the Constitution to get the exact wording, of course, but the motion is completely compatible. This chamber does not attempt to involve itself in the work of the Governor General. What Senator Tkachuk had done was completely in tune and responsive to the duties of the Governor General.

By this subamendment, this chamber is attempting to make the Governor General go in a certain direction and to do something that is not constitutional. Would Your Honour take this as a point of order?

The Hon. the Speaker: Are there any other comments on the point of order raised by Senator Comeau?

Senator Banks: I wish to speak to the point of order.

The original motion, honourable senators, quotes the Constitution in its third paragraph. It quotes the Constitution as follows:

> When a vacancy happens in the Senate by resignation, death or otherwise the Governor General shall by summons to a fit and qualified person fill the vacancy.

Senator Nolin: I have a point of order. If Senator Banks speaks now, is he answering to a point of order?

The Hon. the Speaker: We are on a point of order that has been raised by the Honourable Senator Comeau. I am hearing argument on the point of order, and I am now listening to Senator Banks on the point of order.

Senator Banks: Senator Comeau's point was that there is something in the proposed subamendment to Senator Tkachuk's amendment that is unconstitutional. By reading the quote from the Constitution in the first motion, in the main motion, it indicates, I believe that the subamendment is in no way contrary to the Constitution. In fact, it refers specifically to the Constitution by saying,: "Your Excellency will continue to exercise her lawful and constitutional duties and summon qualified persons to the Senate of Canada . . . ." under the rubric of the quotation that I just read, " . . . thereby assuring that the people . . . to which they are entitled under the Constitution of Canada," so I submit there is no point of order.

Hon. Anne C. Cools: Since we are having a point of order on the actual words, would it be possible, Your Honour, for us to have copies of the motion as moved by Senator Banks? I would very much like to speak on this point of order, but I would feel that I would be speaking with more intelligence if I had the words in front of me. I would suspect that if more senators had the actual text of Senator Banks' proposal, we would engage in more debate and it would encourage more interest in the debate.

The Hon. the Speaker: Honourable senators, I feel comfortable in ruling on the point of order. I do not think I need to hear any more arguments.

The essence of the point of order raised by the Honourable Senator Comeau speaks to the issue of the Constitution. As all honourable senators know, the Speaker does not decide Constitutional matters. I believe, and it is my ruling, that this matter is not procedurally out of order. It is a matter that is best decided by and through debate.

The chair rules that the subamendment to the amendment is in order.

Some Hon. Senators: Question!

Senator Cools: I would like to speak on the amendments.

Honourable senators, I rise to speak in support of Senator Banks' amendment. I would like to begin my remarks by stating unequivocally that I also rise to speak in support of the Governor General of Canada, Her Excellency Michaëlle Jean. I would also like to speak against Senator Tkachuk's claims about her role.

I wish to state, honourable senators, that I do not subscribe to Senator Tkachuk's notion that the Governor General of Canada is a mere rubber stamp for a prime minister. As we know, this notion is described by many as the rubber stamp theory of viceregal power. It is a theory that no member of Parliament can defend because it is unsupported by the facts, by history, and by the law of the Constitution itself. Senator Tkachuk's speech should be named in praise of arbitrariness and the rule of lawlessness.

Honourable senators, just to make this clear, I wish to state my deep concern with Senator Tkachuk's statements about the Governor General's role as stated here on December 4, 2007. I wish to express my disapproval of his statement in the strongest terms. This statement is a personal affront to Her Excellency Michaëlle Jean and should not be countenanced by this house or in this house. In opposing Senator Moore's most noble initiative, Senator Tkachuk spoke about the Governor General, saying:

> Moreover, it invites the Governor General — a monarchical relic who has wisely and not without considerable forethought been relegated to that of figurehead — and her successors to usurp that which is the sole privilege of the democratically elected Prime Minister who appointed her.

Honourable senators, it is well-established and well-settled law of Parliament that our Senate debates should contain no slights on the Governor General or on Her Majesty. This is very well established. Erskine May and many other authorities say that.

The Governor General, like Her Majesty and judges and so on, is one of those listed as "protected persons" in debates in either House. In addition to being distasteful and offensive, this statement is legally and constitutionally wrong and a misrepresentation of the true constitutional position of the Governor General.

The Governor General is no mere relic from the past. She is no vestige from an earlier era. Neither is she an ornament of ceremonial importance only. The fact is that Her Majesty, through Her Excellency the Governor General, is the actuating power of the Constitution. She is the source of all power and authority.

Honourable senators, the Governor General cannot, as Senator Tkachuk says, usurp the privileges of the Prime Minister. All prime ministerial privileges have their source in the Governor General. Senator Tkachuk's statements are consistent with those of the government of the day in their efforts to diminish and degrade the institutions of the Constitution and to conduct affairs in an unconstitutional way.

Honourable senators, I believe that Senator Tkachuk should apologize for these unprecedented and hurtful statements delivered on December 4 on this Address to Her Excellency Michaëlle Jean.

Herbert Vere Evatt, a distinguished Australian parliamentarian and parliamentary authority, wrote in the 1940 *Canadian Bar Review*. In his article *The Discretionary Authority of Dominion Governors*, he wrote about the power of dissolution, the Governor General and the need to explode false constitutional theories.

• (2110)

Evatt wrote:

> I suggest that, when examined, they will finally explode the constitutional theory that, whatever the parliamentary situation and the other surrounding circumstances, Dominion Ministers are always entitled to obtain a dissolution of the popular Chamber, the function of the King's representative being reduced to that of an automaton or a figurehead.

Senator Tkachuk has declared that Michaëlle Jean, with someone's considerable planning, has been relegated to a figurehead. This is simply not true, not in the prerogative of dissolution nor in the prerogative of appointing senators.

Honourable senators, in his remarks Senator Tkachuk used a novel expression. He spoke about the Prime Minister's "policy" in respect of filling Senate vacancies. I do not know what a prime ministerial policy is. I know what a government policy is and what a ministry policy is, but I do not know what prime ministerial policies are.

Honourable senators, the Governor General of Canada is not the servant of the Prime Minister; neither is the Governor General a mere cipher for the Prime Minister. The constitutional phenomenon of a prime minister's advice to a governor general is located under the rubric of what we call "constitutional conventions."

The great constitutional scholar Albert Dicey wrote about the character of constitutional conventions in his book *Introduction to the Study of the Law of the Constitution*. In the eighth edition, published in 1924, he said, at page 413:

> In an earlier part of this work stress was laid upon the essential distinction between the "law of the constitution," which, consisting (as it does) of rules enforced or recognized by the Courts, makes up a body of "laws" in the proper sense of that term, and the "conventions of the constitution," which consisting (as they do) of customs, practices, maxims, or precepts which are not enforced or recognized by the Courts, make up a body not of laws, but of constitutional or political ethics. . .

Dicey said that constitutional conventions are a constitutional morality. The conventions embody the postulates which are the foundation of the entire constitutional system.

Honourable senators, it is well understood that constitutional conventions are largely about the exercise of the prerogative powers which exist alongside the letter of the law as expressed in the British North America Act, 1867 and in the Governor General's letters patent, et cetera. These conventions are pivotal to our responsible government. Their purpose is to secure the rule of law, the supremacy of Parliament, the sovereignty of the people, and the proper functioning of parliamentary governance. These conventions are binding on both the ministry — the Prime Minister — and the Governor General. A prime minister simply cannot dispense with the constitutional convention of giving advice to a governor general in respect of Senate appointments or any other matter of state. Neither can a governor general simply dispense with the constitutional convention of receiving advice, and thereby act *motu proprio*, that is, on her own accord.

If a prime minister chooses to dispense with the constitutional conventions for himself he does so *in toto*. His actions in so dispensing with the constitutional conventions then relieve the governor general from being bound by that same convention.

Honourable senators, conventions are a mutual set of operations, so if they are waived or dispensed with by one party, they no longer have application to the other. The Prime Minister's actions in so dispensing with these conventions then excuse a governor general from being bound by that convention. In other words, the governor general does not continue to be bound by that convention to which the prime minister is not bound. The governor general is then constitutionally compelled to obey the letter of the law and not the convention.

As we know, the letter of the law takes no notice of constitutional conventions. As Senator Banks said a few moments ago, the letter of the law is very clear in section 32 of the Constitution Act, 1867, which says:

> When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

These constitutional conventions, restrictions on the prerogative, of necessity become restrictions on a prime minister. If a prime minister is not bound, then neither is a governor general, and that is the principle and the functioning of constitutional conventions.

Honourable senators, our constitutional system eschews arbitrariness in the exercise of power. The absence of arbitrary power on the part of the King or of the King's servants is the essential characteristic of the British constitution in Canada. Let us be quite clear: The Constitution of Canada, in all its

dimensions, eschews arbitrariness, and it may be said that the very purpose of constitutions is to defeat executive arbitrariness.

Mr. Dicey, in his book *Introduction to the Study of the Law of the Constitution* wrote:

> The idea of the rule of law in this sense implies, or is at any rate closely connected with, the absence of any dispensing power on the part either of the Crown or its servants.

The Bill of Rights 1689, one of the acts settling the English revolution, said:

> The pretended Power of suspending of Laws, or the Execution of Laws, by regal Authority, without Consent of Parliament, is illegal.

This very famous bill, the Bill of Rights of 1689, settled the question in law and in history once and for all in the business of arbitrariness and in the business of the dispensing power on the part of the King and the King's servants. The Prime Minister's whimsy and fancy are strictly forbidden.

Honourable senators, Eugene Forsey, a distinguished Canadian constitutional scholar and also a former senator, whom I knew very well, wrote on these questions, particularly the proper constitutional relationship between a prime minister and a governor general and a governor general's exercise of the prerogative. I wish to quote from Forsey's famous work entitled *The Present Position of the Reserve Powers of the Crown*. This was published as the introduction to the one combined volume of two books, being Forsey's own *The Royal Power of Dissolution of Parliament in the British Commonwealth* and Herbert V. Evatt's *The King and His Dominion Governors*. Forsey said:

> The conventions governing the exercise of the reserve powers must inevitably vary in the different realms in the light of the differing realms. . . . But in all the realms the basic principle is the same: the protection of the normal functioning of parliamentary democracy. . .
>
> If that is so, it seems to me almost certain that neither the Queen nor any of her representatives will exercise any of the reserve powers except to preserve the Constitution. Putting it another way: the reserve powers are there as much as a bulwark against Prime Ministerial dictatorship.

A few pages later, Eugene Forsey hit the nail on the head. He said:

> Nor will it do to say that Prime Ministers can be counted on to behave constitutionally. That is to argue 'the triumph of hope over experience' (and some very recent experience at that). No country can afford to accept a dogma of the immaculate conception and infallibility of Prime Ministers.

Honourable senators, in this era of exaggerated and enlarged prime ministerial powers, there are no constitutional checks on the power of prime ministers, not from the cabinet, not from the Houses, or the party caucus. Senator Tkachuk asks this house to subjugate the Governor General to the Prime Minister. He asked the house to deny the true constitutional position of the Governor General in these circumstances.

• (2120)

In short, Senator Tkachuk was asking us to fly in the face of the law of Parliament, of the Constitution Acts, and of the fact that the Governor General has a duty to make Senate appointments because it is her duty to serve the people of this country and not to serve any prime minister.

The Governor General has an obligation to the people of Canada to summon qualified senators to the Senate. I, for one, would like to join all of those who are supporting this subamendment and say heartily that I support it. It is terribly regrettable that, in this day and era, we have been placed in this particular situation and that a Governor General has been placed in the situation that this particular Prime Minister has deemed to put us all into.

I would also like to throw in a quotation, in encouraging Her Excellency to understand very clearly that she is acting within the law and that it is her lawful duty. I should like to make clear that the Prime Minister, in refusing to Her Excellency —

The Hon. the Speaker: I regret to advise the honourable senator that her time has expired. Continuing debate.

Senator Cools: Five more minutes?

An Hon. Senator: Question!

Senator Cools: This is on the subamendment. Rather than continue my remarks on this subamendment, I will speak on the main motion, then, or to the amendment.

The Hon. the Speaker: Further debate on the subamendment?

Senator Tkachuk: I move the adjournment of the debate.

The Hon. the Speaker: It was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Keon, that further debate on this matter continue at the next sitting of the Senate.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those honourable senators in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those honourable senators opposed to the motion, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: Honourable senators, is there agreement between the whips as to the length of the bell? If there is no agreement, it is one hour.

Honourable senators, the vote will take place at 10:20 p.m.

• (2220)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Nolin
Comeau	Oliver
Gustafson	Stratton
Keon	Tkachuk—9
LeBreton	

NAYS
THE HONOURABLE SENATORS

Bacon	Hubley
Banks	Jaffer
Callbeck	Kenny
Chaput	Mahovlich
Cook	Merchant
Cowan	Milne
Dallaire	Mitchell
Dawson	Moore
Day	Munson
Downe	Peterson
Eggleton	Phalen
Fairbairn	Ringuette
Fraser	Robichaud
Furey	Tardif
Goldstein	Trenholme Counsell
Grafstein	Zimmer—32

ABSTENTIONS
THE HONOURABLE SENATOR

Cools—1

• (2220)

[*Translation*]

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I move that the Senate do now adjourn.

The Hon. the Speaker: Will those honourable senators in favour of the motion please say yea?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say nay?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. There will be a one-hour bell, unless it is agreed otherwise.

The vote will take place at 11:24 p.m.

[*English*]

• (2320)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Keon
Comeau	LeBreton
Di Nino	Nolin
Eyton	Stratton
Gustafson	Tkachuk—10

NAYS
THE HONOURABLE SENATORS

Bacon	Hubley
Banks	Jaffer
Callbeck	Kenny
Chaput	Merchant
Cook	Milne
Cowan	Mitchell
Dallaire	Moore
Dawson	Munson
Day	Peterson
Downe	Phalen
Eggleton	Ringuette
Fairbairn	Robichaud
Fraser	Tardif
Furey	Trenholme Counsell
Goldstein	Zimmer—31
Grafstein	

ABSTENTIONS
THE HONOURABLE SENATORS

Cools—1

Hon. Terry Stratton: Honourable senators, I should like to rise to speak to this issue. I was rather surprised that we were proceeding to this vote tonight because I was intrigued as to what Senator Lowell Murray had to say. If I recall, in the days of Trudeau, there were 20-odd vacancies in this chamber. I know my predecessor, Duff Roblin from Red River, Manitoba, was appointed in 1979 after the seat had been vacant for about seven or eight years. As well, Senator Di Nino reminded me that when he was appointed, there were about 20-odd vacancies in this chamber as well.

I wish to delve into this subject and recall what Senator Murray had said because it was quite a well-researched piece on this issue. With that in mind, and in order to take the opportunity to review that information, I hereby adjourn the debate.

The Hon. the Speaker: It was moved by the Honourable Senator Stratton, seconded by the Honourable Senator Tkachuk, to adjourn the debate for the remainder of his time.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those honourable senators in favour of motion signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those honourable senators opposed to the motion signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. Do the whips have an agreement?

Senator Stratton: We have agreed to 35 minutes.

The Hon. the Speaker: There will be a 35-minute bell.

• (2400)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Keon
Comeau	LeBreton
Di Nino	Nolin
Eyton	Stratton
Gustafson	Tkachuk—10

NAYS
THE HONOURABLE SENATORS

Bacon	Hubley
Banks	Jaffer
Callbeck	Kenny
Chaput	Merchant
Cook	Milne
Cowan	Mitchell
Dallaire	Moore
Dawson	Munson
Day	Peterson
Downe	Phalen
Eggleton	Ringuette
Fairbairn	Robichaud
Furey	Tardif
Goldstein	Trenholme Counsell
Grafstein	Zimmer—30

ABSTENTIONS
THE HONOURABLE SENATORS

Cools—1

The Hon. the Speaker: Honourable senators, pursuant to rule 66(6), I declare that a motion to adjourn the Senate has been deemed moved and adopted, and I shall leave the chair until the time provided for the next meeting of the Senate, which is Thursday, December 13, 2007, at 1:30 p.m.

The Senate adjourned until Thursday, December 13, 2007, at 1:30 p.m.

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