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OFFICIAL REPORT
(HANSARD)

Thursday, June 20, 2019

The Honourable GEORGE J. FUREY,
Speaker

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Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
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THE SENATE

Thursday, June 20, 2019

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

Prayers.

THE LATE HONOURABLE MARK WARAWA, M.P.

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, it is with deep regret that we learned this morning of the death of Mr. Mark Warawa, the Member of Parliament representing Langley—Aldergrove.

On behalf of all honourable senators, I wish to extend our deepest condolences to his wife Diane and their children and grandchildren.

Out of respect for our deceased colleague, I ask you to rise and join with me in a minute of silence.

(*Honourable senators then stood in silent tribute.*)

SENATORS' STATEMENTS

THE LATE HONOURABLE MARK WARAWA, M.P.

Hon. Donald Neil Plett: Honourable senators, this is something that I have done too often in the last few years. We were all saddened this morning to hear that our very good friend and colleague, Mark Warawa, passed away early this morning after a brief but valiant battle with cancer.

Mark began his public life as an Abbotsford city councillor, where he served for 14 years. He then moved to federal politics, winning the 2004 election for the riding of Langley.

After being re-elected as a member of Parliament five times, Mark announced in January that he was retiring from politics and was looking forward to spending more time with his family.

It came as a shock to everyone when, on April 14, Mark shared that he was in hospital with what the doctors thought might be pancreatic cancer.

He faced the news bravely, writing:

> We have our total trust in God. Yes, there have been lots of tears, but the God who created us has healed me and saved my life before. Most important is I know God loves me and wants me to trust Him. I do!

Less than a week later, there was a flash of hope. Mark sent out an update, saying:

> My dear friends, I was preparing to choose between a risky surgery or palliative care, but I just received the miracle that we all have been hoping and praying for. Thank you, Lord Jesus.

The doctors had informed him that his colon cancer was treatable, and the pancreatic mass was just a tumour. The new prognosis was that he would live for years.

But it was not to be. Only a few days later, Mark learned that the cancer had been found in his lungs and lymph nodes. More tests would reveal it was chronic and the doctors were now giving him a maximum of two years.

On May 7, Mark found the strength to come to Ottawa and deliver his farewell speech in the House of Commons. He received a standing ovation from his colleagues, to whom he said:

> I may be around for a long time or I may be around for a short time. We do not know.

Through it all, his faith in God was with unshakeable. Mark's favourite passage from scripture was John 3:16, which happens to be mine as well. It says:

> For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life.

Just a few weeks ago, Mark wrote:

> I know that God can immediately heal me, heal me gradually or He can call me home to Heaven.

Colleagues, as you know, this morning Mark was called home.

As his family stated earlier today:

> Mark's new address is in heaven, where he hopes to see you someday.

On behalf of all senators, I offer my deepest condolences to Diane, Mark's wife of 46 years, along with his five children, Jonathan, Ryan, Nathan, Eric and Kristin, and his 10 grandchildren. Today we hold you close in our hearts and in our prayers, and pray that you will feel the loving arms of God surrounding you. Thank you.

• (1340)

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, I don't think I could give any tribute to Mark that would match the words that were just spoken. It would probably not be proper for me to do that, as I knew Mark, but I didn't know Mark to the extent that Senator Plett and many people did. Out of respect, I'd like to let it sit where it is.

WORLD REFUGEE DAY

Hon. Ratna Omidvar: Honourable senators, it is indeed a sombre day.

I rise to mark World Refugee Day. I could start by quoting the numbers, which are the highest ever, but I fear that over time we become inured to numbers. Let me try to make them real for you in another way.

If we placed the displaced people of the world next to each other with their fingertips touching, they would circumvent the circumference of the globe, not once but twice.

The decision to leave your home, family and country is never an easy one. Refugees today face a very uncertain future, but also an extremely dangerous one. More than half are women and children, putting themselves in the reach of human trafficking and sexual slavery. We need to be both compassionate but clear-eyed, aspirational yet pragmatic.

The World Refugee Council, of which I am a member, has proposed recommendations that could be a transformative response to the refugee and displacement crisis.

First, it calls for the creation of a Global Action Network for the forcibly displaced. Because this cascade of human misery touches us all, either today or tomorrow, this group of champions will include not only refugee-hosting countries, donor countries, civil society organizations, but also the private sector and multilateral institutions such as the IMF and the WTO. By bringing unusual suspects to the table, agile and flexible solutions that rest on more than the simple and well-meaning charity of the world can be arrived at.

Second, we need to tackle the unforgotten. These are the people who have fled their homes but haven't crossed the international borders, so they are out of the reach of the UNHCR and the world's organized response to refugees. The World Refugee Council calls on the United Nations Secretary-General to appoint a representative for international displaced peoples. This representative would be the first step towards a coordinated international response to a growing problem.

Third, we need to make those perpetrators who are directly responsible for creating waves of oppression and displacement pay. We need to take their ill-gotten gains that are stashed in Canada and repurpose them to help people they have harmed, especially the forcibly displaced.

Finally, I would like to say a word about the upcoming election. I implore all political parties not to use refugees and asylum seekers as a wedge issue because this will only sow fear and division.

Canada tops all other countries in refugee resettlements. This is a badge of pride, not of concern. The Canadian response has always been one of compassion. In light of the growing crisis in the world, this is not the time to change that. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the children of the Honourable Senator Christmas, Peter and Gail Christmas.

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

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Grand Chief Arlen Dumas and Cora Morgan. They are the guests of the Honourable Senator McCallum.

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

Hon. Senators: Hear, hear!

[*Translation*]

TREATY OF VERSAILLES

ONE HUNDREDTH ANNIVERSARY

Hon. Serge Joyal: Honourable senators, June 28 is the one hundredth anniversary of the signing of the Treaty of Versailles by 33 countries, including, for the first time, Canada. This was the treaty that ended the First World War.

I wanted to call to mind this historic event because it was Canada's first foreign policy action on the international stage as a fully sovereign nation.

[*English*]

The centennial of the signing of the Treaty of Versailles next week offers an opportunity to reflect on Canada's roots as a fully sovereign nation. Through its participation in the war, Canada no longer wanted to be treated as a British colony. It felt it had reached the maturity of a country that could claim international sovereignty for itself, and we know what "international sovereignty" means. It is essentially the power to declare war and the power to sign for peace.

Canada did not declare war in 1914. Britain did so on behalf of Canada. But because of the magnitude of its war effort, Canada claimed it had the maturity to sign the peace treaty under its own name. There was resistance in some British circles, and also from the Americans, where it was argued that Britain should be the only one to sign on behalf of all the dominions. However, Prime Minister Robert Borden insisted successfully that Canada had the sovereign capacity to sign. Thus, the Dominion of Canada was clearly identified on the document and two Canadian ministers signed on its behalf.

Canada's distinct signature in 1919 was of paramount importance. The Treaty of Versailles created the League of Nations, a new international body established to prevent another world conflict. Canada, on its own, became a founding member of the League of Nations.

In 1925, it was a Canadian senator, Senator Raoul Dandurand, who became president of the League of Nations General Assembly. In 1927, Canada occupied one of the seats on its executive council, again represented by the Senator Dandurand, who remained deeply involved in the international affairs for the country for the next two years.

We should be thankful to the government of Sir Robert Borden, which spearheaded Canada's signature on the Versailles treaty in June 1919, and certainly to Senator Dandurand who, until his death in 1942, remained one of Canada's most powerful voices on the international stage.

Honourable senators, the bust of Senator Dandurand, which had been displayed in a Senate meeting room in Centre Block, has not been moved here. It should be brought back to this building and rightly displayed in a location close to our chamber.

Let us be proud of our remarkable predecessor, who contributed to build the reputation of Canada as a country that strives for world peace and the respect of human rights.

Some Hon. Senators: Hear, hear!

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Armando Perla. He is the guest of the Honourable Senator McPhedran.

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

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

PARLIAMENTARY BUDGET OFFICER

ELECTION PROPOSAL COSTING BASELINE—
REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the report of the Office of the Parliamentary Budget Officer entitled *Election Proposal Costing Baseline*, pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, sbs. 79.2(2).

[*English*]

2018-19 REPORT ON ACTIVITIES TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2018-19 Report on the Activities of the Office of the Parliamentary Budget Officer, pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, s. 79.22.

[*Translation*]

SPEAKER OF THE SENATE

PARLIAMENTARY DELEGATION TO THE REPUBLIC OF KOREA, NOVEMBER 11-14, 2018—REPORT TABLED

The Hon. the Speaker: Honourable senators, I ask for leave of the Senate to table, in both official languages, the report of the Parliamentary Delegation of the Senate, led by the Speaker of the Senate, that travelled to the Republic of Korea from November 11 to 14, 2018.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

[*English*]

PARLIAMENTARY DELEGATION TO THE ARAB REPUBLIC OF EGYPT AND REPUBLIC OF TURKEY, MAY 19-24, 2019—
REPORT TABLED

The Hon. the Speaker: Honourable senators, I ask for leave of the Senate to table, in both official languages, the report of the Parliamentary Delegation of the Senate, led by the Speaker of the Senate, that travelled to the Arab Republic of Egypt and Republic of Turkey from May 19 to 24, 2019.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

STUDY ON INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS

SEVENTEENTH REPORT OF HUMAN RIGHTS COMMITTEE—
GOVERNMENT RESPONSE TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the government response to the seventeenth report of the Standing Senate Committee on Human Rights entitled *An Ocean of Misery: The Rohingya Refugee Crisis*.

• (1350)

[*English*]

CANNABIS ACT

ELEVENTH REPORT OF ABORIGINAL PEOPLES COMMITTEE—PROGRESS REPORT ON PRIORITIES TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the progress report on priorities identified in the eleventh report of the Standing Senate Committee on Aboriginal Peoples entitled *The subject matter of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*.

[*Translation*]

EXPORT DEVELOPMENT CANADA

CANADA ACCOUNT—2017-18 ANNUAL REPORT TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the Canada Account Annual Report for the fiscal year ended March 31, 2018, pursuant to the *Financial Administration Act*, R.S.C. 1985, c. F-11, sbs. 150(1).

STUDY ON THE PROCESSES AND FINANCIAL ASPECTS OF THE GOVERNMENT'S SYSTEM OF DEFENCE PROCUREMENT

FORTY-THIRD REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the forty-third report of the Standing Senate Committee on National Finance entitled *First Interim Report on Defence Procurement - Summary of Evidence* and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

Honourable senators, I want to start by thanking the two deputy chairs, Senator Pratte and Senator Day, for their support.

[*English*]

I want to say thank you to all the members, Your Honour, of our Standing Senate Committee on National Finance who did a great job, a job well done to fulfill our mandate of the Committee of Finance for all Canadians.

(On motion of Senator Mockler, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

AGRICULTURE AND FORESTRY

BUDGET—STUDY ON HOW THE VALUE-ADDED FOOD SECTOR CAN BE MORE COMPETITIVE IN GLOBAL MARKETS—EIGHTEENTH REPORT OF COMMITTEE PRESENTED

Hon. Diane F. Griffin, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, June 20, 2019

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

EIGHTEENTH REPORT

Your committee, which was authorized by the Senate on Thursday, February 15, 2018, to study how the value-added food sector can be more competitive in global markets, respectfully requests funds for the fiscal year ending March 31, 2020.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

DIANE F. GRIFFIN
Chair

(*For text of budget, see today's* Journals of the Senate*, Appendix, p. 5135-5142.*)

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

Senator Griffin: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(f), I move that the report be adopted now.

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

Hon. Senators: Agreed.

The Hon. the Speaker: It was moved by the Honourable Senator Griffin, seconded by the Honourable Senator Pate, that this report be adopted. On debate, Senator Griffin.

Senator Griffin: Honourable senators, we're making this request because we're going to be releasing the report in July, and normally senators would have to travel to Ottawa for the press conference. The committee and the Communications Directorate felt this would be a great opportunity to share our findings directly with stakeholders by going off-site without incurring a great many additional costs to do so. What's more, this would provide the committee the opportunity to highlight the importance of value-added goods to the local economy.

The process of putting a budget together and adopting it does take some time. I want to thank CIBA for its yeoman service in dealing with this budget this very morning.

This was the first opportunity for me to present this budget to you today. Our committee would appreciate your support and understanding, and we hope you will allow the adoption of the report.

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.)

[*Translation*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

ELEVENTH REPORT OF COMMITTEE TABLED

Hon. Leo Housakos: Honourable senators, I have the honour to table, in both official languages, the eleventh report (interim) of the Standing Committee on Rules, Procedures and the Rights of Parliament entitled *Parliamentary Privilege: Then and Now* and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

(On motion of Senator Housakos, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[*English*]

CHARITABLE SECTOR

FIRST REPORT OF SPECIAL COMMITTEE DEPOSITED WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, I have the honour to inform the Senate that pursuant to the orders adopted by the Senate on January 30, 2018, and June 11, 2019, the Special Senate Committee on the Charitable Sector deposited with the Clerk of the Senate on June 20, 2019, its first report entitled *Catalyst for Change: A Roadmap to a Stronger Charitable Sector* and I move that the report be placed on the Orders of the Day for consideration two days hence.

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

(On motion of Senator Mercer, report placed on the Orders of the Day for consideration two days hence.)

STUDY ON ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY

TWENTY-SEVENTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the twenty-seventh report (interim) of the Standing Senate Committee on Foreign Affairs and International Trade entitled *Safety and Security for Global Affairs Canada Employees and Canadians Abroad* and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

(On motion of Senator Andreychuk, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[*Translation*]

ROYAL CANADIAN MOUNTED POLICE ACT CANADA BORDER SERVICES AGENCY ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-98, An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts.

(Bill read first time.)

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

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

CUSTOMS TARIFF CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-101, An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act.

(Bill read first time.)

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

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-6(1)(f), I move that the bill be placed on the Orders of the Day for second reading later this day.

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

Hon. Senators: Agreed.

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

[*English*]

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

WINTER MEETING OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY, FEBRUARY 21-22, 2019—REPORT TABLED

Hon. Percy E. Downe: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Organization for Security and Co-operation in Europe Parliamentary Assembly (OSCE PA) respecting its participation at the 18th Winter Meeting of the OSCE PA, held in Vienna, Austria, on February 21 and 22, 2019.

• (1400)

PRESIDENTIAL ELECTION OBSERVATION MISSION OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY, MARCH 31, 2019—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Organization for Security and Co-operation in Europe Parliamentary Assembly (OSCE PA) respecting its participation at the Presidential Election Observation Mission of the OSCE PA, held in Kyiv, Ukraine, on March 31, 2019.

PRESIDENTIAL ELECTION OBSERVATION MISSION OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY, APRIL 21, 2019—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Organization for Security and Co-operation in Europe Parliamentary Assembly (OSCE PA) respecting its participation at the Second round of the Presidential Election Observation Mission of the OSCE PA, held in Kyiv, Ukraine, on April 21, 2019.

COMMONWEALTH PARLIAMENTARY ASSOCIATION

MEETING OF THE WORKING GROUP ON PROGRAMMES, JANUARY 24-25, 2019—REPORT TABLED

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Commonwealth Parliamentary Association respecting its participation at the meeting of the Working Group on Programmes (EXCO), held in London, United Kingdom, January 24 and 25, 2019.

[*Translation*]

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

BUREAU MEETING AND ORDINARY SESSION, JULY 5-10, 2018—REPORT TABLED

Hon. Dennis Dawson: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation at the Bureau Meeting and the 44th Ordinary Session of the APF, held in Quebec City, Quebec, from July 5 to 10, 2018.

[*English*]

PARLAMERICAS

BILATERAL VISIT TO BRAZIL, APRIL 23-26, 2019—REPORT TABLED

Hon. Rosa Galvez: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Parliamentary Delegation of the Canadian Section of ParlAmericas respecting its bilateral visit to Brazil, held in Brasilia and São Paulo, Brazil, from April 23 to 26, 2019.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF HOW THE VALUE-ADDED FOOD SECTOR CAN BE MORE COMPETITIVE IN GLOBAL MARKETS

Hon. Diane F. Griffin: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I move:

> That, notwithstanding the order of the Senate adopted on Thursday, November 29, 2018, the date for the final report of the Standing Senate Committee on Agriculture and Forestry in relation to its study on how the value-added food sector can be more competitive in global markets be extended from June 28, 2019, to July 31, 2019.

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

Hon. Donald Neil Plett: Honourable senators, before I grant leave, I would ask for an explanation as to why this is happening again. We are continually being asked for leave when things could so easily be done with Notices of Motion so that we do things in an orderly fashion and don't need to ask for leave.

I'm not sure if it's proper, Your Honour, but, if it is, I would like the senator to explain why. I believe yesterday or the day before, she asked for leave. Here she is today, again, asking for leave.

Senator Griffin: Thank you, Senator Plett. You make a very good point. It's a case of, I have to say, *mea culpa*. We originally thought we had lots of time to do this because it was going to be the end of June. The Senate would be rising. We'd have our report done and launched. All of sudden we realized, oh-oh, the new plan was to make the report more extensive, a much better-valued product, befitting of its value to the agricultural industry. The only way we can do that is to actually go to the July date. I'm very sorry. I didn't mean to inconvenience the chamber. I ask your pardon, but I'm also asking your approval. Thank you.

Senator Plett: I'm not sure that the proper word there would be "inconveniencing" this chamber. We have proper rules and procedures. I want to be on the record, at least, as saying that when we don't give leave, it is not necessarily because we oppose certain things but I want to state that I am very reluctant. I will reluctantly not vote against it and will give leave.

The Hon. the Speaker: Again, is leave granted? Senator Day?

Hon. Joseph A. Day (Leader of the Senate Liberals): A short while ago, the honourable senator asked for leave to have money to release a report. Would this be the same report for which you got funding, previously?

Senator Griffin: Yes, I have to admit this is the same report. You're very quick to pick that up. It is indeed the same report. Again, I apologize for the inconvenience to the house, but I do appreciate your support.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Accordingly, it was moved by the Honourable Senator Griffin, seconded by the Honourable Senator Pate, that notwithstanding the order of the Senate — shall I dispense?

Hon. Senators: Dispense.

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

Hon. Senators: Agreed.

(Motion agreed to.)

BUSINESS OF THE SENATE

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I seek leave of the Senate that motion No. 520 on the Notice Paper be brought forward and called now and, if leave is granted, I move the motion that would allow the committee to meet during the summer, as well as table the following three reports with the Clerk of the Senate: The final report on the human rights of federally sentenced persons, an interim report on coerced and forced sterilization of persons in Canada, and an interim report on the Passenger Protect Program.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I hear a no. I'm sorry, Senator Bernard. Leave is not granted.

Senator Bernard: Can I give an explanation as to why I'm asking for leave?

The Hon. the Speaker: You can, Senator Bernard, if you want to. I heard a number of noes, but if you want to give a quick explanation, please do.

Senator Bernard: Honourable senators, the final report on federally sentenced persons is over 200 pages as it covers evidence from over two years of collecting information. The committee received testimony from 155 witnesses, held 30 public meetings, including public meetings in all regions of Canada, and conducted 30 site visits to federal institutions, healing lodges, community-based facilities and two provincial mental health institutions.

Members from all parties were present for site visits, for testimony and contributed to this substantial report. The committee has considered the draft report and needs more time to complete this important work, including the preparation of a report with images and tables and a communications strategy.

The short study on coerced and forced sterilization of persons in Canada was intended as a scoping study to examine this as one of the human rights violations currently faced by Indigenous women. The scope was conducted with the objective of recommending a further study. The committee held three hearings with 14 witnesses and has reviewed the draft report.

Finally, honourable senators, the draft interim report on the Passenger Protect Program remains to be considered by the committee. The committee conducted a short-term study on the impact of the provisions of the Passenger Protect Program and possible solutions to minimize the number of false positives. The committee held two meetings with 11 witnesses.

The Hon. the Speaker: Thank you for your comments, Senator Bernard.

I will ask again. I'm sorry, Senator Plett, there is really no need for debate. I'm being very lenient by allowing Senator Bernard to explain.

Senator Plett: I wanted to help her.

The Hon. the Speaker: I'm going to ask again. Is leave granted, honourable senators.

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I hear a no. I'm sorry, Senator Bernard, but leave is not granted.

QUESTION PERIOD

ETHICS AND CONFLICT OF INTEREST FOR SENATORS

BUSINESS OF COMMITTEE

Hon. Marilou McPhedran: Honourable senators, my question is to Senator Andreychuk, the Chair of the Standing Committee on Ethics and Conflict of Interest for Senators. First, as a newcomer woman senator, may I offer most sincere appreciation for your leadership for more than 20 years as the doyenne of the Senate.

Some Hon. Senators: Hear, hear.

Senator McPhedran: My question is about how to make the work of the Senate Ethics Officer and staff more understood and more transparent.

The Standing Committee on Ethics and Conflict of Interest for Senators retains its jurisdiction after we adjourn.

• (1410)

If it is so decided, the committee could use the upcoming summer break time for the completion of in-depth research and work by, for example, the Library of Parliament or the Parliamentary Budget Office. Would the Standing Committee on Ethics and Conflict of Interest for Senators consider creating a report on the possibility for more directives, which are squarely within the authority of the committee, in terms of information to be included in the Senate Ethics Officer's annual reporting requirements?

Hon. A. Raynell Andreychuk: Thank you for the point of confidence in the work that I have done here.

With respect to the report, you know that there is a five-year review under the code and that the committee has been working to review the code and other codes that may pertain to the issue of ethics, both in legislatures and other countries. We have for some time met and reviewed the issues.

It has taken us longer for a multitude of reasons that I'm not going to go into, but imminently we have an interim report that addresses many of the issues that I think are confronting senators now and in the future.

I want to pay tribute to the members of the committee. They have taken this task on very seriously. We have put together rather a lengthy interim report. Unfortunately, for many reasons, we need to vet it with our legal services. You know that the law clerks have had to go through an unusually heavy amendment process, so we have had to defer our work.

We will be filing a major interim report that will cover procedures and some of the issues. It will deal with education for the public, for ourselves and for the community at large.

I think your point will be addressed in our report. I should say that there's already an undertaking to bring more education out to the public from the Senate Ethics Officer and also from the education base that we need to take, including before we get to be senators so that we understand our obligations. That is being covered. Your suggestion that it be included in an annual report is now on the record and we will take it up in the committee.

Before our mandate expires, the report will be filed here. The committee has the authority to file reports with the Senate during the break until prorogation or a writ is dropped.

I think that senators should expect an interim report that will be quite lengthy and a final report that may be even more lengthy. I hope that will be educational and we will take up the point you have. We intend to meet during the break.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table the answers to the following oral questions:

Response to the oral question asked in the Senate on March 20, 2019 by the Honourable Senator Seidman, concerning the advertising of vaping products.

Response to the oral question asked in the Senate on March 20, 2019 by the Honourable Senator Stewart Olsen, concerning New Brunswick—infrastructure projects.

Response to the oral question asked in the Senate on March 21, 2019 by the Honourable Senator Bovey, concerning copyright policy.

Response to the oral question asked in the Senate on April 4, 2019 by the Honourable Senator Smith, concerning the judicial selection process.

Response to the oral question asked in the Senate on April 9, 2019 by the Honourable Senator McIntyre, concerning the use of drones in the delivery of illicit drugs or contraband material to prisons (Correctional Service of Canada).

Response to the oral question asked in the Senate on April 9, 2019 by the Honourable Senator McIntyre, concerning the use of drones in the delivery of illicit drugs or contraband material to prisons (Transport Canada).

Response to the oral question asked in the Senate on April 11, 2019 by the Honourable Senator Poirier, concerning the official languages in education program.

Response to the oral question asked in the Senate on May 1, 2019 by the Honourable Senator Carignan, P.C., concerning assistance for victims of flooding.

Response to the oral question asked in the Senate on May 2, 2019 by the Honourable Senator Mockler, concerning support for regional newspapers.

Response to the oral question asked in the Senate on May 8, 2019 by the Honourable Senator Poirier, concerning the Royal Canadian Mounted Police—francophone cadets.

Response to the oral question asked in the Senate on May 28, 2019 by the Honourable Senator Deacon (*Ontario*), concerning amateur athlete trusts.

INFRASTRUCTURE AND COMMUNITIES

NEW BRUNSWICK—INFRASTRUCTURE PROJECTS

(*Response to question raised by the Honourable Carolyn Stewart Olsen on March 20, 2019*)

Under the Investing in Canada Infrastructure Program, funding approved for projects remains committed under our programming until the program's close. Should the province decide not to move forward with a project, that funding can be reallocated to future projects over the life of the bilateral agreement signed between the province and the federal government.

In the case of funding for projects where federal funding was provided under the New Building Canada Fund, any unallocated funding will be flowed directly to municipalities via the Gas Tax Fund as it will in a cases where the province decides not to move forward with a previously approved project.

In the event of a project that has already begun and received federal funds being cancelled, the province may be required to reimburse the federal government for its share of the cancelled project. A federal contribution may also be reduced correspondingly if the province decides to scale down a project but not cancel it entirely.

We work closely with our provincial and territorial partners to ensure that their infrastructure priorities are met. We will continue working in close collaboration with the Province of New Brunswick in order to determine the way forward on the projects in which Infrastructure Canada is involved.

HEALTH

ADVERTISING OF VAPING PRODUCTS

(*Response to question raised by the Honourable Judith G. Seidman on March 20, 2019*)

Health Canada

Health Canada has implemented a suite of activities to enforce the provisions of the *Tobacco and Vaping Products Act* (TVPA), including on lifestyle advertising and advertising appealing to youth, and will verify compliance at major festivals and sporting and cultural events with a focus on the prohibition on sponsorship promotion. Recently, Health Canada also announced an immediate increase in the scope of its compliance and enforcement activities and committed to inspect, by the end of December 2019, all Canadian vape specialty establishments (approximately 1,000) and 2,000 convenience stores.

In addition, Health Canada published a Notice of Intent on February 5, 2019 that outlined plans for additional advertising rules for vaping products. The proposed rules would restrict where advertisements could be displayed to limit their visibility to young people. They would also restrict the content of advertisements, require health warning messages on permitted advertisements, and would restrict the display of vaping products at points of sale.

Health Canada also launched a public consultation on April 11, 2019 on potential further measures, including regulations to restrict nicotine, addressing product attributes that might be appealing to young people such as flavours and design features, and placing additional restrictions on online sales.

CANADIAN HERITAGE

COPYRIGHT POLICY

(*Response to question raised by the Honourable Patricia Bovey on March 21, 2019*)

Through the *Cultural Property Export and Import Act*, the Government of Canada introduced a range of measures to help ensure the preservation of the objects that are most meaningful to our heritage.

In 2017, the government engaged in consultations with stakeholders on proposals to modernize the legislation, including with respect to the export permit process. The subsequent export by the National Gallery of Canada of a painting by Marc Chagall raised new issues which could be addressed as part of the upcoming Act's modernization. The tax-related amendments were announced in Budget 2019, and will be enacted through the *Budget Implementation Act*, enabling Canada's cultural institutions to continue to acquire important objects.

In March 2018, Parliament launched the statutory review of the *Copyright Act*. This review is led by the Standing Committee on Industry, Science and Technology and the Standing Committee on Canadian Heritage, which recently completed and tabled their respective reports on the review of the *Copyright Act* and on remuneration models for artists and creative industries.

Groups of visual artists have told the Committees that an artist resale right (ARR) would have a positive impact on their livelihood. The Standing Committee on Industry, Science and Technology has recommended that the Government of Canada consult with provincial and territorial governments, Indigenous groups, and other stakeholders to explore the costs and benefits of implementing a national artist's resale right, and report on the matter to the Standing Committee on Industry, Science and Technology within three years. The Standing Committee on Canadian Heritage has recommended that the Government of Canada establish an artist's resale right. The Committees' recommendations will inform future thinking on possible legislative solutions on different copyright issues, such as an ARR.

JUSTICE

JUDICIAL SELECTION PROCESS

(*Response to question raised by the Honourable Larry W. Smith on April 4, 2019*)

Department of Justice

The Minister of Justice and Attorney General is confident that the leak did not come from his office and the Prime Minister has stated that the leak did not come from his office. The publication of personal details from the most recent nomination process of Supreme Court of Canada judges is deeply concerning. Canadians should have complete confidence in the administration of justice. The nomination process for the Supreme Court is merit-based and considers Canada's finest jurists for the short list. The Office of the Privacy Commissioner of Canada has confirmed that it is investigating this matter.

PUBLIC SAFETY

USE OF DRONES IN DELIVERY OF ILLICIT DRUGS OR CONTRABAND MATERIAL TO PRISONS

(*Response to question raised by the Honourable Paul E. McIntyre on April 9, 2019*)

Correctional Service of Canada (CSC)

CSC is focused on ensuring that federal correctional institutions provide a safe and secure environment conducive to inmate rehabilitation, staff safety and the protection of the public.

Preventing the introduction of contraband and reducing the use of illicit substances by offenders in correctional institutions is a priority for CSC. CSC relies on staff professionalism and attentiveness, in combination with detection equipment, search practices and a variety of approved techniques to prevent the entry of drugs and contraband. CSC also works closely with local police agencies and communities to stop non-authorized items from entering its institutions.

CSC continues to research and introduce new technology as it becomes available to better facilitate the detection of contraband, including drone detection. While drone sightings over CSC airspace have increased over the past few years, to date there is no indication that drone sightings have a discernible impact on the overall presence of drugs in correctional institutions.

CSC is unable to provide data specific to drones given that there is no specific category in CSC's system to account for drone deliveries.

PUBLIC SAFETY

USE OF DRONES IN DELIVERY OF ILLICIT DRUGS OR CONTRABAND MATERIAL TO PRISONS

(*Response to question raised by the Honourable Paul E. McIntyre on April 9, 2019*)

Transport Canada

Transport Canada (TC) is committed to implementing new drone regulations that will improve the safety of aviation, promote user accountability, and reduce unsafe and

non-compliant drone use. The new rules will require drone pilots to operate safely by taking exams, registering their drone, and obtaining pilot certificates. All drone users are responsible for following federal, provincial, and municipal laws including the Criminal Code. TC is also working with its law enforcement partners to ensure that Canadians comply with these legal requirements. The new rules will take effect on June 1, 2019.

The department also supports its federal research and development partners, including the National Research Council and Defence Research Development Canada, on testing and evaluating a variety of drone counter-measure technologies to ensure that they do not pose a risk to aviation or public safety.

OFFICIAL LANGUAGES

POST-SECONDARY EDUCATION

(*Response to question raised by the Honourable Rose-May Poirier on April 11, 2019*)

The Government of Canada is actively pursuing its work with the Council of Ministers of Education (Canada) to conclude a Protocol on Education. Several meetings have taken place over the last year and discussions are progressing.

However, in response to requests from many stakeholders, and to avoid uncertainty and ensure financial stability and predictability, we have extended the existing Protocol and agreements for the 2018-2019 fiscal year and offered to extend agreements for 2019-2020 with the same financial contribution from the Government of Canada. As a result, the Government of Canada has renewed its financial contribution of $ 235.5 million annually to the provinces and territories until March 2020.

In addition, in Budget 2019, the Government set aside additional funding to increase support for minority language education. This funding is conditional upon the conclusion of a new Protocol and/or new Bilateral Agreements that would include provincial and territorial government commitments to consultations with their stakeholders in the development and implementation of their action plans, and to a better accountability for federal investments.

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

ASSISTANCE FOR VICTIMS OF FLOODING

(*Response to question raised by the Honourable Claude Carignan on May 1, 2019*)

Public Safety Canada (PS)

The Government of Canada's top priority is ensuring Canadians are safe and supported in the event of disasters, including floods. This means working closely with all levels of government to coordinate response efforts and ensuring communities have the resources they need.

In addition to the flood relief support provided to affected communities by the Canadian Armed Forces, the federal government has also committed to providing swift and early financial assistance to affected provinces through the Disaster Financial Assistance Arrangements (DFAA), should such assistance be required. Provinces have been encouraged to make use of the innovative recovery provisions under the DFAA to support relocation to less disaster-prone areas.

On May 3, 2019, the Government of Canada also announced a $2.5 million grant to the Canadian Red Cross to support recovery efforts in flood-affected communities. This builds on commitments already made in Budget 2019 to work with all levels of government, emergency management partners, including municipalities, Indigenous leaders and communities, to move towards a more sustainable and resilient Canada that is better equipped to prepare for, respond to and recover from disasters.

OFFICIAL LANGUAGES

SUPPORT FOR REGIONAL NEWSPAPERS

(*Response to question raised by the Honourable Percy Mockler on May 2, 2019*)

A strong and independent news media is crucial to a well-functioning democracy.

The Government of Canada recognizes the vital role that local journalism plays in communities from coast to coast to coast, including in official language minority communities and is making key investments to ensure that Canadians in underserved communities continue to have access to informed and reliable news coverage.

To ensure that Canadians continue to have access to informed and reliable journalism, the Government announced in Budget 2019 the details of three new initiatives to support Canadian journalism: two tax credits and a fiscal measure to encourage charitable donations in eligible news organizations.

To preserve the independence of the press, an independent panel will be established to recommend eligibility criteria for all tax measures. On May 22, 2019, the Government invited eight associations that represent Canadian journalism to submit the name of a candidate to take part in the work of this panel. One of them is the Association de la presse francophone, which represents online and written francophone press in Canada.

These measures also include an amount of $50 million over 5 years for local journalism previously announced in Budget 2018.

It is expected that these measures will benefit media in official language minority situation communities.

PUBLIC SAFETY

ROYAL CANADIAN MOUNTED POLICE—
FRANCOPHONE CADETS

(*Response to question raised by the Honourable Rose-May Poirier on May 8, 2019*)

Royal Canadian Mounted Police (RCMP)

Bilingualism is a fundamental aspect of our Canadian identity and the Government recognizes our responsibilities to uphold both of Canada's official languages.

There is currently no French Essential position for RCMP Members. The RCMP establishes the linguistic identification of positions in accordance with the TBS Directive on Official Languages for People Management. Despite this fact and in order to optimize employment opportunities of French-speaking candidates without compromising the safety of the public, in 2012, the RCMP launched its post-Depot Accelerated English Second Language Training Program (ESLTP). This Program had been developed to meet the specific needs of newly engaged unilingual Francophone Members and provides them with the linguistic skills required to work safely in their second official language.

Following a thorough assessment of the ESLTP where key deficiencies were identified, the RCMP proposed piloting, on a two-year basis, a new approach where English Language training will be provided to Francophone cadets prior to the Cadet Training Program followed by an enhanced delivery model of the French troop which includes English and French classes.

The RCMP is not eliminating the French-speaking troop, quite the contrary. This enhanced delivery model will graduate three French troops annually, up from one French troop.

NATIONAL REVENUE

AMATEUR ATHLETE TRUSTS

(*Response to question raised by the Honourable Marty Deacon on May 28, 2019*)

The Government, along with all Canadians, appreciates the efforts and sacrifices that amateur athletes make to excel in their sport. The dedication and perseverance they demonstrate in their endeavours is an example for others and their success, whether nationally or on the world stage, makes us all proud.

The Government of Canada is the single largest investor in Canada's amateur sport system, providing over $200 million per year to support sport development, sport excellence, and hosting for the Canada Games and international sport events.

The current regime for amateur athlete trusts provides flexibility for amateur athletes to save their athletic-related earnings on a tax-assisted basis and to wind-up their amateur athlete trust following the end of their athletic career.

The Government is continually reviewing the tax system to ensure that it is fair and effective and will carefully consider the Honourable Senator's suggestion in that context.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—CERTAIN SENATE AMENDMENTS CONCURRED IN, DISAGREEMENT WITH A SENATE AMENDMENT AND AMENDMENTS

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

Wednesday, June 19, 2019

ORDERED,— That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, the House:

agrees with amendments 1, 2, 5, 7, 8, 9, 11, 12(b), 13 and 14 made by the Senate;

proposes that amendment 3 be amended to read as follows:

"3. Clause 239, pages 90 and 91:

(a) on page 90, replace lines 2 and 3 with the following:

"dictable offence that is punishable by 14 years or more of imprisonment, other than an offence listed in section 469, the justice";

(b) on page 90, replace lines 18 and 19 with the following:

"able by 14 years or more of imprisonment, an offence listed in section 469 that is not punishable by 14 years or more of imprisonment or an";

(c) on page 90, replace line 44 with the following:

"section 469 that is punishable by 14 years or more of imprisonment,";

(d) on page 91, replace lines 20 and 21 with the following:

"offence listed in section 469 that is punishable by 14 years or more of imprisonment, the justice shall endorse on the informa-";";

proposes that amendment 4 be amended to read as follows:

"4. Clause 240, pages 92 and 93

(a) on page 92, replace line 11 with the following:

"14 years or more of imprisonment, other than an offence mentioned";

(b) on page 92, replace lines 25 to 27 with the following:

"offence that is punishable by 14 years or more of imprisonment, an offence listed in section 469 that is not punishable by 14 years or more of imprisonment or an offence mentioned in section";

(c) on page 92, replace line 41 with the following:

"section 469 that is punishable by 14 years or more of imprisonment,";

(d) on page 93, replace line 20 with the following:

"is punishable by 14 years or more of imprisonment, the justice or";";

proposes that, as a consequence of Senate amendments 3 and 4, the following amendment be added:

"1. Clause 238, page 89: replace line 33 with the following:

"fence that is punishable by 14 years or more of imprisonment is be-";";

proposes that amendment 6 be amended by replacing the words "an intimate partner — and, in particular, a partner" with the words "a person" and by replacing the words "on the basis of sex or is an Aboriginal person" with the words "because of personal circumstances — including because the person is Aboriginal and female";

respectfully disagrees with amendment 10 made by the Senate because the Bill already provides flexibility to the provinces and territories with respect to agent representation while also recognizing regional diversity in respect of how legal representation is regulated across Canada, and because the amendment could have unintended repercussions for the provinces and territories; and, the Government continues to work with the provinces and territories to support the effective implementation of these reforms;

proposes that amendment 12(a) in the English version be amended by replacing the words "apply in Bill C-45" with the words "apply if Bill C-45".

ATTEST

Charles Robert
The Clerk of the House of Commons

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

(On motion of Senator Harder, message placed on the Orders of the Day for consideration later this day.)

[*English*]

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—MESSAGE FROM COMMONS—CERTAIN SENATE AMENDMENTS CONCURRED IN, DISAGREEMENT WITH CERTAIN SENATE AMENDMENTS AND AMENDMENTS

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

Thursday, June 20, 2019

ORDERED,— That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, the House:

agrees with amendments 1, 4(a) and 5(b) made by the Senate;

proposes that amendment 2 be amended by replacing the text of the amendment with the following:

"(c.1) the Service considers alternatives to custody in a penitentiary, including the alternatives referred to in sections 29 and 81;

(c.2) the Service ensures the effective delivery of programs to offenders, including correctional, educational, vocational training and volunteer programs, with a view to improving access to alternatives to custody in a penitentiary and to promoting rehabilitation;";

proposes that amendment 3 be amended by replacing the text of the amendment with the following:

"(2.01) In order to ensure that the plan can be developed in a manner that takes any mental health needs of the offender into consideration, the institutional head shall, as soon as practicable after the day on which the offender is received but not later than the 30th day after that day, refer the offender's case to the portion of the Service that administers health care for the purpose of conducting a mental health assessment of the offender.";

proposes that amendment 4(b)(i) be replaced by the following amendment:

"1. Clause 10, page 7: replace lines 25 to 28 with the following:

'(2) The Service shall ensure that the measures include

(a) a referral of the inmate's case, within 24 hours after the inmate's transfer into the structured intervention unit, to the portion of the Service that administers health care for the purpose of conducting a mental health assessment of the inmate; and

(b) a visit to the inmate at least once every day by a registered health care professional employed or engaged by the Service.'; ";

respectfully disagrees with amendment 4(b)(ii) because it may not support the professional autonomy and clinical independence of healthcare professionals and does not take into account the inmate's willingness to be transferred to a hospital or the hospital's capacity to treat the inmate;

respectfully disagrees with amendment 5(a) because it would result in a significant addition to the workload of provincial superior courts, and because further assessments and consultations with the provinces would be required to determine the probable legislative, operational and financial implications at federal and provincial levels, including amendments to the Judges Act and provincial legislation and the appointment of additional judges;

proposes that amendment 6 be amended to read as follows:

"6. Clause 14, page 16:

(a) replace line 7 with the following:

'48 (1) Subject to subsection (2), a staff member of the same sex as the inmate may';

(b) add the following after line 15:

'(2) A body scan search of the inmate shall be conducted instead of the strip search if

(a) the body scan search is authorized under section 48.1; and

(b) a prescribed body scanner in proper working order is in the area where the strip search would be conducted.';";

proposes that amendment 7(a) be amended by replacing the text of the French version of the amendment with the following:

"c) l'identité et la culture autochtones du délinquant, notamment son passé familial et son historique d'adoption.";

proposes that amendment 7(b) be amended to read as follows:

"(b) replace lines 32 and 33 with the following:

'ing the assessment of the risk posed by an Indigenous offender unless those factors could decrease the level of risk.';";

respectfully disagrees with amendment 8 because extending the concept of healing lodges designed specifically for Indigenous corrections to other unspecified groups is a major policy change that should only be contemplated following considerable study and consultation, and because it would impede the ability of the Correctional Service of Canada, which is responsible for the care and custody of inmates pursuant to section 5 of the Act, to be part of decisions to transfer inmates to healing lodges;

respectfully disagrees with amendment 9 because extending the concept of community release designed specifically for Indigenous corrections to other unspecified groups is a major policy change that should only be contemplated following considerable study and consultation;

respectfully disagrees with amendment 10 because allowing offenders' sentences to be shortened due to the conduct of correctional staff, particularly given the existence of other remedies, is a major policy change that should only be contemplated following considerable study and consultation, including with provincial partners, victims' representatives, stakeholder groups and other actors in the criminal justice system;

respectfully disagrees with amendment 11 because five years is an appropriate amount of time to allow for robust and meaningful assessment of the new provisions following full implementation.

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

(On motion of Senator Harder, message placed on the Orders of the Day for consideration later this day.)

[*Translation*]

INDIGENOUS LANGUAGES BILL

MESSAGE FROM COMMONS—CERTAIN SENATE AMENDMENTS CONCURRED IN, DISAGREEMENT WITH CERTAIN SENATE AMENDMENTS AND AMENDMENT

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

Wednesday, June 19, 2019

ORDERED,— That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-91, An Act respecting Indigenous languages, the House:

agrees with amendments 4(a), 7(a), 9, 11(a), 12, 13 and 14 made by the Senate;

respectfully disagrees with amendment 1 because Bill C-91 provides for regulations and agreements or arrangements that take into account unique circumstances and needs;

respectfully disagrees with amendment 2 because Bill C-91 would already apply to organizations such as friendship centres and other community-based organizations; moreover, highlighting specific types of organizations might signal that those types of organizations would be favoured over others, which is not the intention of the defined term;

respectfully disagrees with amendment 3 because the Office and the Commissioner of Indigenous Languages are neither agents of the Crown nor federal institutions and would therefore not be subject to commitments of the Government of Canada;

respectfully disagrees with amendments 4(b)(i) and 6 because the obligations they provide for are inconsistent with the constitutional principles that govern the allocation of public funds;

respectfully disagrees with amendment 5 because the proposed text would be contrary to what was heard during the Government's engagement with Indigenous languages practitioners, experts, academics, Elders, youth, and community members, who all expressed great reluctance to attempt to define specific rights in a manner that could be perceived as limiting their scope;

respectfully disagrees with amendments 4(b)(ii), 7(b) and 8 because they would be contrary to the intent of Bill C-91 in this regard, which is to facilitate cooperation with Indigenous governments and other Indigenous governing bodies, Indigenous entities and provincial and territorial governments while respecting all powers and jurisdictions of partners to best achieve the objectives of the proposed Act;

respectfully disagrees with amendment 10 as amendment 9 already addresses the matter;

proposes that amendment 11(b) be amended, in the French version, by replacing the words "l'exercice de son mandat" with the words "l'accomplissement de sa mission";

respectfully disagrees with amendment 15 because mechanisms already exist under the proposed Act to review the Act and its administration and operation, which includes identifying any measures to report on all Indigenous languages equally.

ATTEST

Charles Robert
The Clerk of the House of Commons

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

(On motion of Senator Harder, message placed on the Orders of the Day for consideration later this day.)

BILL RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

MESSAGE FROM COMMONS—CERTAIN SENATE AMENDMENTS CONCURRED IN, DISAGREEMENT WITH CERTAIN SENATE AMENDMENTS AND AMENDMENT

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons which reads as follows:

Wednesday, June 19, 2019

ORDERED,— That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families, the House:

agrees with amendments 1(a), 4 and 5 made by the Senate;

proposes that amendment 6 be amended to read as follows:

"6. New Clause 15.1, page 9: Add the following after line 15:

"15.1 In the context of providing child and family services in relation to an Indigenous child, unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the service provider must demonstrate that he or she made reasonable efforts to have the child continue to reside with that person."; ";

respectfully disagrees with amendments 1(b), 2, 3, 7, 8, 9 and 10 because they are not consistent with the main objectives of the Bill, which are to affirm the rights and jurisdiction of Indigenous peoples in relation to child and family services and to set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children.

ATTEST

Charles Robert
The Clerk of the House of Commons

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

(On motion of Senator Harder, message placed on the Orders of the Day for consideration later this day.)

• (1420)

[*English*]

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: third reading of Bill C-102, followed by second reading of Bill C-101, followed by consideration of the messages from the House of Commons on bills C-91, C-92, C-75, C-48, C-83 and C-69, followed by third reading of Bill C-97, followed by all remaining items in the order that they appear on the Order Paper.

[*Translation*]

APPROPRIATION BILL NO. 2, 2019-20

THIRD READING

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) moved third reading of Bill C-102, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2020.

She said: Honourable senators, I forgot to mention one very important point during my speech yesterday. Not all committees have a steering committee with two deputy chairs, but the Standing Senate Committee on National Finance does. I forgot to thank Senator Pratte yesterday, who is deputy chair of the committee, for the work he accomplished in the 42nd Parliament.

[*English*]

Hon. Elizabeth Marshall: Honourable senators, I don't have much to add either. I thank Senator Bellemare for her comments. I don't want to pass up the opportunity to say a few words. Since we have some new senators in the chamber, I thought that I would just give a little run-through as to how the supply bill relates to the estimates.

Honourable senators — this is directed toward our new senators, and I see Senator Day over there smiling — we refer to —

Senator Plett: He's hardly new.

Senator Marshall: I've replaced you, Senator Day.

Honourable senators, we refer to Bill C-102 as the supply bill because it supplies money to the government so it can operate. This is the second supply bill for this fiscal year.

The first supply bill was passed by the Senate on March 22 and provided money for the first three months of the fiscal year. I always refer to this first supply bill as the interim supply. On June 30, just a few days away, the first supply bill will expire,

and many programs will no longer have the money they need to operate. This supply bill, Bill C-102, must receive Royal Assent by June 30 or the government will be unable to operate.

To complicate matters, some money has already been provided by other acts. In fact, $176 billion of the $302 billion, which the government needs to operate this year, has already been approved by other acts, but the remaining $126 billion has to be approved by both houses and receive Royal Assent by the end of this month.

The Canada Child Benefit, for example, is not included in this bill because these payments have already been approved by the Income Tax Act. We refer to these payments as statutory payments. Another example is Old Age Security payments. That's paid under the Old Age Security Act. It seems like there's a lot of attention paid to the estimates, but there's a link between the estimates and the supply bill because the estimates support the supply bill. You can actually look at the estimates document and trace the dollar amounts in the estimates document to the dollar amounts in the supply bill. We do that in the Finance Committee.

In the Finance Committee, we study the estimates in detail and then we trace the dollar amounts in the estimates to the supply bill. We had five meetings with 17 federal organizations for the estimates on this supply bill.

This tracing of the numbers from the estimates document to the supply bill — I'm looking over at Senator Day — is very important because one year, Senator Day, who is the former Chair of the Finance Committee, identified a problem with the supply bill. Good for Senator Day.

This bill has to be passed before we adjourn. It receives so little attention but it is so important. Thank you.

Some Hon. Senators: Hear, hear.

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 bill read third time and passed.)

CUSTOMS TARIFF
CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

BILL TO AMEND—SECOND READING

Hon. Frances Lankin moved second reading of Bill C-101, An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act.

She said: Honourable senators, I rise today to share my thoughts with you as the Senate sponsor of Bill C-101. Though short in length, this bill weighs heavily with considerations on the job security of workers, Canada's trade interests and the rules-based international trading order. When faced with such challenges in the present international climate, we must weigh the risks and pursuit in balance.

Senators, I ask of you to consider whether Bill C-101 strikes that balance. I believe it does. Bill C-101, plain and simple, makes a small and temporary change to the rules for using global safeguards. Global safeguards are trade measures authorized under the rules of the World Trade Organization and Canadian law by which, when faced with evidence that an increase in imports is causing or threatens to cause serious injury to domestic producers, a set of measures to manage those flows may be triggered.

In simple terms, it's a rules-based system for putting in place tariffs or quotas to manage extreme volatility.

Under Canadian law, these measures can be applied by the Governor-in-Council on the recommendation of the Minister of Finance on the basis of an inquiry by the Canadian International Trade Tribunal or in critical circumstances, on the basis of a report by the Minister of Finance, with immediate referral to the CITT for inquiry. This process is set out in a document called Customs Tariff. Bill C-101 amends one simple aspect of those provisions.

Presently, subsection 55(5) of the Customs Tariff prohibits the reimposition of safeguard measures on products that have already been subject to safeguards within a period of the previous two years. Bill C-101 repeals this subsection from the Customs Tariff. In other words, this bill, in essence, permits the government to reimpose safeguards within a shorter time frame than the two years currently permitted.

Additionally, the bill comes with a built-in sunset clause. Two years after this bill receives Royal Assent and comes into force, the Customs Tariff shall return to its present form.

In the past decade, honourable senators, we've seen populist movements and protectionist walls rise once more. 2016 was a turning point in this shift with the election of Donald Trump to the United States presidency. For Canada, this meant the reopening of NAFTA in 2017. It was also followed by the U.S. imposition of tariffs on steel and aluminum, with all imports into the U.S. targeted in May 2018 under Section 232 of their Trade Expansion Act of 1962 on the grounds of "national security."

Canada retaliated. The government imposed surtaxes on a long list of American steel, aluminum and many other goods. It also put in place a number of provisional global safeguards to protect the Canadian market from a surge of foreign steel that could no longer find a home in the now-closed American market.

On September 30, 2018, we reached a deal with the U.S. and Mexico on free trade. On May 17, 2019, we reached an agreement with the United States to pull back our respective tariffs.

Crisis averted? Well, not so fast. Just because a crisis was averted with our neighbours to the south does not change the fact that the U.S. market maintains barriers with almost all other major steel-producing countries. Where will that steel go? With a number of our safeguards now removed, how will we defend against surges to Canada? Can we afford to wait two years to reimpose safeguards? Steel companies operating in Canada fear that without provisional safeguards in place, even more of their businesses will be targeted by foreign producers.

• (1430)

In short, more action is desperately needed to protect the steel industry from the surges of foreign steel imports. That's why Bill C-101 is needed. The government wants to have the ability, if needed, in volatile times like these to reimpose tariffs on such surges to protect both Canadian jobs and maintain good relations with the United States.

One of the conditions of the agreement to remove tariffs with the U.S., I point out, was that Canada ensures no transshipment of steel into the U.S. market. Essentially, we cannot become a gateway for others to export into the U.S. to bypass the tariffs and surcharges that have been put in place by the U.S. government.

On June 8 and 9, the G20 trade ministers met for the Global Forum on Steel Excess Capacity. Later this month, a G20 leaders' summit will take place, and this will be a subject of discussion again. In September, the OECD Steel Committee will meet, followed by the WTO Committee on Safeguards in November. At each of these meetings, Canada has had or will have opportunity to make its intentions known, alleviate concerns and reassert its commitment to return to more stable relations. One way or another, many risks — in acting or not — remain.

Looking closer to home, CUSMA has not yet passed through our neighbours' legislatures. The U.S.'s section 232, in technical terms, is not officially considered a safeguard. Therefore, it allows the U.S. to reimpose tariffs should they not be satisfied with our efforts on transshipment.

There are also tensions of a domestic nature to consider. Steel jobs are primarily in Ontario, Quebec, Alberta, Saskatchewan and Manitoba. On the other hand, British Columbia is more accustomed to importing steel. Companies in construction, energy and other downstream users of steel rely on cheaper steel from, for example, Asian exporters.

We know this already. Any protectionist measure will create winners and losers. So we must consider now, as senators, as we examine Bill C-101, our international trade system is in a state of disorder, imbalance and confusion.

Clearly, colleagues, this is an unfortunate situation, but it is an unfortunate situation that we are nonetheless already in and not of our choosing.

Canada is a strong supporter of the rules-based international order. Moving in this direction now is both out of character for us and continues the international community's collective stepping away from the quiet, well-regulated trade regime of the past. But what choice do we have now and in this moment?

I believe Canadian interests, Canadian industry and Canadian workers must be protected, and government needs all the tools at its disposal, period.

As Senator Eaton raised in committee, this bill is a precautionary, preventative measure, and a necessary tool to provide government with the flexibility to act if the steel industry brings forward evidence that warrants action.

Without a doubt, the times they are a changing. To meet that challenge, there are indeed long-term plans in place, and still forthcoming, that are beyond the scope of this bill.

Honourable senators, I remain optimistic. There may be light at the end of the tunnel. Here is where the built-in sunset clause of Bill C-101 becomes so fundamental to both this bill and to our measured, made-in-Canada approach. It signals the exceptional nature of the situation. It demonstrates the sincere desire — the commitment in fact and in law — to return to more certain times in the near future.

Senators, we are left here to consider these complexities, and admittedly not with very much time. There are risks both ways. Whichever way the country moves and whichever risk is taken, I believe it is responsible to give ourselves the tools we require to give the people of Canada the best chance possible.

I've kept my remarks today brief, relatively speaking. If you wish for more detail, I recommend to you the more fulsome version of my second reading speech, which I sent to all of you this morning. I have filed this speech in my records as the best speech I never got to give.

I would like to extend my thanks to our Finance Committee colleagues, the chair, Senator Percy Mockler, as well as the clerk, analysts and supporting officials from the Finance Department and Global Affairs Canada.

Honourable senators, thank you for your time.

Hon. Nicole Eaton: Honourable senators, I rise today to respond to Senator Lankin.

Bill C-101's introduction in the other place on June 5 with the expectation it pass through the two houses of Parliament in two weeks offers further proof that this government is flying by the seat of its pants when it comes to trade and international affairs

generally. Bill C-101 is short in length, but the subject is complicated and the implications significant. Yet the Senate is in a position where the National Finance Committee was confined to one hour of pre-study, with the only witnesses being government officials who were either unable or unwilling to answer many of our questions.

I would like to thank Senator Lankin for her leadership on this bill. She sometimes had better explanations than our witnesses did. She has done an excellent job of explaining the bill and the challenges facing the Canadian steel industry caused by a global surplus.

Bill C-101 gives Canada the ability to reimpose safeguard measures — these are import quotas and surtaxes — if foreign imports of steel products cause serious injury to domestic producers.

Right now, under Canadian law and World Trade Organization rules, these safeguard measures expire after 200 days and cannot be reapplied for two years. This bill does away with that two-year waiting period.

This should not be confused with anti-dumping measures. The safeguard measures permitted under this bill apply to fairly traded products when there is a surge in imports.

The Canadian government applied safeguard measures to seven categories of steel imports last fall. The Canadian International Trade Tribunal ruled that the measures were not justified in five of the seven categories and therefore they were lifted in April.

If Bill C-101 passes and receives Royal Assent, the government can, under Canadian law, reimpose the safeguards immediately if it chooses. The officials who appeared before the committee argued that Bill C-101 is fully compliant with our WTO obligations.

That answer is technically correct but highly misleading. Under questioning, John Layton of Global Affairs Canada admitted that if the government actually uses the law and reimposes the safeguards within two years:

> . . . there would be questions at the WTO about whether the Canadian measures conform with our obligations.

In other words, the law poses no problem with the WTO as long as we don't use it.

The law firm Borden Ladner Gervais, in a post on its website, described it this way:

> Despite its professed commitment to a rules-based trading system sustained by the WTO, the Government has implicitly acknowledged that the amendments are so it can break those rules . . . .

So why are we in this situation? The easy answer is President Trump and his tariffs on steel and aluminum. Those tariffs have been lifted for Canada and Mexico but remain in place for the rest of the world. The fear is that cheap steel from Asia and Eastern Europe will flood the Canadian market.

However, the U.S., going back to the Obama administration, has been concerned about Chinese steel entering the United States after coming through Canada. Canada did not take those concerns seriously in the past and the stakes have become a lot higher since the Trump administration imposed tariffs on Canadian steel and aluminum.

The government is explicitly denying there is any link between Bill C-101 and the agreement between Canada and the U.S. last month that led to the lifting of the U.S. tariffs. I find that hard to take seriously.

The Joint Statement by Canada and the United States on the lifting of tariffs says:

> 3. The United States and Canada will implement effective measures to: . . .
>
> b. Prevent the transshipment of aluminum and steel made outside of Canada or the United States to the other country. Canada and the United States will consult together on these measures.

The government wants the flexibility this bill will provide to deal with imports from Asia precisely to prevent a surge in cheap steel flowing from Canada to the U.S., which would trigger a new round of tariffs.

Incidentally, the agreement allows the U.S. to reimpose tariffs on Canada if there is a surge in imports, but it limits Canada's ability to retaliate. It's not hard to see who got the best of those negotiations.

The steel industry is enthusiastically supportive of Bill C-101 because the safeguard measures on foreign steel enhance their own competitive position. But we must remember that some areas of the country depend on importing certain types of steel. For example, in British Columbia, 40 per cent of the rebar used in buildings comes from overseas.

• (1440)

There are concerns that the cost of projects in the energy sector — in both Newfoundland and Alberta — could increase if safeguard measures are imposed again.

However, we received no assurances from officials that the government will consider the regional impact if it does reimpose safeguard measures.

I asked the question, but government officials could not provide us with information on what proportion of steel used in Canada is imported. Surely, we deserve to know the answer to basic questions such as this.

Honourable senators, I know that a majority of us in the chamber will vote in favour of this bill and it will be enacted. But nobody should be happy with a legislative process that has treated us as an afterthought. Thank you.

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 bill read second time.)

BILL TO AMEND—THIRD READING

Hon. Frances Lankin: Honourable senators, with leave of the Senate, I move third reading of Bill C-101, An Act to amend the Customs Tariff and the Canadian International Trade Tribunal Act.

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

Hon. Senators: Agreed.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

INDIGENOUS LANGUAGES BILL

MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENT AND NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-91, An Act respecting Indigenous languages

Wednesday, June 19, 2019

ORDERED,— That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-91, An Act respecting Indigenous languages, the House:

agrees with amendments 4(a), 7(a), 9, 11(a), 12, 13 and 14 made by the Senate;

respectfully disagrees with amendment 1 because Bill C-91 provides for regulations and agreements or arrangements that take into account unique circumstances and needs;

respectfully disagrees with amendment 2 because Bill C-91 would already apply to organizations such as friendship centres and other community-based organizations; moreover, highlighting specific types of organizations might signal that those types of organizations would be favoured over others, which is not the intention of the defined term;

respectfully disagrees with amendment 3 because the Office and the Commissioner of Indigenous Languages are neither agents of the Crown nor federal institutions and would therefore not be subject to commitments of the Government of Canada;

respectfully disagrees with amendments 4(b)(i) and 6 because the obligations they provide for are inconsistent with the constitutional principles that govern the allocation of public funds;

respectfully disagrees with amendment 5 because the proposed text would be contrary to what was heard during the Government's engagement with Indigenous languages practitioners, experts, academics, Elders, youth, and community members, who all expressed great reluctance to attempt to define specific rights in a manner that could be perceived as limiting their scope;

respectfully disagrees with amendments 4(b)(ii), 7(b) and 8 because they would be contrary to the intent of Bill C-91 in this regard, which is to facilitate cooperation with Indigenous governments and other Indigenous governing bodies, Indigenous entities and provincial and territorial governments while respecting all powers and jurisdictions of partners to best achieve the objectives of the proposed Act;

respectfully disagrees with amendment 10 as amendment 9 already addresses the matter;

proposes that amendment 11(b) be amended, in the French version, by replacing the words "l'exercice de son mandat" with the words "l'accomplissement de sa mission";

respectfully disagrees with amendment 15 because mechanisms already exist under the proposed Act to review the Act and its administration and operation, which includes identifying any measures to report on all Indigenous languages equally.

Hon. Peter Harder (Government Representative in the Senate) moved:

That, in relation to Bill C-91, An Act respecting Indigenous languages, the Senate:

(*a*) agree to the amendment made by the House of Commons to its amendment 11(b); and

(*b*) do not insist on its amendments to which the House of Commons disagrees; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise to speak to the message from the other place regarding Bill C-91, An Act respecting Indigenous languages.

On behalf of the government, I want to thank Senator Sinclair for sponsoring this bill. Thank you as well to other members of the Senate Aboriginal Peoples Committee for your work on this important legislation.

Bill C-91 proposes flexibility as to how communities and groups may use funding for their own language priorities. In fact, the preamble of Bill C-91 speaks to Canada's recognition that:

> . . . a flexible approach that takes into account the unique circumstances and needs of Indigenous groups, communities and peoples is required in light of the diversity of identities, cultures and histories of Indigenous peoples;

With respect to the message from the other place, the government has accepted a total of five amendments made by the Senate, while respectfully declining 11 amendments and modifying one in the French version.

Of note, an amendment moved by Senator Patterson would clarify that legislation could include arrangements made with Indigenous governments, organizations or provincial or territorial governments in areas such as the provision of programs and services in Indigenous languages in the areas of "education, health and the administration of justice."

The government agrees with this amendment and is open to discussing cooperative arrangements to support the use of Indigenous languages in areas of provincial and territorial jurisdiction with willing partners.

I would like to highlight an amendment proposed by Senator Sinclair that the government has accepted. That amendment would provide access to federal services where capacity and demand exist in Indigenous languages.

The government believes that this is a significant shift in the way that government could provide programs and services, and it looks forward to co-developing regulations and agreements that define, among other things, important concepts such as capacity and demand.

Overall, the government has chosen to respectfully decline Senate amendments that would reinforce stronger funding commitments within the legislative framework. While fully respecting the spirit of the amendments, the government believes that after having consulted with a number of Indigenous governments, the previous wording in Bill C-91 places a duty on the government to provide funding without infringing on the authorities of Parliament.

The government has also respectfully declined Senate amendments that would remove reference to "provinces and territories" in certain paragraphs of the bill. The government's view is that this is not the intent of the legislation and that the constitutional framework fully reinforces the protection of rights and jurisdictions of Indigenous governing bodies and also to the division of powers between provinces and territories.

Further, it is the government's intention that the legislation should foster cooperative dialogue on supportive Indigenous language while fully respecting all affected jurisdictions.

The government has also chosen to respectfully decline Senate amendments that sought to alter the definition clause of the bill. The government believes that the provisions as drafted are sufficiently broad to include appropriate organizations, and that to cite specific types of organizations may lead to confusion about whether the definition is intended to apply to others.

The government intends to work with Indigenous peoples and to work with any organizations that have an interest in this matter.

Bill C-91 is an important piece of legislation with immense potential to reverse the dramatic loss of Indigenous languages over the preceding decades. It reaffirms the government's commitment to reconciliation while ensuring our Indigenous languages are strengthened and appreciated. Each and every Indigenous language in Canada will be able to benefit from this legislation once it has been enshrined into law. I thank all honourable senators for their work on this matter, including our colleague Senator Joyal, who has championed this issue through his Senate public bills over many years. This is an example of the private and tenacious work of an individual senator helping to build the case, drive debate and ultimately lay the groundwork for a major policy change in Canadian society.

On that note and in closing, I would like to quote briefly from Senator Sinclair's remarks earlier in this Parliament on the debate of Senator Joyal's Bill S-212. Senator Sinclair's remarks capture the philosophical importance of language as an expression of culture, identity and world view. This is an important point as we think about Bill C-91, and also as we think about official languages in Canada, the importance of celebrating and maintaining many mother tongues in our diverse and inclusive society.

From Senator Sinclair:

> 'Who are you?' It's not a rhetorical question. It's a question which asks you to contemplate the fundamental question of your identity and character. To be able to answer that, you need to know where you and your ancestors came from, what you stood for, your personal and collective history, what your influences have been, what your ambitions have been and are, and what your purpose in life is . . .
>
> Language and culture are key to personal identity. Personal identity is key to a sense of self-worth, and spiritual and mental wellness hinge on one's sense of self-worth.

Honourable senators, for those of us who take the integrity and continued existence of our first language, whatever it is, for granted, we should walk in the shoes of fellow Canadians who do not have that security. We should feel free and try to understand the deep anxiety that would accompany a threat to one's conceptual and ancestral world view, as expressed in language.

Therefore, honourable senators, it is important with Bill C-91 we take this important step to remedy historical injustice and act together to walk the path of reconciliation. I urge you to support this motion.

Hon. Murray Sinclair: Apparently my speech has already been delivered by Senator Harder, but thank you very much.

Hon. Dennis Glen Patterson: Well, Senator Harder didn't deliver my speech.

I am pleased to rise today, as critic for the bill, to speak to the message received on Bill C-91, An Act respecting Indigenous languages.

When I spoke to this bill at third reading, I spoke of my gratitude to the members of the Standing Senate Committee on Aboriginal Peoples for working collegially to pass amendments unanimously that, I believe not only greatly improved the bill, but proved to witnesses who came before us and/or submitted briefs that the Senate was listening.

• (1450)

Our amendments addressed key concerns raised at committee and communicated to this chamber and the other place in our report on Bill C-91 at the conclusion of our pre-study. The committee opened that report by explaining that:

> The vitality of Indigenous languages varies across the country, but no Indigenous language is safe. The committee recognizes that, given their critical state, work to revitalize, protect and promote Indigenous languages is an urgent task necessary to ensure that Indigenous youth for years to come can learn their own Indigenous language(s). Further, Algonquin Elder Claudette Commanda, the Executive Director of the First Nations Confederacy of Cultural Education Centres, suggested that revitalizing Indigenous languages could have a positive impact on the health of First Nations communities and the self-esteem of First Nations youth.

I firmly believe that every member of our committee understood the weight and importance of the work we were doing on this historic bill.

Our report went on to identify key areas in which we could improve the bill. One of those areas was funding. The report states:

> In the absence of clarity around funding, witnesses identified characteristics they believe are essential to ensure funding contributes to language revitalization. Funding must be permanent, long-term, and reflect the diversity of Indigenous Peoples and languages, including those living off-reserve and in urban centres. As emphasized by the Native Women's Association of Canada, "funding must be consistent with Jordan's Principle to ensure there are no jurisdictional disputes. As Jordan's Principle ensures Indigenous children receive essential public services, regardless of where they live, Indigenous languages must be considered an essential service." Further, witnesses felt that funding should be distributed to Indigenous Peoples undertaking language revitalization work, as opposed to national political organizations.

In an effort to address this persisting vagueness surrounding the promise of "adequate and sustainable funding" in the bill, the committee unanimously — and I feel it's important to continually stress the word "unanimously" — agreed to adopt guiding principles to ensure that funding was fairly allotted in line with the stated purpose of this bill. Those principles included: (a) the number of persons composing the Indigenous language population of an area; (b) the particular characteristics of that population; and (c) the objective of the reclamation, revitalization, maintenance or strengthening of all the Indigenous languages of Canada in an equitable manner.

We thought carefully and took great care in developing this amendment, honourable colleagues. It is regrettable that the government did not agree with the Senate's objective of bringing increased clarity to this important issue. Equally regrettable — and this is especially for me to say as senator for Nunavut — is the government's choice not to give credence to the legitimate concerns of Inuit.

The committee's report clearly points to the fact that:

> Despite their involvement in the co-development process, Inuit were particularly concerned that, the bill was not distinctions-based, did not reflect Inuit priorities and did not take into account the unique status of Inuktut as a language spoken by many Inuit in their homelands.

An annex was presented to the committee by Inuit leaders and supported by witnesses such as Inuit Tapiriit Kanatami President Natan Obed; Nunavut Tunngavik Incorporated President Aluki Kotierk; and Nunavut Minister of Education, Minister of Culture and Heritage, Minister Responsible for Arctic College and Minister of Languages the Honourable David Joanasie.

The annex presented thoughtful ways of addressing legitimate concerns of Inuit regarding the preservation, protection and promotion of Inuktut. It was my pleasure and great honour to present amendments that responded to the concerns surrounding the provision of services in an Indigenous language, alongside Senator McPhedran, who introduced an amendment that would recognize the unique status of Inuktut within Inuit Nunangat in the preamble.

Thank you for that, Senator McPhedran.

Additionally, Senator Coyle called for a review of service delivery within Nunavut following testimony from Nunavut Languages Commissioner Helen Klengenberg, who gave evidence that:

> The Government of Canada has to comply with our Inuit Language Protection Act . . . .

She further pointed out that the Government of Canada signed a declaration during the creation of Nunavut that promised Inuit the ability to conduct government business in Inuktut.

Although all these amendments were passed by the entire committee, only my amendment on the ability of the minister to coordinate with provinces and territories on "providing Indigenous language programs and services in relation to [but I should add not limited to] education, health and the administration of justice" was accepted.

It is particularly discouraging to hear that the government rejected these amendments in light of our report very clearly affirming that:

> The committee believes that Bill C-91 must better meet Inuit needs and priorities. Otherwise, the title of Bill C-91 is misleading and should be changed.

Colleagues, Bill C-91 is among several key pieces of legislation that deserved further study and improvement. However, their introduction late into the legislative session has left us where we are today; we are left with a bill that does not adequately respond to the concerns of one of Canada's more widely spoken languages. This bill fails to assure Inuit leaders that it will meet the objective of maintaining and strengthening Inuktut.

As the senator of Nunavut, I want to insist on these amendments. I believe it is our duty as parliamentarians from regions, put in this chamber to represent the voices of the regions, to insist.

However, I know that there is no appetite hours before the other place rises, and I know that to insist now would be to jeopardize the passage of this bill. I am mindful of the positive and giant leap forward this bill will have for the protection of certain Indigenous languages in Canada. The Inuit do not want to stand in the way of the First Nations and Metis. They made that very clear from the beginning.

Therefore, with much reluctance and fully aware of the disappointment that Inuit leaders will surely feel — and they have been pressing me to insist their case right to the end — I will not be moving that the Senate insist on its amendments.

Oh, my, honourable colleagues, this has been an intense and tortuous journey. I would, though, end by stating my hope that the Aboriginal Peoples Committee will — and I look to our respected chair, Senator Dyck — in fact stay true to the promise it made at the end of its report on this bill:

> . . . should the bill pass both Houses of Parliament and receive Royal Assent, your committee will continue to monitor its implementation, and progress to ensure that the concerns raised by witnesses are addressed.

I want to close by commending my friend and long-time colleague in public affairs, Senator Joyal, who did great things when he was Secretary of State. I think he inspired the government to get moving on this issue through the bill he tabled in this place, even though we knew that it could not have the power of a money bill from the other place.

• (1500)

Honourable senators, thank you. *Qujannamiik. Koana. Taima.*

Some Hon. Senators: Hear, hear.

The Hon. the Speaker pro tempore: Senator Patterson, would you accept a question?

Senator Patterson: Yes.

Hon. David Richards: Thank you very much, senator. I am a full proponent of this bill and of First Nations learning, studying, writing and creating in their own languages. I always have been. It's a very daunting task. I'm wondering about the feasibility. Where are we going to find the teachers and the people who can do it? It's a question that comes up every time I think of this.

I had a young Mi'kmaq friend of mine here last week. He came into the chamber. He works for *The Walrus* magazine. I mentored this young man when he was a student at St. Thomas and now he has a job working for the better magazines in the country. He doesn't speak his own language. He's 28 years old and he said that his mother spoke some Mi'kmaq, but not fully.

I would ask any of the members of the Aboriginal Committee if they could answer this. It seems that it is going to be so daunting. How do we go about it?

Senator Patterson: I respect that question coming from one of Canada's great writers.

Honourable senators, the committee was torn in looking at this bill. On the one hand, we heard many voices saying, "We've got to take a first step. This is a first step we cannot, as a country, not take." On the other hand, they were saying that it was a very tentative first step.

I believe that the Indigenous languages commissioner has been allocated some $337 million in the last budget and $115 million ongoing. The task is way bigger than that.

The dilemma was whether we reject this rather tentative weak first step or do we try to change it? We tried to change it. We tried to strengthen the bill. We tried to improve the principles around funding, recognizing the size of the task, as you've outlined, Senator Richards. We ended up with a disappointing compromise of agreeing to support and taking the next step, as we will do today in accepting this message, watering down our amendments. That's what happened; our amendments were watered down. However, I would say that the attention we've given to this bill and the attention that the Senate has given to the importance of the issue with our work should call on us all to be vigilant as we go forward with our work.

One advantage of the Senate is, God willing, we'll all be here after the coming election, go forward with determination and vigour to monitor the progress in this work and continue to push Canada to do its duty to respect the most fundamental right of Aboriginal people, their right to language. That is the one good thing I said about this bill in speaking to it earlier. It does expressly acknowledge that Aboriginal rights —

The Hon. the Speaker pro tempore: Honourable senator, your time is up.

Hon. Lillian Eva Dyck: Honourable senators, I'd like to say a few words. I was inspired by the question that Senator Richards asked. In our committee report, as Senator Patterson said as the critic of the bill, most studies that our committee has undertaken have always been done in a very collegial and respectful manner in almost all cases. Certainly in this case, that was true.

One of the things we talked about at the committee, which is in the report, is specifically with regard to your question. That is: Who is going to do the teaching?

As we know, oftentimes the teachers are those that are certified. We then urged the government to accept fluent speakers. There are a few fluent speakers who are able to pass that language on, but they don't necessarily have a degree or a Bachelor of Education.

The fluent speakers and the elders are the ones who are going to carry the language forward. In Saskatoon, for example, we have the Saskatchewan Indigenous Cultural Centre where they have recordings of elders speaking in their language. There are resources available in these community-based organizations.

The committee heard a lot about how it was necessary to utilize elders, resources that are available in the communities and not strictly rely upon universities and academically trained teachers.

I think it's good that the government accepted a number of our amendments. Without having them all in front of me I can't make a detailed analysis. I think the bill is good. From what we heard, people were very excited about having this bill, even without the amendments because, as Senator Patterson said, it is acknowledging the right to be taught in your own language, which is a big step forward.

It is a small step, but it's certainly a significant step. I would not say that the amendments are watered down. I would say that it's a good bill. It's a good place to build. I would conclude by saying our committee has always been good at following up. We followed up with Bill S-3. We're following up with Bill C-45. We need to continue that in the future. I'm sure that the members of this committee will continue to follow what's happening with this language bill.

I know that people in the community are going to be writing to us, as they do now, to say, "What's happening here?" and asking to us intervene, to make sure, continue to prod and improve this bill and initiate further actions with the next government.

Some Hon. Senators: Hear, hear.

Hon. Serge Joyal: Honourable senators, it is an important day. I would even venture to say it's a historical day.

When I was a kid, my mother was pregnant with my younger brother and she was always singing. One day I asked her, "Why are you singing all the time?" She said, "I am speaking to your future brother."

It stayed in my mind that the first language you hear will determine your life. I thought it was so important when I realized that on my street, there were kids who were speaking English only. I wanted to play with them because I was the only boy on the street that was French Canadian.

I thought by learning the language, I would be able to connect and get out of my isolation as a kid. I went to school with the idea that when you have the opportunity to learn different languages, you discover another world. I will speak to you in English because I want you to realize what it is like when you are born in one language and, when you learn another one, how open you are to others.

• (1510)

As I learned the history of French Canadians, Champlain came to Canada and was welcomed by the Algonquin and the Huron. He learned their language. He had to, because he wanted to connect. He wanted to settle. He wanted to build a house. He wanted to stay. And he did stay. He died in Quebec City 30 years later. He became rooted in the country. Why? Because he was able to connect with the Aboriginal peoples. I learned that when I was a kid.

I also learned that, through the years, when new settlers didn't need the support of the Aboriginal peoples anymore, with whom they had fought to push back the enemy in 1775, with whom they fought in 1812 to again push back the Americans, and when they expanded and became a big, thriving society and more numerous than the Aboriginal peoples, then they could impose their language on the Aboriginal peoples and push them to forget their language, forget who they were, to forget their roots and to forget the first songs they heard from their mothers.

I was wrestling, as an Indian. I went back in my papers and found photos of me dressed up as an Indian, when I was six or seven years old. I was then a fan of "Rin Tin Tin," the "Lone Ranger," "Zoro" and Roy Rogers. Among us, we had to decide who was the Indian and who was the cowboy. I always ventured to be the Indian because I liked to go naked —

Senator Mercer: Too much information.

Senator Joyal: — and put some makeup on, and whatnot, to dress like the other and to become the other. But I could not become the other, because I was trying to watch the TV and learn some words, to be like the *Last of the Mohicans* — how he was speaking. I was trying to imitate him.

Of course, when I tell you that, it sounds a bit ridiculous. But I realized that if, one day, I would have the opportunity to do something specific to make sure that those others would reappropriate their identity instead of me trying to appropriate their identity, I felt it would be the right thing to do.

When I had the privilege to chair the repatriation of the Constitution, with the help of Senator Patterson and other Inuit people, we had the opportunity to put something in the Constitution to recognize that. But you will understand that, 40 years ago, this was like speaking in the air. Nobody would think or understand what we were trying to do one day.

We put section 22 in the Charter of Rights and Freedoms, which states:

> Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

I tell you, honourable senators, it was about Aboriginal languages that I had in my head when they put this here.

When I became Secretary of State years later, I met with Senator Patterson. I offered him and Clément Chartier, the chief of the Metis people: "Let's sit together and do something to start supporting and helping Aboriginal peoples to define for themselves who they are," even though, as Senator Richards has said, it's such a long way to go.

We are on the path of reconciliation to try to rebuild 150 years of assimilation, directly or directly. It won't happen overnight; we can't do that overnight. It's impossible. For you as an individual to try to change your own personal habits, look how difficult it is. When we, as a country, try to reverse the course of assimilation, it cannot happen overnight.

We will all strive individually to do something, but we sat together and found a way to do it.

I'm happy to see senators that have introduced the amendment that allowed the government to sign agreements with the various nations and with the Nunavut government, to give way to the aspiration of the Inuit people in relation to the capacity to come back and be proud to speak their language.

That's why in this chamber, honourable senators, in 2006, I, along with Senator Charlie Watt and Senator Willie Adams, initiated the experience of allowing Inuit to speak their language on this floor. Even though we would do it only a couple of times, it was the principle. Yes, it is possible to do it when there is a will. You all know politics: When there is a will, there is a way.

Honourable senators, this is such a historical day.

Hon. Senators: Hear, hear.

Senator Joyal: I would like to thank Senator Harder, and Senators Sinclair and Dyck, because what we're doing today will have an everlasting impact on the future of this country. We will never be the same, honourable senators.

Thank you.

Hon. Senators: Hear, hear!

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

Senator Dupuis, on debate.

[*Translation*]

Hon. Renée Dupuis: I'd like to take this opportunity to note that there are First Nations across Canada, but especially in Quebec, whose second language is French. Let me also remind you that English is the language of the federal government. For years those same First Nations were prohibited from teaching their children their mother tongue, whether it was Attikamek, Innu, or another language. For decades they persevered in the face of adversity and continued to speak their language, and continued to try to educate their children in their language. Although these languages are endangered, these First Nations have succeeded without any means or recognition, to develop programs to keep these languages alive in their community.

I want to close by quoting an Indigenous woman from the Peruvian Amazon, one of the very few people who still speak Chamicuro. She was interviewed in the year 2000 because Chamicuro is an endangered Indigenous language spoken only by elders. She said something that struck me. Their mother tongue is Chamicuro and their second language is Spanish. She said, and I quote, "There are things we cannot express in Spanish." I think that says a great deal.

Thank you.

Hon. Senators: Hear, hear!

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

Hon. Senators: Yes.

The Hon. the Speaker pro tempore: It is moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that, in relation to Bill C-91, An Act respecting Indigenous languages, the Senate—

Hon. Senators: Dispense.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1520)

[*English*]

BILL RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENT AND NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families

Wednesday, June 19, 2019

ORDERED,— That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families, the House:

agrees with amendments 1(a), 4 and 5 made by the Senate;

proposes that amendment 6 be amended to read as follows:

"6. New Clause 15.1, page 9: Add the following after line 15:

"15.1 In the context of providing child and family services in relation to an Indigenous child, unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the service provider must demonstrate that he or she made reasonable efforts to have the child continue to reside with that person."; ";

respectfully disagrees with amendments 1(b), 2, 3, 7, 8, 9 and 10 because they are not consistent with the main objectives of the Bill, which are to affirm the rights and jurisdiction of Indigenous peoples in relation to child and family services and to set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children.

Hon. Peter Harder (Government Representative in the Senate) moved:

That, in relation to Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families, the Senate:

(*a*) agree to the amendment made by the House of Commons to its amendment 6; and

(*b*) do not insist on its amendments to which the House of Commons disagrees; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise to speak to the message from the other place regarding Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families.

On behalf of the government, let me begin by thanking our colleague, Senator LaBoucane-Benson, for her dedicated work as sponsor of this bill and for her enthusiasm for its expectation.

Some Hon. Senators: Hear, hear.

Senator Harder: I would like to thank the Standing Senate Committee on Aboriginal Peoples for their work to both review and improve this legislation over the last number of months.

Through Bill C-92, the government is seeking to implement critical improvements to child and family services systems that are affecting Indigenous children and youth, while reaffirming and respecting Indigenous jurisdictional rights.

With respect to the message received from the other place, the government has agreed to four amendments. In two instances, the government has done so without modification. In one instance, the government has modified a Senate amendment and, in another, the government has accepted the amendment in part.

First, the government has agreed to a Senate amendment reinforcing the principle of the bill articulated in the preamble by repeating that language elsewhere in the legislation. Specifically, that amendment reinforces that the right of self-government in Indigenous nations is not legally assigned but is inherent according to the human rights of Indigenous peoples. This inherent jurisdiction includes jurisdiction in relation to children and family services.

Second, the government has accepted a Senate amendment that would change the reference from "a child's well-being is often promoted" to "best interests." This is a term used more consistently throughout the legislation and which best captures the principle of putting children's interests first.

Third, the government has modified a Senate amendment in relation to the provision of preventive care to support a child's family before a child can be removed from her or his family. The government has proposed wording that respects the principle of the Senate amendment but has used wording that is less prescriptive, requiring a demonstration of reasonable effects to have the child continue to reside with their family.

Fourth, the government has accepted part of a Senate amendment to the preamble. The rationale underlying this amendment is that parents were not mentioned in the preamble but are mentioned throughout the bill. Therefore, this amendment would remedy this oversight while maintaining the coherence of the overall legislative framework proposed in Bill C-92.

The government has chosen to respectfully decline some Senate amendments.

For example, the government has respectfully declined an amendment that would allow the provisions of the Nunavut legislation to prevail if there's a conflict or inconsistency between the provisions of this act and the provisions of the Nunavut legislation relating to child and family services, as this proposed change could create a conflict between Indigenous and territorial laws.

Concerning a Senate amendment to create a new advisory committee, the government has respectfully declined this amendment. Upon coming into force, discussions will take place with Indigenous partners, provinces and territories to determine if there is a need for such an advisory committee to determine what its role should be. These discussions will take place when distinction-based transition governance structures are established to provide recommendations on the implementation of this bill.

As well, the government has respectfully declined a Senate amendment with regard to review of funding. Again, the government believes that further discussions are required with Indigenous groups, provinces and territories in order to assess the funding needs of communities, as well as to identify proper funding methodologies. Funding requirements for each community will vary depending on the child and family services model they wish to adopt, along with their distinct needs and priorities.

In addition, these types of reporting requirements can be added through the transition governance structures or coordinating agreements, and there will also be an opportunity to look at funding through the reporting structure set out in the bill itself.

Honourable senators, to conclude, Bill C-92 is a crucial step toward reforming the family and child services system so that First Nations, Inuit and Metis peoples can themselves decide the best path forward for their children and families. Bill C-92 upholds the principle of the best interests of the child while affirming Indigenous jurisdiction.

Again, I thank honourable senators for their careful review of this bill and propose that we concur with the message from the other place to make this important and overdue change into law.

Some Hon. Senators: Hear, hear.

Hon. Dennis Glen Patterson: Honourable senators, I too rise today to speak to the message received on Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families. I do so as the critic for the bill. I feel it is my duty to express concerns about it.

I am disheartened to once again stand before this chamber and have to communicate my disappointment in the government's rejection of thoughtful amendments that, again, were unanimously adopted in committee and by this chamber.

We have here before us an important opportunity help reduce the number of Indigenous children and youth in care. We have a chance to empower Indigenous governing bodies and organizations with the ability to decide for themselves how to approach the issues surrounding child and family services. Through this bill, we could not only reduce the number of children in care but also reduce the number of apprehensions, curbing the practice of placing children in non-Indigenous families, which severs ties to their family, culture and community. We could put money into prevention and community support services.

Yet, once again, I feel great concern that we are squandering these opportunities by refusing commonsense amendments that would have significantly improved this bill. These amendments would have brought increased clarity, certainty, comfort, transparency and accountability based on the testimony of:

> . . . more than 30 witnesses and . . . many detailed briefs on Bill C-92 . . . .

That testimony was identified in the report by the Standing Senate Committee on Aboriginal Peoples.

I think it is important to note that at the conclusion of the committee's pre-study, the report acknowledged that:

> Many witnesses told us that, while they strongly support the concept of a bill that recognizes and affirms the inherent rights of Indigenous Peoples and their jurisdiction over child and family services, there are significant gaps in Bill C-92, such as . . . the absence of funding principles and other issues which are discussed below. Your committee acknowledges the concerns raised by witnesses. Your committee also acknowledges the testimony of Indigenous organizations and individuals who do not support the bill because they feel that it undermines agreements and processes that were either already in place or were progressing, or because they feel that the bill, as drafted, imposes limits on their ability to fully exercise their jurisdiction.

Colleagues, these are not small issues.

After careful study and consideration, the amendments that were put forward and accepted addressed many of these concerns.

• (1530)

I would also point out that many of the amendments I chose to introduce were originally proposed in the other place by former Minister of Indigenous Services the Honourable Jane Philpott. As I told this chamber during third reading, one year ago I had the unique experience of joining a teleconference with all committee members and Dr. Philpott, who told us of her commitment to introducing and passing this legislation during this parliamentary session. She stressed to us the importance of hearing from the grassroots and ensuring that the government "got it right." Having been part of the engagement sessions that led to the drafting of this bill and having been part of the original draft, I think she was uniquely positioned to give advice on addressing the deficiencies of this legislation — at least, that was my thinking.

But it is apparent to me, after seeing the bulk of the Senate amendments rejected by the government, that this sentiment was not shared in the other place. The Senate committee found that:

> Virtually all witnesses told the committee that a funding commitment needs to be included in the bill, beyond the reference to funding in the preamble and the reference to fiscal arrangements that could form part of a coordination agreement. Some witnesses suggested it be included in the principles section of the bill; others proposed alternative solutions. We heard that without funding, Indigenous communities will not be able to fully exercise jurisdiction, and that nothing will change for Indigenous children and families. Funding should be long-term, predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality.

However, the government saw fit to reject amendments that would have included reporting back on the adequacy of funding measures. Without the inclusion of a Royal Recommendation, there is limited funding that can be shifted from existing monies to address the issues covered by this bill. But it was the hope of the committee that the inclusion of this amendment would help to ensure that funding levels are adjusted to meet the needs based on direct input from Indigenous people. That is why the amendment calls for the establishment of an advisory body, struck in consultation with Indigenous governing bodies, to work with the minister to "specifically study the adequacy and methods of funding and assess whether the funding has been sufficient to support the needs of Indigenous children and their families."

Other amendments that were rejected would have added specific references to the legislation to child protection, adoption, reunification and post-majority transition services. This would have broadened and made more inclusive the concept of child and family services, creating a continuum of care for children, youth and young adults. Your committee heard time and again that it was important for this definition to be as inclusive as possible.

I do note that Senator Harder referred to an amendment that did address a concern of the Territory of Nunavut, but I do also have to note that the government rejected an amendment that would have responded to other concerns raised by my home territory. That amendment would have ensured that:

> If there is a conflict or inconsistency between the provisions of this Act and the provisions of Nunavut legislation relating to child and family services, and the provisions of the Nunavut legislation provide a level of services that meets or exceeds the level of services provided for by the provisions of this Act, the provisions of the Nunavut legislation prevail to the extent of the conflict or inconsistency.

That amendment was also rejected, despite an observation made by your committee that stated:

> For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or is not inconsistent with, the provisions of this Act.
>
> The committee was concerned that this clause imposes a limit on provinces or territories whose existing legislation exceeds the level of services that are provided for in the bill. The example of Nunavut was of particular concern to the committee. While the departmental officials clarified that where provincial or territorial legislation relating to child and family services is seen as providing a level of services that exceeds Bill C-92's standards this would not be considered to conflict or be inconsistent with the bill, the committee believes that this clause should be amended to make this point clear.
>
> In addition, some Indigenous communities have expressed concern that clause 4 means that provincial or territorial legislation prevails in relation to child and family services. While the departmental officials explained that clause 4 only applies with an Indigenous community has not exercised its jurisdiction over child and family services, the committee believes that this clause should be amended to clarify this point.

Honourable senators, I must express again some disappointment that the government refused to accept well-reasoned and important amendments, as recommended unanimously by your committee and later by this chamber. I can only hope that this bill is the first step in addressing the concerns raised by the many witnesses who appeared before us, and I wish to offer my apologies to those witnesses who feel discouraged by this outcome. I want them to know that the Senate was listening and that the Senate cares about their input. It's just too bad the government does not. Thank you.

Hon. Mary Jane McCallum: Honourable senators, I rise today to speak to the message from the House of Commons on Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families.

I would first like to express my dismay in only learning this morning that debate would begin and end on this important message today. This process is so quick that the item will likely pass without ever having made it onto the Order Paper. This bill has caused much anguish to me, and it also has created division among Indigenous people.

Colleagues, I cannot stress enough the importance of this piece of legislation and the impact it will have on the lives of countless Indigenous children and their families. I would like to qualify that statement by saying that this impact will not necessarily be as constructive, helpful and positive as some would have you believe. As I wouldn't necessarily classify debate on this piece of critical legislation as fulsome, I feel it important to reiterate and further supplement the concerns that I brought forward at third reading on this bill.

As an Indigenous senator and mother from Manitoba, I have an extremely strong investment in ensuring that this is done right. As many of you know, Manitoba is an outlier in terms of the scope and breadth of the impact that child apprehension has on First Nations. In my first speech, I said that Manitoba has the highest rate of children in care among Canadian provinces. Almost 90 per cent of children in care are Indigenous, yet only 17 per cent of Manitoba's population is Indigenous. So when I

look at these statistics and see that 60 per cent of children in care are permanent wards, it causes me concern about where we're going.

First Nations communities have been in a state of devolution for the last 10 to 15 years with the Province of Manitoba. It was done under the guidance of provincial law and provincial policies, but apprehensions still increased.

Honourable senators, it comes as no surprise that children who grow up in care have significantly worse life outcomes as adults. They encounter high rates of unemployment, contact with the justice system and homelessness. It should be noted that negative impacts as a result of child apprehension are also inflicted on the mothers of these children. It is shown that these women see a significant deterioration in their health and social situation after apprehension, such as increased rates of depression, anxiety and substance abuse.

• (1540)

Honourable senators, a few weeks ago there was a news release in Manitoba regarding the abuse of children in care on one of the northern Manitoba reserves. This child care was under provincial jurisdiction, policy and instruments. It was not a First Nation child and family. The Assembly of Manitoba Chiefs have invested a great deal of time and resources into the CFS jurisdiction and legislation. They are widely recognized as being the furthest ahead in preparedness and movement on this file. The fear is that the work done as a direct result of the MOU with Canada will be for naught.

I feel it prudent to inform honourable senators that, only this morning, a meeting took place between Senator McPhedran, Grand Chief Dumas, Minister O'Regan, Parliamentary Secretary Dan Vandel, and a number of various staff members and myself. That meeting was held solely to discuss Bill C-92, its impact on Manitoba and AMC, and the path forward.

At the outset of the meeting, the minister began by indicating that the MOU that Canada had entered into with AMC would not be recognized under clause 3 of this bill. For reference, clause 3 speaks of upholding existing agreements. It had previously been indicated in this chamber that the MOU would have standing and would be protected by this section of the bill. The minister himself has confirmed that this is not so, as this MOU doesn't have "the force of law." That is a concept that is found in other accords, like self-government agreements, for example.

That was very troubling news to receive as it now seems as if the good work that Manitoba First Nations have done on this file could be lost.

Colleagues, the catch here is that there are several provinces that have shown zero interest in working with First Nations communities on transferring this authority. I have alluded to this in my third reading speech where I referenced the proverbial cash cow in play as provinces make money through apprehending our children as their wards.

I can attest that the Manitoba government — and I spoke to the minister on Tuesday — was never approached by the federal government for a coordination agreement. The minister also advised me that she has no knowledge of any plans of transferring the program.

In our meeting with Minister O'Regan today, we were told that AMC need not worry. After 12 months, their law will supersede all others. However, the biggest issue is one that the minister and his staff were unable to answer: What happens if the province isn't willing to facilitate this transfer of authority?

Honourable senators, it is an undeniable truth that this legislation cannot move forward if the province does not share their data and information with Indigenous communities to indicate how many children are in care and whose children they are. We need that through the disclosure of the information which falls under provincial law and regulation. Although clauses 28 and 30 cover this reference agreement and information sharing, it is at the will of the province whether they choose to do so.

This morning, the minister confirmed that this bill cannot force disclosure of this information. Due to jurisdictional boundaries, Bill C-92 cannot enter into the provincial arena and force them to cooperate. Without a mechanism to facilitate the sharing of this information, the provinces that do not wish to be party to this transfer of authority essentially have the ultimate trump card. This morning, he said that Ontario, Saskatchewan and Manitoba were the provinces of concern.

Without this information, the concept of "bringing our children home," which AMC has aptly named their legislation, will be lost.

Colleagues, it has also been incorrectly indicated that there were fractures and dissent among Manitoba First Nations with regard to this piece of legislation. That was largely due to the fact that a resolution passed by the Southern Chiefs Organization in Manitoba had been mischaracterized as supporting Bill C-92. In reality, this resolution merely stated that the SCO would collaborate with any southern First Nation who chose to pursue an agreement through this bill. This is certainly not to be misconstrued as being in support of the bill itself.

The AMC is the authoritative voice when it comes to Manitoba First Nations as they are the political body that speaks on behalf of Manitoba First Nations chiefs. The SCO and MKO conversely are administrative bodies that were created by AMC to exist in the political sphere. It's important to understand the structure and dynamic.

Colleagues, during our meeting today, Minister O'Regan pointed to the six points of action that the government committed to on this file. One of these points states that their goal of:

> . . . supporting communities to draw down jurisdiction and explore the potential for co-developed federal child welfare legislation . . .

Honourable senators, to use the words of the minister: Local problems are best solved by local solutions.

There can be no more local solution than the Bringing Our Children Home Act, as developed by AMC for Manitoba First Nations. Yet it is my belief that the shortcomings found through this legislation will make it so that First Nations in Manitoba will not and cannot draw down their jurisdiction on child and family services so long as they have an unwilling partner in the province.

I wanted to end by saying that many of my questions remained unanswered at the meeting this morning. I asked the minister, why did this happen? Why wasn't there more discussion on how we could proceed to make this workable?

I believe that, as senators, we need to ensure that, in the future, bills regarding First Nations, Inuit and Metis peoples are given more debate and consideration. We deserve better. Thank you.

An Hon. Senator: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Harder, seconded by the Honourable Senator Dyck, that in relation to Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families — may I dispense?

Hon. Senators: Dispense.

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.)

CRIMINAL CODE
YOUTH CRIMINAL JUSTICE ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENT ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts

Wednesday, June 19, 2019

ORDERED,— That a Message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, the House:

agrees with amendments 1, 2, 5, 7, 8, 9, 11, 12(b), 13 and 14 made by the Senate;

proposes that amendment 3 be amended to read as follows:

"3. Clause 239, pages 90 and 91:

(a) on page 90, replace lines 2 and 3 with the following:

"dictable offence that is punishable by 14 years or more of imprisonment, other than an offence listed in section 469, the justice";

(b) on page 90, replace lines 18 and 19 with the following:

"able by 14 years or more of imprisonment, an offence listed in section 469 that is not punishable by 14 years or more of imprisonment or an";

(c) on page 90, replace line 44 with the following:

"section 469 that is punishable by 14 years or more of imprisonment,";

(d) on page 91, replace lines 20 and 21 with the following:

"offence listed in section 469 that is punishable by 14 years or more of imprisonment, the justice shall endorse on the informa-";";

proposes that amendment 4 be amended to read as follows:

"4. Clause 240, pages 92 and 93

(a) on page 92, replace line 11 with the following:

"14 years or more of imprisonment, other than an offence mentioned";

(b) on page 92, replace lines 25 to 27 with the following:

"offence that is punishable by 14 years or more of imprisonment, an offence listed in section 469 that is not punishable by 14 years or more of imprisonment or an offence mentioned in section";

(c) on page 92, replace line 41 with the following:

"section 469 that is punishable by 14 years or more of imprisonment,";

(d) on page 93, replace line 20 with the following:

"is punishable by 14 years or more of imprisonment, the justice or";";

proposes that, as a consequence of Senate amendments 3 and 4, the following amendment be added:

"1. Clause 238, page 89: replace line 33 with the following:

"fence that is punishable by 14 years or more of imprisonment is be-";";

proposes that amendment 6 be amended by replacing the words "an intimate partner — and, in particular, a partner" with the words "a person" and by replacing the words "on the basis of sex or is an Aboriginal person" with the words "because of personal circumstances — including because the person is Aboriginal and female";

respectfully disagrees with amendment 10 made by the Senate because the Bill already provides flexibility to the provinces and territories with respect to agent representation while also recognizing regional diversity in respect of how legal representation is regulated across Canada, and because the amendment could have unintended repercussions for the provinces and territories; and, the Government continues to work with the provinces and territories to support the effective implementation of these reforms;

proposes that amendment 12(a) in the English version be amended by replacing the words "apply in Bill C-45" with the words "apply if Bill C-45".

Hon. Peter Harder (Government Representative in the Senate) moved:

That, in relation to Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, the Senate:

(*a*) agree to the amendments made by the House of Commons to its amendments;

(*b*) agree to the amendment made by the House of Commons in consequence of Senate amendments 3 and 4; and

(*c*) do not insist on its amendment 10, to which the House of Commons disagrees; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise today to speak to the message from the other place on Bill C-75, an important bill that amends the Criminal Code and the Youth Criminal Justice Act in order to address the urgent issues of delays in the criminal justice system.

Allow me to thank Senator Sinclair for his sponsorship of this bill and for steering this legislation through the Senate. I would also like to thank members of the Standing Senate Committee on Legal and Constitutional Affairs for their detailed consideration of this bill.

Bill C-75 has been considered and debated in this chamber in a comprehensive and vigorous manner. The Senate has proposed 14 amendments for the other place to consider, 10 of which have been accepted.

• (1550)

The substantive Senate amendments that the other place has supported include: First, Senate amendment No. 1, which would maintain the availability of DNA orders for the indictable offences punishable by a maximum of five and ten years of imprisonment and Bill C-75 proposes to hybridize.

Second, Senate amendment No. 2, which would make a minor amendment to respond to the March 28, 2019, decision of the Supreme Court of Canada in *R v. Myers*.

Third, Senate amendments 5, 8, 9 and 12b, which would re-enact a new victim surcharge regime that would provide greater judicial discretion to depart from imposing the surcharge in appropriate cases.

Fourth, Senate amendment No. 7, which would expand Bill C-75's aggravating factor for intimate partner violence, or IPV, to include IPV committed against a member of the offender's or the victim's family, and creating a new sentencing principle to require courts imposing a sentence for an IPV offence to consider the increased vulnerability of female victims, giving particular attention to the circumstances of Aboriginal female victims.

Fifth, Senate amendments 11, 13 and 14, which would amend the Identification of Criminals Act to clarify that fingerprints can be taken for an accused who has been charged with a hybrid offence, even where the Crown has elected to proceed by summary conviction.

Based on the same concerns that prompted our approach, the other place has proposed two amendments on Senate amendments 3 and 4 on preliminary inquiries, as well as one consequential amendment.

Honourable senators may recall that Bill C-75, as introduced, proposed to restrict the availability of preliminary inquiries to indictable offences punishable by life imprisonment, which represents 70 offences. The Senate proposed to expand the availability of preliminary inquiries on a discretionary basis to the 393 other indictable offences in two circumstances: First, on the consent of the parties and where a justice is satisfied that appropriate measures were taken to mitigate the impacts on any witness likely to provide evidence at the inquiry, including the complainant; or, second, where one party requests an inquiry where the justice is satisfied the criteria were met, i.e., mitigation measures have been taken for witnesses, and that it is in the best interest of the administration of justice.

Though the other place has not supported this amendment, it has accepted the underlying principle — namely, to make preliminary inquiries available for offences carrying the most serious penalties — but has chosen instead to expand Bill C-75's original approach to allow preliminary inquiries not only for indictable offences punishable by life imprisonment but also for indictable offences punishable by 14 years of imprisonment, which represents an additional 86 offences. This proposal would be consistent with the consensus achieved by the 2017 federal-provincial-territorial Ministers of Justice to restrict them to "serious offences" and would respond to stakeholder concerns to make preliminary inquiries available for more offences.

The Senate amendment would have introduced uncertainty as to whether a preliminary inquiry would be held for 393 offences and would likely have resulted in significant litigation to determine the scope of the criteria and would have added a step to the criminal justice process to determine whether a preliminary inquiry should be held. This would have likely resulted in further delays rather than reducing them. Given the other place's concern with this Senate amendment and the underlying reasons that prompted their approach, I'm pleased with the way it has chosen to respond to these stakeholder concerns.

Honourable senators may recall that Bill C-75, as introduced, would modernize and streamline the scheme for the classification of offences in the Criminal Code by hybridizing indictable offences that carry a maximum penalty of imprisonment of 10 years or less, creating a uniform maximum penalty of imprisonment for all summary conviction offences of two years less a day and increasing the current limitation period for all summary conviction offences from 6 to 12 months. These amendments are a key part of the legislative reforms identified by federal, provincial and territorial ministers of justice to reduce delays in the criminal justice system.

Bill C-75, as passed by the other place, included an amendment made by the Standing Committee on Justice and Human Rights to the reclassification provisions of the bill. Specifically, the justice committee proposed amendments on agent representation in section 802(1) of the Criminal Code. This amendment will facilitate agent representation by giving provinces and territories additional flexibility to establish criteria for agent representation for summary conviction offences with a maximum penalty greater than six months imprisonment, in addition to their existing ability to establish a program and will allow agents to appear on any summary conviction offence for the purpose of adjournment proceedings.

These amendments maintain jurisdictional flexibility in this area of criminal procedure, while also recognizing regional diversity in how legal representation is regulated across Canada.

Senate amendment No. 10 proposed to further amend section 802(1) to also allow agent representation as "authorized by the law of the province." As honourable senators know, Bill C-75 is the product of considerable consultation with provinces and territories. The other place does not accept this amendment, as there has not been sufficient time to analyze and ascertain what its effects would be under existing provincial and territorial laws. There is also a concern that the Senate amendment may have unintended consequences. For example, the reclassification reforms would come into force 90 days after Royal Assent. This would not enable provinces and territories to make any legislative changes if needed. Moreover, provinces and territories already have flexibility to quickly address any consequences of the reclassification scheme on agents through the amendments made to the bill in the other place last December. Using the proposed new power to do this through criteria or a program established by the Lieutenant Governor in Council is a faster process than legislative reform.

Honourable senators, through thoughtful amendments this place has improved the bill to a great degree. I now ask honourable senators to accept the message from the other place. It represents significant criminal law and procedural reforms, many of which are long overdue. In accepting this message, Parliament will have passed legislation that will contribute to modernizing the criminal justice system, reducing delays and ensuring the safety of Canadians. Thank you.

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I'd like to say a few words before I give my speech.

I want to thank and congratulate Senator Joyal for his excellent work as Chair of the Standing Senate Committee on Legal and Constitutional Affairs. Since he will soon be leaving us, I also want to thank him and say I've enjoyed working with him for the past 10 years.

I want to tell everyone in this place how much all members of the committee saw Senator Joyal as a neutral, inspiring member with an excellent knowledge of the law. I'm so appreciative of the work he did in recent months, and in particular the monumental work he did on Bill C-75.

This bill could have been a positive start to the reform of the Criminal Code. Everyone, including legal experts, agrees with me that we need to reform the Criminal Code. In some respects, the Criminal Code has become a mess that can be hard to untangle. What could have initiated a reflection on the Criminal Code ended up being, in my opinion, a half-baked political exercise.

The proof is that 118 offences that were previously criminal offences will become hybrid offences and possibly lead to summary convictions, which could result in significantly reduced sentences. In fact, we found several measures in the bill that would make it no longer possible to identify people charged with summary conviction offences in the National Sex Offender Registry.

The amendment proposed by my colleague, Senator McIntyre, opened the eyes of the Minister of Justice to a huge flaw in the bill. This just shows how the bill was hastily thrown together and why it could not meet its objectives.

Clause 339 of the bill, which is basically identical to a clause in Bill C-452 dealing with sexual exploitation and trafficking in persons, provides that, for Bill C-75, the Minister of Justice's prerogative to issue an order-in-council to implement clause 389 has been retained.

I remind you that this clause deals mainly with sexual exploitation, the fastest-growing crime in Canada. The government could have passed Bill C-452 at some point in the past four years. Yet, it did not do so. Every week, dozens and dozens of young girls and minors fall prey to sex trafficking. Bear in mind that in Montreal alone, 600 pimps have been arrested and charged since 2012, and that's just the tip of the iceberg. There are 2,000 to 3,000 pimps out there exploiting minors and wreaking untold harm. This bill should have ensured that clause 389, which eliminates consecutive sentences for individuals who participate in human trafficking, came into force as soon as the bill passed. This was something many victims had called for, but their wishes were ignored.

• (1600)

I also think all the provisions relating to domestic violence should have been reviewed. I've said it before, and I'll say it again: every year, 60 to 70 women and girls are murdered in Canada by their partners or former partners. Many of these murders could have been prevented if justice had not been so lenient towards these men. Under this bill, the first episode of domestic violence won't trigger strong penalties, only the second will be judged more harshly. That is totally unacceptable. When this proposed amendment was discussed in this chamber, most of the independent senators voted against it, including many women. I just don't understand.

I believe this bill could have been very useful. However, parts of it will have to be fixed, and I think that should happen sooner rather than later. Thank you.

An Hon. Senator: Question.

[*English*]

Hon. Murray Sinclair: I may have misheard Senator Boisvenu. I thought he was making a motion. No? My mistake. I may have misheard you.

I only have a few brief comments, honourable senators. The message back from the house has caused two significant changes to the amendments that were approved by the Senate that colleagues should be aware of. One is the agency amendment. It reduces the ability of the agency to be more accessible to those charged with summary conviction offences, but it does not do so in such a significant way that it eliminates it entirely.

While I have concerns about the fact that this may contribute to delays and other problems within the criminal justice system, I am prepared to live with the government's position with regard to that particular amendment.

In addition, the decision to expand the role of preliminary inquiries that has been contained in their message back from the house also causes me concern, not the least of which is because I already enunciated my position, generally with regard to the utility of preliminary inquiries.

I also pointed out that in the Senate report on court delay, it talked about the fact that we needed to take more seriously the impact that preliminary inquiries were having upon court delay. In particular, when one looks at the time limitations that have been placed upon trials of indictable matters, being a maximum limit of 30 months, and the potential for more accused to have their charges removed because they have had some delay with regard to their trials caused by preliminary inquiries is also a matter of some concern.

I accept the suggestion of the fact that there would have needed to have been an application made to a judge to expand the possibility of preliminary inquiries for certain offences, which might also contribute to delays. I think in this particular case, as an institutional body, we should keep an eye on the question as to whether those changes the government is making to this particular set of amendments that the Senate approved will, in fact, reduce delays or not.

Overall, while I was supportive of the amendments that went over and I have concerns about these two particular amendments, I nonetheless am still prepared to support the motion to send the message back that we would accept the house amendments but with a recommendation to us as senators that we need to keep an eye on the question of whether those changes and the bill overall contributes to or reduces court delays. Thank you.

[*Translation*]

Hon. Pierre J. Dalphond: I just want to take a few minutes to say that the government's response to Bill C-75 seems completely acceptable to me and that we should accept it. The bill hybridizes many offences that are currently under-prosecuted. It will broaden the network of offenders that could be convicted in the future. We talked about how the committee refused to implement another act that would provide for cumulative and consecutive sentences, in addition to minimum sentences, since the Department of Justice believes that such amendments would be unconstitutional.

Yes, the committee refused to do that because, yes, the committee believes in the Charter of Rights and Freedoms. Yes, the committee refused to implement an unconstitutional measure.

We talked about family violence. Yes, the committee refused to place on those accused of violence for the first time the onus of proving that they should be released rather than having them be subject to the usual rules under which that onus is placed on the Crown. Yes, that is what we decided because to do otherwise would be unconstitutional. That's what we heard from the witnesses. Today, some senators are saying that the committee didn't do its job, but that's not true. The committee did its job and refused to make an amendment that would have made the act unconstitutional.

We talked about sexual violence. We heard from police officers who told us that the way the current act was drafted meant that very few cases are brought to court. The bill creates a presumption regarding the exploitation of one person by another, easing the Crown's burden of proof. All the police officers who appeared before the committee told us that this amendment was an improvement.

I wanted to clarify the comments made by my colleague, Senator Boisvenu. I have no hesitation whatsoever in supporting the government response even if it excludes one of my amendments dealing with preliminary inquiries — although it accepted all the others. I felt that the restriction proposed by the government was too drastic.

I'm pleased that the government understood the message sent by the Canadian Bar Association and many defence lawyers from Ontario and elsewhere who testified before our committee. The list of offences that can now have a preliminary inquiry has been expanded. Overall, I think the government made an excellent choice and I support its response. Thank you.

The Hon. the Speaker pro tempore: Will you take a question?

Senator Dalphond: Of course.

Senator Boisvenu: Senator Dalphond, forgive me if I don't share your optimistic perspective. Why did the government refuse to remove the coming-into-force order for Bill C-452, which was passed in 2015, from Bill C-75? Since its passage, it has caused hundreds and hundreds of minors to fall victim to sexual exploitation. Why wasn't this section brought into force immediately to prevent the sexual exploitation of other minor victims?

Senator Dalphond: Thank you for that interesting question. The answer came up in committee. Bringing that act into force would have resulted in an unconstitutional situation. An act found to be unconstitutional because of the cumulative effect of minimum sentences and cumulative sentences is in violation of the Charter. The government said it needed time to review all of the provisions that allow for both minimum sentences and cumulative sentences at the same time. That process is still under way. The committee wisely decided not to take my colleague's suggestion.

Senator Boisvenu: Senator, the government had four years to figure out if Bill C-452 was constitutional or not. Four years! And you tell me it needs more time? How much time?

• (1610)

Senator Dalphond: Obviously I am not the Government Representative in the Senate. My role is limited to hearing evidence in committee. However, I am rather pleased to see that the mandate letters were acted upon over this four-year period. Granted, that may seem like a long time, but you will recall that this chamber took two years to ultimately oppose Bill C-337, which in fact wasn't that hard to pass. Will the government be any quicker than our chamber?

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.)

[*English*]

OIL TANKER MORATORIUM BILL

MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare:
>
> That, in relation to Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast, the Senate:
>
> (*a*) agree to the amendment made by the House of Commons to its amendment 2; and
>
> (*b*) agree to the amendment made by the House of Commons in consequence of Senate amendment 1; and
>
> That a message be sent to the House of Commons to acquaint that house accordingly.

Hon. Elaine McCoy: I thank you, colleagues. As you know, I've not been able to be with you for a few days, so I haven't had a chance to put other views in terms of this bill in front of you. I will try to be brief.

I want to say firstly that I remember the beginning of this session in 2015. I said to so many people, I have never been more optimistic for the future of Canada and our federal institutions. I stand before you today, at what may be the very last time I speak in the session, and say I have never been more disappointed. All the promise has been turned.

My voice may waffle once or twice during this speech, but please don't think that that is an emotional response. That actually is a consequence of some physiological things which have kept me away from the Senate for the last few days.

Second, let me say that I thank Senator Downe for his speech yesterday on this bill —

Some Hon. Senators: Hear, hear.

Senator McCoy: — for giving us historical perspective. I really do appreciate that.

I would like to repeat his quotation from John A. Macdonald.

> There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatsoever were it a mere chamber for registering the decrees of the Lower House.

Turning to Bill C-48 in particular, I'm afraid that we are not going to take advantage of our authority and duty to do just any one of those three things: amend, oppose or postpone.

The sad thing about our deliberations on Bill C-48 is we never came to deal with the real issues that are affecting the northern coast of British Columbia.

That happens with some bills. Particularly it happens with bills whose titles give you the wrong idea of what the bill is. It takes a while before you catch on to just how misleading that is.

Sometimes you have to listen to quite a few witnesses and do your own research before you begin to discover, my goodness, this is a magic trick. Someone is saying, "Look over here; here is the bunny, but over here something is really happening."

Bill C-48, as one person said to me when I was talking to senators about this, is shooting at the wrong duck. It's as simple as that.

We ended up talking and arguing over hypothetical issues fuelled in part by some dynamics at the committee — we all agree — but nevertheless, on the substance, we were debating, arguing, expostulating about hypothetical issues.

The real issue is oil spills happening now.

I remember at committee I asked a question of Chief Slett of the Heiltsuk Nation. She is one of the Coastal First Nations. She was appearing on their behalf. I asked her what the Senate could do to help her achieve her goals. She answered, and I quote from the transcript of the committee:

> We have developed a proposal, a vision of an Indigenous marine response centre.

Now, a response centre is talking about what happens if a spill occurs. Then what do you do? Do you have the capacity? Do you have the knowledge? Do you have the tools to respond and to follow up and to take lessons learned and to adjust your policies and practices so you have something in place if, heaven forbid, it ever happens again. That's the real issue.

Her written testimony said, on page 1, that Canada's existing marine oil spill regime is inadequate to safeguard Heiltsuk waters and address the full range of marine oil spill impacts. That was what they were after, the full range, not just very large crude carriers. There have been no very large crude carriers, in that area, but there have been oil spills. With one oil spill, two people died. Another one damaged clam fisheries and shut down the cannery, not to mention other impacts they have yet to ascertain fully.

Again, she said that Canada's marine oil spill regime is not adequate to address oil spill impacts for First Nations. That was the issue.

So why don't we listen? I'm rather like Senator Patterson saying earlier, why do we not listen to our Indigenous peoples? I heard examples of that in our discussions today on Bill C-91 and Bill C-92. Why don't we listen to our Indigenous peoples? They tell us what is wrong. They tell us what they need. We simply do not hear them. What chance does reconciliation have if that's how we — especially senators — respond?

Here is another example on Bill C-48, it's the Metlakatla First Nation, which is also in that area, although further north. The minister appeared before our committee and said they were in favour. So they wrote a letter and said, "No, we're not." Then they said, "We are very concerned. If we do not get it right, we could be missing an opportunity to ensure marine protection."

Marine protection is all about spill response and prevention of spills. That was the real issue. It wasn't about doing an impact assessment on something that hasn't happened yet. It was on something that has happened.

• (1620)

They wanted a review of the risks of existing shipping. It's not something that doesn't exist, a hypothetical, which are these big oil tankers that are the subject of Bill C-48. He wanted an analysis of needed marine response prevention and response capacity, protections for traditional and sensitive areas and an understanding of the risks.

Why would we not listen to them? They said that on May 13.

They wrote again on June 5:

> We are writing to you a third time. Once more, we express concern multiple times about the existing shipping and current prevention and marine response.

Why didn't we hear that?

As you know, from my second reading speech and publications, I have been against this bill from the beginning, partly because there are no oil tankers in that area. There will be no oil tankers in that area until there are oil handling facilities in that area. There will be no oil handling facilities in that area until they've been approved. We're talking a hypothetical, but we do have oil spills there.

If you don't trust the elected or appointed officials about keeping oil tankers out of there, remember that the very large crude carriers for oil carry up to 2 million barrels. At roughly $55 a barrel, which is more or less what it is hovering at now, that's $110 million in every cargo.

Trust me, commercial interests will see to it that none of those vessels waste their time where there are no facilities to load or unload. Commercial interests will keep them away. We do not need this bill.

I really think that we have failed in our duty if we let Bill C-48 go. We will have failed in our duty to regions; there is no doubt about that. I've expanded on that and others have as well. I won't repeat that today. However, I think we've also failed in our duty to minorities, not the least of which are smaller provinces. Even more important in this day and age is our responsibility to the minority that Indigenous peoples endure in our society.

We can be so proud of ourselves running around saying, "No, no, we want to treat you like a peer. What did you say? I didn't hear you. Oh, yes, but I want to treat you like a peer." We're being hypocritical.

Honourable senators, I want you to consider our attitudes and maybe slow down a little bit. We don't have to do this. Senator Dalphond, I've seen some of your email responses. You say the election has decided it. Fine. We don't need the bill because there will not be an oil tanker, commercial interests to keep them away. Nothing is going to change. Let's just postpone it then.

We've boxed ourselves in with the amendments we put forward, which were out of order and out of scope. If we simply reject this message, it will hang up now because the House of Commons has recessed for the summer. At least to that extent, it would be postponing it. However, I will say that if someone to put forward a motion to send this message to committee, I would support that. Maybe not that committee; maybe another committee, any committee of this house to look at the real issue. I don't think we got all the evidence or even gave our thoughts to the real issues that are being asked to be addressed.

If we adjourn this debate today, I would support that motion as well because I think in this case, postponement hurts no one. It will change nothing. There will be no oil tankers in that vicinity for the foreseeable future.

Again, we would buy ourselves time and maybe — just maybe — reclaim some of the high ground around doing our job as a sober second thought.

The one thing I cannot do is vote for this message in good conscience. I will not vote for this message. No amount of public opinion should dictate to me what my job is. My job is to be the elder statesman, is to be proof from public opinion and to hide behind the Senate's reputation or a particular group's reputation in the Senate is a dereliction of duty.

I think we have to stand because you are appointed. We have deference. In this case, when you have got the issue wrong and you got distracted by magicians' tricks, we should simply wait a little while. Let's all cool off, if you can do that over a summer. Let's all take a break and then come back and reassess the issue that really needs to be assessed in order to satisfy the needs of what I have been calling the orphan coast, which is the northern and central coast of British Columbia.

The Hon. the Speaker: I'm sorry, Senator McCoy, but your time has expired.

Are you asking for five more minutes?

Senator McCoy: Only if somebody would like to ask a question. Other than that, I thank you all very much for listening to me. I hope you search for your better nature before you cast a vote this afternoon.

Some Hon. Senators: Hear, hear.

Hon. Dennis Glen Patterson: Honourable senators, I rise today to speak to the message received on Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast.

I would like to associate myself with Senator McCoy's remarks. Senator McCoy is a lifelong respected lawyer in the energy field. We should heed her words.

I agree with her that the bill is essentially a cop-out. Canada's much touted $1.5 billion Oceans Protection Plan neglected the northwest coast and will continue to neglect the northwest coast. This bill is a sop to those who are concerned about protecting that environment.

Developing oil spill response capacity, as we have done on the southwest coast, as we have done in the Atlantic, funded by industry or led by Indigenous groups who are willing to do so, is clearly the way to go and the way we've gone in other parts of this great country.

I'd like to focus today on Senator Pratte's comments on this bill. I was struck by them. He told our chamber that:

> The tanker ban was not mentioned in the Liberal's national platform. The commitment was made in British Columbia but was rarely mentioned in other parts of the country. Therefore, it cannot be said that Canadians as a whole voted in favour of a tanker ban on the northern coast of B.C. This election commitment is not equal to cannabis legalization or infrastructure spending. The government's mandate on this matter is unclear and weak.

• (1630)

I find it astounding that we are standing on the brink of passing a piece of legislation that, as Senator Pratte has put it, "has become a national unity issue."

The *Canadian Encyclopedia* states that:

> The Senate's purpose is to consider and revise legislation, investigate national issues, and most crucially according to the Constitution — give the regions of Canada an equal voice in Parliament.

This is confirmed on the Senate's own website, which describes our chamber's role as this:

> Created to counterbalance representation by population in the House of Commons, the Senate has evolved from defending regional interests to giving voice to underrepresented groups like Indigenous peoples, visible minorities and women.

In both instances, there is great emphasis placed on our role to represent and defend regional interests. Bill C-48 is a bill, sadly, that pits Indigenous groups against Indigenous groups, regional interests against regional interests.

Speaking of Indigenous organizations, in a question to Senator Woo yesterday, I asked him if he was aware of a letter sent on June 13 to Senator Sinclair from President Clayton of the Nisga'a Nation rejecting Senator Sinclair's amendment, saying that it does not address any of the critical issues the Nisga'a Nation has continued to raise.

I think it's important to put her words on the record today. She tells Senator Sinclair that:

> Unfortunately, the amendment does not address the core issues raised by the Nisga'a Nation during Committee hearings as outlined in my letter to Senators on June 10th and attached here again for your review.
>
> Not only does the amendment not address any of the critical issues the Nisga'a Nation has continued to raise, the amendment utilizes language in sections 3.1 and 3.2 that is of significant concern as well.
>
> The Nisga'a Nation has long opposed the use of this version of non-derogation language in federal legislation on the basis that it really has no effect. No legislation ever could abrogate or derogate from constitutional protection. It is legally ineffective but gives the false impression of doing something for Indigenous peoples. As far back as 2007, the Senate Committee on Legal and Constitutional Affairs considered this language and, in its report entitled "Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights", endorsed a more appropriate format of non-derogation clauses related to Aboriginal and treaty rights.

And that was an initiative of former Senator Watt, which we should not forget.

> In addition, the Government of Canada has included the version of non-derogation clause that the Senate Committee, the Nisga'a Nation, and other modern treaty holders support, in Bills C-91 (Section 3) and C-92 (Section 2) of this session.
>
> Therefore, we would ask that you replace section 3.1 of your amendment with the non-derogation clause from those Bills:
>
> Rights of Indigenous peoples.
>
> 3.1 This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.
>
> We would also respectfully request that your proposed section 3.2 be removed entirely. While we do not doubt that it is well intentioned, and we know that it is copied from Bill C-68, in our view this clause is not consistent with the existing jurisprudence, and at worst, proposes to give legislative authority to unconstitutional infringements of Indigenous rights. Any adverse effects on section 35 rights must be justified in accordance with Sparrow and not merely "considered" by the Minister. In effect, s. 3.2 is, inadvertently, a "derogation" clause.
>
> We believe the insertion of the appropriate section 3.1 language and rejection of section 3.2 do not in any way detract from the salutary intent of your amendments and we hope that you will consider these important revisions.

Honourable colleagues, in closing, I also want to commend Senator Downe for essentially urging us to have the courage to do what is right and to exercise the independence that we should all cherish in this chamber.

It's clear we have failed to resolve the national unity issues that Senator Pratte and others in this chamber have pointed to. As critic of this bill, I would urge you to vote against this message. It is my hope that the attention the Senate has drawn to this issue will help voters decide the path forward in October. Thank you.

Hon. Michael L. MacDonald: Honourable senators, I didn't expect to speak to this today. I never had the opportunity to finish my remarks last week, so I thought I'd finish them today.

Although I have a few more minutes to play with, I've added a couple of pages.

As I was saying, we keep hearing about the *Nathan E. Stewart* as an example of what can happen on the north coast of British Columbia. The *Nathan E. Stewart* was an American-owned and -operated articulated tug-barge that went aground in 2016. It lost a lot of fuel and made an environmental mess. Senator Jaffer, in her speech delivered by Senator Woo, used the delay in response time as a reason not to allow oil to be shipped out of northern British Columbia. This is faulty reasoning.

First, there is nothing in this tanker ban that would have prevented an accident like this from occurring with a single-hulled vessel. Second, and more notably, if northern B.C. had already been exporting heavy oil, there would have to have been a spill response centre in the area, just like those that exist in the Lower Mainland, the Strait of Canso, the Bay of Fundy or on the St. Lawrence River. The present lack of any spill response station in northern British Columbia is an omission that should be addressed, as there is nothing to prevent the same type of laggard response to any future grounding of any other single-hulled vessel that plies the northern British Columbian coastline.

The grounding of the *Nathan E. Stewart* is actually an argument for exporting oil in the area because of the response infrastructure that would be put in place in conjunction with the oil export industry. We can make private industry pay for it, and they would pay for it.

Bill C-48's proponents also claim that the weather and ocean conditions in northern British Columbia are so extreme and dangerous that large tankers should be banned. More dangerous and wild than the North Atlantic? Really? How many winter storms with freezing spray do vessels battle through on the West Coast? How much ice-laden water do they have to navigate through during late winter and early spring, with or without the aid of icebreakers, on the West Coast?

Senator Harder advised us that this was the fourth most dangerous stretch of water in the world. The Americans have been shipping oil through these waters since the 1970s. If there were a safety issue peculiar to the marine conditions in this area, surely there would be some evidence of it after half a century.

Next they argue that the ecosystem of northern B.C. waters dictates that it be treated differently than its East Coast counterpart because of the variety of whales and other sea mammals and birds. I'm all for protecting habitat and sea life, but are the humpback whales that feed for four months in the nutrient-rich waters of the Bay of Fundy less deserving of our protection? Are the belugas in the St. Lawrence estuary and the right whales in the Gulf of St. Lawrence expendable in the eyes of this government? There are over 20,000 Pacific grey whales but fewer than 500 North Atlantic grey whales, the most endangered whale in the world. Why the double standard? How is this consistent with proper environmental management? The answer, of course, is that it is not consistent. This entire scheme is just another example of the perpetual virtual-signalling, combined with an ad hoc approach to governance, that has been the hallmark of the Trudeau government since coming to office.

The apologists for this legislation then refer to admittedly legitimate concerns that the West Coast First Nations have expressed for their salmon fishery. Again, I share any reasonable caution regarding the importance of maintaining viable and productive fisheries wherever they exist. But I repeat: The experience of the East Coast proves that these risks are manageable and indicates that these concerns are exaggerated and too often politically motivated on the West Coast.

• (1640)

Nothing better exemplifies the hypocrisy on this issue than the refusal of the Trudeau government to listen and acknowledge the efforts of First Nations communities living in northern B.C. are making to stimulate economic growth and secure badly needed prosperity. Unemployment in some of these communities is over 90 per cent.

The Eagle Spirit proposal would carry petroleum by pipeline from Alberta to the deep-water ports in northern British Columbia. It would create thousands of well-paying jobs, establish a permanent revenue stream for these communities and be of great economic benefit, not only to B.C., Alberta and Saskatchewan, but to the entire country. This initiative is supported by all of the many First Nations along the proposed route, a very important distinction that Senator Harder completely ignored in his speech when he unfairly dismissed these efforts to create some hope and prosperity for their communities. Perhaps Senator Harder and my colleagues opposite, as well as the Government of Canada, should speak and listen to a wider circle of people than they do at present.

The Trudeau government would rather leave these communities in poverty. They are content to smugly leave them with no hope. They would rather legislate against our wealth-creating petroleum industries in Alberta and Saskatchewan, and if the many First Nations along the proposed route lose out, that apparently is just fine with them. I say to my colleagues opposite: Think about that when you are expected to blindly acquiesce to the short-sighted and anti-Canadian legislation.

The Trudeau government will make the excuse that nothing can be resolved because some First Nations have diametrically opposed points of view. But there is nothing here that couldn't be resolved with a modicum of common sense and a bit of leadership from the federal authority.

One discernible difference between the northern and West Coast First Nations on this issue is that while the former haven't received a penny from anyone for their efforts, the campaign to stop pipelines and tanker traffic has been financed by over $65 million of foreign money, primarily from American environmental groups who are trying to shut down the Canadian petroleum industry.

Some Hon. Senators: Hear, hear!

Senator MacDonald: In the meantime, American refineries buy our oil at rock-bottom prices while shipping their own oil out at world prices. The Trudeau government sides with interfering American environmental groups at the expense of our own country and chooses to abandon the First Nations most directly affected.

Finally, the supporters of Bill C-48 will declare that a pipeline cannot be safely built and maintained from northern Alberta to the northern B.C. coastline. If the Americans can build a pipeline 50 years ago from the Beaufort Sea along the spine of Alaska to the southern coast and operate it safely for all of that time, surely Canada is capable of building an even better and more modern pipeline half a century later.

Some Hon. Senators: Hear, hear!

Senator MacDonald: I would be remiss if I didn't mention the reverential concerns expressed for the Great Bear Rainforest, that magical mystical place unknown to countless generations of Canadians. This name, of course, is a fabrication. The First Nations people from the area whom I met and listened to scoffed at the designation. They informed me it was dreamt up a few years ago by an environmental activist from Vancouver while sitting in a café in San Francisco.

A search quickly revealed this was in fact the case. When I asked them what they actually called it, they told me, "We always called it the woods." I said, "What a coincidence. That's what we called the forest in Nova Scotia as well."

I'm all for protecting and preserving natural habitat and wildlife, but we have a lot of forests and bears in Nova Scotia, and there has never been any indication that the tanker traffic that surrounds Nova Scotia has ever had a deleterious effect on either the woods or the bears.

The land footprint in northern and central coast of B.C. alone is three fifths of the size of the entire province of Nova Scotia. I'm sure the bears will be fine.

All of the arguments put forth for prohibiting normal tanker traffic on the northern B.C. coast are weak, unconvincing and are being bankrolled by inappropriate injections of American money funnelled into our public discourse. Any self-respecting Canadian who believes in the integrity and sovereignty of their own country should take issue with this unacceptable interference in domestic Canadian affairs.

What our committee heard is that Bill C-48 will be devastating for Alberta and Saskatchewan's economy and for the hundreds of thousands of industry workers and their families pushed into unemployment lines or on to welfare. These job losses are being felt across the country. We have great natural advantages on the northern West Coast. We should be exploiting these advantages for the benefit of all Canadians and not putting arbitrary, unnecessary and unfair restrictions on our ability to compete on world markets.

We import foreign oil from countries with far lesser environmental standards. The government will prevent our oil, which is a premium product, developed at world-class standards, from getting to market where it would displace products produced at lesser standards. We can't get pipelines built, so oil producers are forced to increase transportation by rail at high risk to the environment and safety. Just ask the people of Lac-Mégantic if they think that's a good idea.

Allowing the deep-water ports of northern B.C. to export petroleum would also enable Canada to reduce its emissions because these ports are able to accommodate the largest crude oil vessels afloat. The Very Large Crew Carriers, the VLCCs, and the Ultra Large Crew Carriers, the ULCCs.

Professor Amit Kumar from the University of Alberta, who is an energy engineer, gave convincing testimony on this matter. As the head of the university's research program on energy and environmental systems engineering, his team did a comprehensive study on the entire chain of energy production, extraction, processing, transportation, conversion and end use. They mathematically proved that the most efficient, profitable and environmental-friendly way to move bitumen or synthetic crude oil is by tanker and the larger the better.

Unlike the Lower Mainland and many other Canadian points that presently handle oil tankers, the northern B.C. ports can easily handle the ULCCs, the largest crew carriers in the world. The largest ships would allow Canada to reduce the emissions created in the export transportation of heavy oil, which something I'm sure all Canadians would agree with.

Both Prince Rupert on the West Coast and Point Tupper at the Strait of Canso in Nova Scotia have the ability to easily handle the ULCCs. This is a huge advantage for Canada that we should be exploiting instead of squandering.

If the government is so concerned about the environment, why isn't it doing more to encourage the export of our oil in the largest vessels available?

Why does the government have such little faith in the regime they proposed in Bill C-69, a regime meant to provide rigorous evaluation of major projects, including proposed ports in northern B.C., and that would subject them to a review of a wide range of factors? I was under the impression that Canada's new environmental regime was meant to ensure that a port project would be examined on a scientific basis. Instead, our industry and best interests are being treated in an ad hoc and subjective manner.

Some senators were optimistic that some form of amendment could fix the bill. Senator Simons and Senator Patterson championed an amendment to create a corridor for tanker traffic. I commend their efforts, but I was there when the minister was asked clearly about the government's willingness to accept an amendment that would provide for a corridor. "The answer is no," he said bluntly. He was clear there would be no compromise on this bill from the government, and there hasn't been.

As Senator McCoy said previously during her speech at report stage:

> No vote in our national Parliament should target a single region so directly and so adversely.

There are better options than Bill C-48.

As Senator McCoy also suggested, why doesn't the government increase the accident response capacity or declare such zones as a PSSA, particularly sensitive sea area under international convention? Or work with local communities and First Nations to ensure the protection of these areas without outright targeting the economic heart of oil-producing provinces?

Better still, let the voters decide. Unlike in 2015, let the Liberal Party put this proposal in their platform, at least find a better solution. Undermining our most important industry, dividing the nation and threatening national unity is not the way to proceed.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Éric Forest: Would the senator take a question?

[*English*]

Senator MacDonald: Sure.

[*Translation*]

Senator Forest: Could you point me to the historical references backing your claim that the name "Great Bear Rainforest" was chosen at a café in San Francisco?

[*English*]

Senator MacDonald: Well, two things; testimony from the First Nations who live in that area and who are familiar with the area; and second, I went online and found all kinds of references. If you can trust what you read online — there was more than one source. I spoke to the First Nations people from the area and they confirmed it. In fact, they brought it up.

[*Translation*]

Senator Forest: Would the senator be so kind as to send me those references so that I can check them myself?

[*English*]

Senator MacDonald: I'll also send you a copy of my speech.

• (1650)

[*Translation*]

Hon. Julie Miville-Dechêne: Would the senator take another question?

I listened carefully to your speech, and I have to wonder what you'd say to the nine Indigenous nations living on the B.C. coast that support the moratorium you denounced. The only nations you didn't mention in your speech were those that support the moratorium — those that are concerned about the risk of a spill. Even if the possibility of a spill is low, it still exists.

I'd also like to hear your response to the valid argument that the only communities that would be affected by a potential spill are the coastal nations that rely on fishing.

How can you ignore this real risk and how can you also ignore the fact that 35 per cent of those living on the B.C coast are Indigenous? You seem to be ignoring a significant number of Indigenous people in your argument for why this moratorium makes no sense.

[*English*]

The Hon. the Speaker: I'm sorry, Senator MacDonald, but your time has expired. Are you asking for time to answer the question?

Senator MacDonald: I'm used to people saying "no," so it's not a problem.

The Hon. the Speaker: Senator MacDonald, are you asking for five more minutes?

Senator MacDonald: I'll answer the question if people want me to, but it doesn't matter to me one way or the other.

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

Hon. Senators: Agreed.

Senator MacDonald: First, I don't agree with your interpretation of my remarks. I will remind you that I spoke to this last week as well. I did mention the 35 First Nations, or so, along the proposed route who support it. I also did speak to the people who fish along the shore, and I said that the evidence of managing fish stock on the East Coast of Canada — I said this last week. The West Coast fishery is about $350 million worth of value, and the East Coast fishery is about $3 billion of value. It's a huge fishery, much more substantial than the West Coast fishery, yet we manage that fishery. We manage the movement of over 280 million metric tonnes of petroleum, while they only manage 6 million metric tonnes on the West Coast.

In terms of concern for the West Coast Indians who deal with the salmon fishery, I have empathy for them and I understand because we have the same concerns on the East Coast. But we manage them, and I am saying that the evidence is fairly straightforward that we can manage both industries successfully.

Some Hon. Senators: Hear, hear.

[*Translation*]

The Hon. the Speaker: Senator Miville-Dechêne, do you have a supplementary question?

Senator Miville-Dechêne: That said, Senator MacDonald, I repeat my question: How do you respond to the fact that there is a potential risk? A spill could happen, and the 12,000 members of Indigenous nations that rely on the fishery don't want to take that chance. Albertans aren't at risk of an oil spill, but the 11,000 Indigenous people who live along the coast, are. The situation on the East Coast isn't really the same.

[*English*]

Senator MacDonald: Risks are risks. It's all about managed risk and the ability to manage risk. When it comes to managing petroleum in conjunction with managing the fishing industry, the experience on the East Coast of Canada makes it fairly clear to me that these are risks that can be managed. The idea that we don't have pilots or technology or all the things one would expect on the West Coast to manage both when we have them on the East Coast is just not believable. Of course they can manage it on the West Coast.

DISTINGUISHED VISITOR TO THE SENATE

The Hon. the Speaker: Honourable senators, while we normally do not acknowledge visitors to the bar, I notice the Member of Parliament from Skeena—Bulkley Valley who has decided not to offer himself for re-election in the next Parliament, Nathan Cullen.

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

Hon. Senators: Hear, hear!

OIL TANKER MORATORIUM BILL

MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare:
>
> That, in relation to Bill C-48, An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia's north coast, the Senate:
>
> (*a*) agree to the amendment made by the House of Commons to its amendment 2; and
>
> (*b*) agree to the amendment made by the House of Commons in consequence of Senate amendment 1; and
>
> That a message be sent to the House of Commons to acquaint that house accordingly.

Hon. Pat Duncan: Honourable senators, I rise to speak to Bill C-48.

It has been referenced several times this afternoon that the Senate is representative of all regions. My region has not and the Yukon has not been heard from in this discussion. There are several points I would like to draw to the attention of my colleagues that have not been entered into the record either in this chamber or at committee, to the best of my knowledge.

Bill C-48 speaks to British Columbia's north coast and protection of this particular part of Canada's coast. I believe this to be British Columbia's choice, and that's a very important element when we're talking about Confederation and our individual places at the confederate table. When I say "British Columbia's choice," I'm referring to First Nations and the Government of British Columbia.

Honourable senators, the idea of environmental protection in this area is not new. I draw to your attention the Memorandum of Understanding and Cooperation between the State of Alaska and the Province of British Columbia signed in 2015. Section 3 states:

> Alaska and British Columbia will collaborate to promote marine transportation reliability and safety. Areas of collaboration include measures to prevent accidents and spills and to reduce the consequences of accidents and spills . . . .

In the appendix to the Statement of Cooperation on the Protection of Transboundary Waters, the "Definition of Terms" defines "Transboundary Water(s)"," as ". . . also includes all marine waters within the jurisdiction of Alaska, south of sixty (60) degrees latitude or within the jurisdiction of British Columbia."

As recently as 2018, Alaskans have been urging Canada and British Columbia to deal with environmental protections and watersheds. Areas we're speaking of are under Canada's jurisdiction.

We know and have known for thousands of years that the Alaska National Wildlife Refuge on the very north coast of Alaska is a sacred calving grounds of the porcupine caribou herd. Yukon has lobbied as long as I've been a Yukoner and well before for protection of the Alaska National Wildlife Refuge on the northern coast. We have asked Alaskans not to drill for oil in the calving grounds of the porcupine caribou herd. To the Vuntut Gwitchin in the north of Yukon, this is sacred ground. Their powerful and effective lobby in Washington has been supported by the Yukon and Canadian governments of all political stripes. Some senators will be aware of their efforts.

How can we lobby for protection of the Alaskan coast, recognizing its importance to the Indigenous people and all Yukoners, if we're not prepared to protect our own Canadian coast in recognition of its importance to Indigenous people?

Lest anyone suggest that I not be aware of the difficulty of landlocked resources, I would remind senators that the Faro Mine resources were shipped to market through the Port of Skagway in southeast Alaska. And it's not my first rodeo with pipelines. Canada and the United States had a valid, signed treaty that proposed to ship Alaskan gas from the Alyeska Pipeline. It would travel by pipeline through Yukon and possibly be refined in Alberta. I lobbied long and hard for that pipeline. It would travel along an existing transportation corridor built by the Americans and still funded by the Americans, in part. Ultimately, industry made another decision. I share this because it can't be underestimated the role that industry makes in all of these decisions.

Colleagues, the Yukon shares this border and much of the traffic into southeast Alaska. Although technically they travel through British Columbia and the border crossings are labelled as British Columbia, they are supported by Yukoners. Yukoners use them more than daily, sometimes twice a day.

• (1700)

The Alaskans in the southeast and the far west are our neighbours, our friends and, in many cases, they're the other part of the family. We'll have grandparents on one side and parents on the other.

I share this information about the global implications, the American-Canadian implications, because they weren't discussed at committee. I believe perhaps they should have been. However, hindsight is 20/20.

I also share what I believe to be, and is supported by the information I've shared with you today, support for protection for this particular area.

As much as I fully respect the entreaties that have been made today and Senator McCoy's information, I do believe that Bill C-48 is a response of Canada within their responsibility. It's a request of British Columbians, and we should be doing it. I believe with the issues around resources that there are other factors involved, and industry will be making decisions in that regard.

For these reasons, honourable senators, I will be supporting Bill C-48. I believe it is the appropriate thing to do. It's a request of British Columbia, of the Confederation, and I believe we should listen to them and follow up. Thank you.

Some Hon. Senators: Hear, hear.

Hon. Donna Dasko: Honourable senators, I rise today to speak to the message from the House of Commons on Bill C-48, known by its short title as the oil tanker moratorium act.

As a member of the Standing Senate Committee on Transport and Communications, I had a special opportunity to participate in the deliberations on this bill. Our long process included holding 22 meetings, hearing 139 witnesses and travelling to four communities. I am grateful that I had such wonderful colleagues on the committee, and we formed an unshakeable bond. In some strange way, I will miss Bill C-48 after it is gone.

The message we have from the House of Commons takes us pretty much back to the original bill. From the very beginning of studying this bill, I thought it was generally a good idea. As I continued through deliberations and study, I found it to be quite a good bill. Now hearing so much criticism, I feel compelled to stand today to talk about the bill.

I'm going to be brief in my remarks, but I want to say that I do believe that we should accept the message.

Let me tell you my general thoughts about Bill C-48. To me, Bill C-48 has all of the elements of what should be a successful and widely accepted bill. First, it's based on established policy. The tanker moratorium is well-grounded policy which came into existence several decades ago.

As we all know, in 1977 a system was established for American tankers carrying American crude from Alaska to the U.S. mainland whereby they would avoid the West Coast of B.C. This practice was formalized in the 1985 understanding between the Canadian and U.S. Coast Guards to create a voluntary Tanker Exclusion Zone. I understand that all federal and all B.C. governments have supported the voluntary arrangements over these many decades.

Bill C-48 is the further formalization of this agreement applied now to Canadian tankers. How many policies in this country have the opportunity to be tested for almost 40 years before they are put into legislation? How often does that happen? Almost never.

To me, it's a moderate, tested policy. No tankers have travelled in this area before and none will travel in the future. That's the first point I'd like to make.

The second feature that makes this a good bill is the reason for the tanker ban, and that is to protect the relatively untouched northern B.C. coast, the renowned Great Bear Rainforest and other sensitive areas in the region from the disaster of a future oil spill.

We have heard about the uniqueness of this lush habitat in great detail from Senator Jaffer via Senator Woo last week, and I have no need to repeat here her wonderful description.

This coast, unlike the East Coast, has never had tanker traffic. The focus on the environment makes this bill especially timely today given Canadians' overall increased sensibility to issues like climate change, to all environmental issues and environmental protection. Canadians are more willing now than ever to accept tougher environmental policies.

The third reason that this is a good bill is it has the support of a great many people and a great many communities. Our trip to Prince Rupert and Terrace was so valuable and so important in showing the committee the extent to which the citizens in the region want Bill C-48.

First and foremost, 9 of 11 coastal First Nations, the majority of First Nations in the area, look to Bill C-48 to protect their communities and their current and future livelihoods developing the fisheries from the catastrophe of an oil spill.

Senator McCallum described these views and aspirations of coastal regions exceptionally well last week here in the chamber, and I have no need to repeat what she said so strongly to us last week.

But there are many more people who support this bill: municipality leaders; environmentalists; local citizens; the Mayor of Prince Rupert; the Mayor of Kitimat; the federal member of Parliament from the area who, on cue, has walked into our chamber; the provincial MLA from the coastal region; and, especially importantly, the provincial government in British Columbia supports Bill C-48.

This substantial and diverse support is another factor we must take into account in our deliberations. Many people are imploring us to pass this bill.

My fourth reason today that should be of great importance to us is the fact that the initiative was promised by the Trudeau Liberals in 2015. Perhaps the promise was made in B.C., but it is a promise nevertheless.

It has been said, and it is true, that governments sometimes don't go ahead with their promises. For example, electoral reform was a promise not pursued. But when a government decides to go ahead with a promise that has been made, we must weigh this very strongly in our deliberations. They certainly have a mandate, especially from the people of British Columbia, to go ahead with this policy.

Those are four reasons that I think are exceptionally important.

Then we might ask: If Bill C-48 seems so obviously good to me, why has this bill had so much difficulty?

Colleagues, there is only one reason, and it has to do with the very sad state of the Alberta-based oil industry, the plunging price of the resource in recent years, the loss of jobs, the loss of futures and lost hope. The despair has affected the public mood, public dialogue and even national unity.

• (1710)

My former colleagues at Environics teamed up last year with the Canada West Foundation, the Mowat Centre and the IRPP to undertake a huge public opinion survey of the Canadian public revisiting various national unity issues. They conducted a large survey of Canadians in 13 provinces and territories, as well as Indigenous communities, in December of last year and January of this year.

One very important set of findings relates to the Province of Alberta and how that province is experiencing what we might call extreme alienation from Canada. Seventy-one per cent of Albertans say the province does not get the respect it deserves in Canada, up from 49 per cent who felt it this way in 2010. Sixty-seven per cent of Albertans say they don't have their fair share of influence on national decisions, and that compared to 46 per cent of all Canadians. And 56 per cent of Albertans now say they get so few benefits from Canada that they might as well go on their own, and this figure is up from only 28 per cent in 2010.

The subsequent Alberta election campaign, with its impassioned rhetoric, made such views even more salient. Premier Kenney articulated these exact themes when he appeared before our committee on April 30, saying that Alberta is the largest fiscal contributor to the rest of the country, that there is a crisis of confidence in Alberta about federalism and there is also a national unity crisis. He also spoke of secession sentiments.

We have to conclude that these attitudes and perceptions are real, as is the reality of the economic situation and lost revenues, jobs and opportunities that have disappeared in the resource sector.

I think and I know that many Canadians sympathize with this situation and I know that the situation today is different, at least with respect to other Canadians, from the bad old days of the National Energy Program. I truly feel that Canadians in the rest of Canada understand and sympathize tremendously with what Alberta is going through. I firmly believe that. I know that, Senator Simons, and I've said this to you before. I know that to be a fact.

Now, many Albertans have taken out their disappointment on the tanker bill. Albertans have a right to be angry, but this bill doesn't deserve so much anger. It doesn't. We get emails from folks from Alberta who talk about all the jobs that they will have when Bill C-48 is defeated. They are expecting a bounty of jobs as soon as the bill is defeated.

I have to say, however, with deep respect, that some Albertans have, unfortunately, been given false hope by the possible demise of this bill. I say that with deep respect.

The end of Bill C-48 does not create jobs in Alberta. Unfortunately, there is no pipeline coming in the foreseeable future. There's no northern TMX and there is no northern Keystone on the horizon. I say this with regret.

In addition, our travels in the region have confirmed, to me, the huge opposition to pipeline construction that exists in the region. We learned about Northern Gateway and why it was unsuccessful. There was a plebiscite in Kitimat where the citizens turned down Northern Gateway. They didn't like it — and this is a resource town. There has been opposition from just about every corner in that community, according to Anne Hill of the North West Watch Society:

> Every city council in the region passed resolutions rejecting Northern Gateway.

We have to understand that is a factor, as well. There is huge opposition in the region to building pipelines.

I wanted to put that on the record. I want, in conclusion to get back to the theme. In spite of this, we know that there is still anger and disappointment in the Province of Alberta.

In response, last week, the in-depth regional review amendment crafted by Senator Sinclair and Senator Pratte and accepted by the Senate was, in my view, a genuine, good-faith effort to keep hope alive and signal to Alberta that we care about them.

The government has now turned this down and we are left with essentially the original, almost untouched version of Bill C-48. We have, as part of the bill, an amendment that proposes a moderate five-year review of the legislation, which I feel will, in fact, be of some help in understanding and in reaching out to Alberta.

I believe, honourable senators, that it is finally time for us to accept the message and to accept that we have done all we can. I urge us to accept the message from the House of Commons.

Thank you.

Some Hon. Senators: Hear, hear.

Hon. Bev Busson: Honourable senators, I wasn't going to speak on this bill because I have a bit of a raspy throat. I feel compelled to speak after listening to my colleagues today speaking so passionately on the bill.

I feel very strongly about this bill because, of course, I'm from British Columbia. It affects the ecology of British Columbia, the energy sectors of Alberta and Saskatchewan and our economy altogether. More importantly, it affects the very fabric of our country.

Since this bill made it to the Order Paper, we have witnessed one group after the other, through their testimony, emails and social media, passionately plead their cases and champion their causes on each side.

Those who favour Bill C-48 advocate that the only way to protect the coastline of British Columbia is to solidify the voluntary tanker ban on the West Coast into binding federal legislation. This would forever banish tankers from transporting oil from Alberta and Saskatchewan through northern British Columbia ports and, therefore, make Asian markets a more difficult destination.

I understand that the vast majority of supporters of this bill are motivated by their love of British Columbia and their fear for that environment. They not only wish to protect the vast shoreline and pristine beaches, but also the mountains and unspoiled rainforests. British Columbia and its waters are inhabited by the rarest species left on the planet. The people who live along the coast, who are predominantly Indigenous, follow a lifestyle predicated on the legacy of habitation that has been rooted there for thousands of years.

Many demand that we protect the environment for future generations. This genuine concern has been expressed by some as a need for a total prohibition of tankers. Conversely, there are those who remind us that this great country was built upon exploration, retrieval and transportation of natural resources to markets around the world.

The petroleum industry is one of the major contributors to the entire Canadian economy, not just the economies of Alberta and Saskatchewan. Does it come down to choosing one interest over the other, pitting one region against another and one First Nation against another?

I'll come back to this.

I have called British Columbia home for over 40 years. I've lived on the coast, I've lived in the interior and I have spent a lot of time in the northern regions of British Columbia. I have fished on the Skeena River and its tributaries. I visited Haida Gwaii. I've even seen a Kermode, or spirit bear, in the wild — yes, I really have — and also a number of grizzlies, though more up close than I would have liked, I have to admit.

I'm certainly not constantly saying that I am an expert on British Columbia's ecosystem, but it gives me a personal perspective. To say that I think British Columbia is a very special place is a vast understatement.

Interestingly enough, I grew up in Dartmouth, Nova Scotia. I spent my high school summers at places like Lawrencetown Beach and Clam Harbour Beach. I have travelled the Cabot Trail on the coast of Cape Breton with my parents, and later with my own family and my friends. I've spent time in P.E.I., Newfoundland and Labrador. I have experienced the majesty of the East Coast, which is every bit as beautiful and precious as the West Coast.

• (1720)

Thus, a conundrum: Why the focus on the West Coast? If tanker traffic is safe for the east and for the St. Lawrence, why is it to be forbidden on the West Coast? I'm not really sure.

Another complication not often discussed in the pipeline tanker conversation is the transportation of oil by rail. The longer we avoid ports and building pipelines to accommodate oil, the more oil is going to be transported by rail. Research shows that rail is, by far, the most dangerous way for oil to be moved from one place to another. We will never forget the hellish nightmare of the Lac-Mégantic catastrophe. A train derailment into one of the rushing rivers that has been the lifeblood of the West would be an unspeakable tragedy as well for the environment — one, I submit, that would be at least as devastating as an unmitigated spill at sea.

There was such a derailment last year in the Rogers Pass that saw 40 railcars go off the rails. Imagine if they had been loaded with oil instead of grain. Where I live in B.C., there's been a doubling of oil by rail on the mainland of the CPR that travels west through the Rocky Mountains on its way to the coast. These trains cling to the cliffs and banks of the Thompson and the great Fraser River down through the major spawning waterways where many kinds of salmon, including our famous sockeye, sturgeon and other fish species have habitats.

In committee, I asked one of the witness experts who was testifying about how oil spills are dealt with in the ocean. I asked, "What plan is there if an oil tanker ever went into one of the fast-moving rivers like the Fraser?" He said there was no plan and no possibility of mitigating the damage of a large oil spill in swift water. This spill would not only destroy the fish habitat and spawning grounds but would ultimately end up in the same ocean we are all trying so hard to protect. Perhaps getting oil into pipelines and not out of them should be our goal.

This is not just a debate about pipelines and oil tankers on the West Coast. It's a debate about our ability to work together for the greater good, to find the tie that binds the common ground that makes us all Canadians, not to create a wedge that separates us into regional agendas.

Canadians enjoy a lifestyle that is second to none in the world. This country has afforded us First World benefits, like universal health care, modern infrastructure and so much more, supported by tax revenues, much of which are funded by the resource sector.

As previously stated, the energy sector accounts for approximately 10 per cent of Canada's economy and hundreds of thousands of direct and indirect jobs. Although we are all striving to reduce our carbon footprint, the petroleum industry is currently an integral part of our lives and is not about to become obsolete tomorrow.

I was fortunate enough to be part of the Senate road crew that travelled west to hear witnesses talk about Bill C-48, each with impassioned pleas for each of their sides, both of whom wanted it to be their way.

As you know, we've heard from witnesses with compelling and valid arguments. Unfortunately, the government has rejected the amendment that we had put in the balance. This is not a moratorium. This is a tanker ban. It's not just a tanker ban on tankers; it's a tanker ban on prosperity for the people of the Nisga'a and others, who are praying for the kind of opportunity that the rest of us enjoy.

I'd like to remind you that we already have a tanker moratorium on the West Coast and hopefully Bill C-69 to protect us from the hazards of an oil spill. I will be voting no to this message. Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that in relation to Bill C-48 — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising. Do we have an agreement on a bell?

An Hon. Senator: One hour.

The Hon. the Speaker: One hour. The vote will take place at 6:24.

Call in the senators.

• (1820)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Anderson
Bellemare
Bernard
Boehm
Boniface
Bovey
Boyer
Christmas
Cordy
Cormier
Coyle
Dalphond
Dasko
Dawson
Day
Dean
Duncan
Dupuis
Dyck
Forest
Forest-Niesing
Francis
Furey
Gagné
Galvez
Gold
Harder
Hartling
Joyal
Kutcher
Lankin
Lovelace Nicholas
Marwah
McCallum
McPhedran
Mégie
Mitchell
Miville-Dechêne
Moncion
Moodie
Omidvar
Pate
Petitclerc
Pratte
Ravalia
Ringuette
Saint-Germain
Sinclair
Woo—49

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Black (*Alberta*)
Black (*Ontario*)
Boisvenu
Busson
Campbell
Carignan
Dagenais
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Downe
Doyle
Eaton
Frum
Greene
Griffin
Housakos
Martin
Massicotte
McCoy
McInnis
McIntyre
Mockler
Neufeld
Ngo
Oh
Patterson
Plett
Poirier
Richards
Seidman
Simons
Smith
Stewart Olsen
Tannas
Tkachuk

LaBoucane-Benson	Verner
MacDonald	Wallin
Manning	Wells
Marshall	White—46

ABSTENTION
THE HONOURABLE SENATOR

Klyne—1

• (1830)

Hon. Marty Klyne: Honourable senators, I wish as to address my abstention on Bill C-48. I understand what the legislation aims to achieve and I agree that healthy marine environments are economically, culturally and environmentally integral to the well-being of Canada's pristine northern B.C. coastline and its coastal communities. I don't know anyone who wants to see that environment come to any harm.

I also believe that all Indigenous groups have a right to develop their own economic and social agendas and should not be cut off from opportunities for self-determination to create wealth and self-sufficiency.

The Hon. the Speaker: I'm sorry, Senator Klyne. When senators stand to explain an abstention, it's not a time for debate. It's generally a time for a very quick intervention as to why a senator decided to abstain. It's not a right. It's just an arcane practice that we've allowed to carry on over time and it's not something we normally get into. It really isn't the time for a debate or to re-debate issues that have already been spoken to, but just a time to quickly speak to why you abstained.

Senator Klyne: It's a very important issue; I understand.

The one thing I must say is that I agreed with the legislation with the regional assessment and when that was removed, for me, this became more than just a tanker ban. To skip through all the other stuff, it morphed into a ban on Western Canadian resources. From that, I hope the five-year review will prove me wrong.

Some Hon. Senators: Order.

The Hon. the Speaker: Senator Klyne has the floor. Senator Klyne.

Senator Klyne: But it's too far out in time, all the same, making me very hesitant. These are the thoughts, one of many, why?

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable senators, it being past six o'clock, pursuant to rule 3-3(1) I'm required to leave the chair and the sitting will be suspended until 8 p.m., unless it's agreed that we not see the clock.

Is it agreed that we not see the clock?

Hon. Senators: Agreed.

CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act

Thursday, June 20, 2019

ORDERED,— That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, the House:

agrees with amendments 1, 4(a) and 5(b) made by the Senate;

proposes that amendment 2 be amended by replacing the text of the amendment with the following:

"(c.1) the Service considers alternatives to custody in a penitentiary, including the alternatives referred to in sections 29 and 81;

(c.2) the Service ensures the effective delivery of programs to offenders, including correctional, educational, vocational training and volunteer programs, with a view to improving access to alternatives to custody in a penitentiary and to promoting rehabilitation;";

proposes that amendment 3 be amended by replacing the text of the amendment with the following:

"(2.01) In order to ensure that the plan can be developed in a manner that takes any mental health needs of the offender into consideration, the institutional head shall, as soon as practicable after the day on which the offender is received but not later than the 30th day after that day, refer the offender's case to the portion of the Service that administers health care for the purpose of conducting a mental health assessment of the offender.";

proposes that amendment 4(b)(i) be replaced by the following amendment:

"1. Clause 10, page 7: replace lines 25 to 28 with the following:

"(2) The Service shall ensure that the measures include

(a) a referral of the inmate's case, within 24 hours after the inmate's transfer into the structured intervention unit, to the portion of the Service that administers health care for the purpose of conducting a mental health assessment of the inmate; and

(b) a visit to the inmate at least once every day by a registered health care professional employed or engaged by the Service.”; ”;

respectfully disagrees with amendment 4(b)(ii) because it may not support the professional autonomy and clinical independence of healthcare professionals and does not take into account the inmate’s willingness to be transferred to a hospital or the hospital’s capacity to treat the inmate;

respectfully disagrees with amendment 5(a) because it would result in a significant addition to the workload of provincial superior courts, and because further assessments and consultations with the provinces would be required to determine the probable legislative, operational and financial implications at federal and provincial levels, including amendments to the Judges Act and provincial legislation and the appointment of additional judges;

proposes that amendment 6 be amended to read as follows:

“6. Clause 14, page 16:

(a) replace line 7 with the following:

“48 (1) Subject to subsection (2), a staff member of the same sex as the inmate may”;

(b) add the following after line 15:

“(2) A body scan search of the inmate shall be conducted instead of the strip search if

(a) the body scan search is authorized under section 48.1; and

(b) a prescribed body scanner in proper working order is in the area where the strip search would be conducted.”;”;

proposes that amendment 7(a) be amended by replacing the text of the French version of the amendment with the following:

“c) l’identité et la culture autochtones du délinquant, notamment son passé familial et son historique d’adoption.”;

proposes that amendment 7(b) be amended to read as follows:

“(b) replace lines 32 and 33 with the following:

“ing the assessment of the risk posed by an Indigenous offender unless those factors could decrease the level of risk.”;”;

respectfully disagrees with amendment 8 because extending the concept of healing lodges designed specifically for Indigenous corrections to other unspecified groups is a major policy change that should only be contemplated following considerable study and consultation, and because it would impede the ability of the Correctional Service of Canada, which is responsible for the care and custody of inmates pursuant to section 5 of the Act, to be part of decisions to transfer inmates to healing lodges;

respectfully disagrees with amendment 9 because extending the concept of community release designed specifically for Indigenous corrections to other unspecified groups is a major policy change that should only be contemplated following considerable study and consultation;

respectfully disagrees with amendment 10 because allowing offenders’ sentences to be shortened due to the conduct of correctional staff, particularly given the existence of other remedies, is a major policy change that should only be contemplated following considerable study and consultation, including with provincial partners, victims’ representatives, stakeholder groups and other actors in the criminal justice system;

respectfully disagrees with amendment 11 because five years is an appropriate amount of time to allow for robust and meaningful assessment of the new provisions following full implementation.

Hon. Peter Harder (Government Representative in the Senate) moved:

That, in relation to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, the Senate:

(*a*) agree to the amendments made by the House of Commons to its amendments; and

(*b*) do not insist on its amendments to which the House of Commons disagrees; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise to speak to the message we have received from the other place regarding Bill C-83.

This bill proposes a number of changes to the Corrections and Conditional Release Act, including the creation of a new system of structured intervention units, or SIUs, to deal with inmates who pose safety risks in the general population of an institution. This legislation was introduced by the government in October 2018.

It was studied and amended in the other place, with the most notable amendment, in the context of SIUs, being the addition of a system of binding external oversight by independent adjudicators.

We received the bill in March. The Social Affairs Committee studied it and proposed additional amendments, which were received by the other place last week. Now we have a message from our colleagues in that chamber indicating that they agree to several of the Senate's amendments, either verbatim or with slight technical changes, they disagree partially with two amendments and they disagree with five others.

The proposals retained in whole or part by the other place will have significant positive effects. These include mandatory mental health assessments within 30 days of intake for all inmates and within 24 hours of placement in a SIU.

The requirement to include family and adoption histories when considering systemic and background factors involving Indigenous inmates; also that these factors may result in a lower — but not a higher — risk level designation.

The requirement to use an airport-style body scanner wherever possible to minimize reliance on strip searches and a new emphasis on alternatives to incarceration in the Correctional Service Canada's guiding principles.

These additions are significant improvements and reflect the considerable and valuable contribution of many senators in this chamber. Further, these amendments will help Bill C-83 achieve the government's objective of safe and effective rehabilitation.

Turning now to the amendments that were considered but ultimately declined in the other place, there are two relatively similar amendments that recommend applying existing approaches used for Indigenous corrections and expanding them to other groups. This would apply to section 81 of the act, which allows for community-run healing lodges, and section 84, which allows for community supported release. Both of these amendments have proven valuable and successful in an Indigenous context. The idea of expanding them to other groups that are overrepresented in federal custody is worthy of serious consideration.

While the government agrees with the principle of these amendments, such approaches would require extensive consultations to determine, among other things, which groups would be interested, where capacity exists and how the experience of the relatively few Indigenous communities and organizations that run section 81 facilities can be shared more broadly. The answers gleaned from consultation must be found before such approaches are entered into law, not after.

The government also respectfully disagrees with an amendment that would require Correctional Services to provide the transfer to a provincial hospital of an inmate with a "disabling mental health issue." As a positive development, the government has increased funding for external mental health beds in the 2018 budget. And the use of provincial hospitals may be appropriate in some circumstances.

However, it can be difficult to find provincial hospitals willing and able to house and treat federal inmates. A change that would see a significant number of people from federal correctional institutions transferred to provincial hospitals requires first further provincial consultation.

To be clear, the law already allows for these kinds of transfers where possible and appropriate, and where recommended by medical professionals, but the law cannot pre-empt the professional judgment of the health care providers who work in corrections. It is important to preserve their clinical independence.

• (1840)

The government is also respectfully declining an amendment that would allow sentences to be shortened, on application to a court, should correctional personnel commit acts or omissions deemed to constitute unfairness in the administration of a sentence. Of course, there are a great many people working in federal corrections who are committed professionals doing excellent work. If and when this is not the case, inmates have recourse in the form of grievances or lawsuits which could result in discipline or dismissal of the wrongdoer. The idea of retroactively short-circuiting court-imposed sentences in these circumstances would be a major policy change, one that would require extensive consultations with a number of stakeholders, including victims' groups, as well as provincial partners and other actors in the justice system. As well, parliamentarians in both chambers should have the opportunity to study it at greater length.

The government also respectfully disagrees with the recommendation to have the new system reviewed by a parliamentary committee after two years rather than five. A five-year time frame gives the new system time to get off the ground and be fully implemented. It will ensure that Parliament's review is more meaningful when it does happen.

In the interim, however, the minister will soon be appointing an advisory panel to monitor implementation of the SIUs as they roll out. That panel will be able to visit sites, meet with inmates and staff, provide feedback to the commissioner, and sound the alarm to the minister or to the public if something is really not working as it should. Of course, parliamentary committees don't need legislation to tell them what to study. If a committee of either house wants to review the SIU system in two years, they are perfectly free to do so.

Lastly, government respectfully disagrees with the proposal to institute judicial oversight of all SIU placements after 48 hours. I am aware that there has been a great deal of focus on the other place's disagreement with this proposal in particular. The argument has been made that, without this amendment, the bill is inconsistent with the Charter of Rights and Freedoms.

I will therefore focus my remarks on why I am confident that, even without judicial oversight, Bill C-83 is consistent with the Charter.

Let me start with the issue of judicial oversight. The Minister of Public Safety recently sent a letter to all honourable senators setting out his concerns with the proposal to get a judge involved at the 48-hour mark of every SIU placement. I share his concerns about the impact of such a requirement for provincial Superior Courts.

In 2017, our Legal and Constitutional Affairs Committee published a report entitled *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*. That report highlighted numerous reasons for delays in our justice system and proposed a variety of approaches that, taken together, could help address the issue. Many honourable senators will be familiar with this report so I won't go into its details. My point is simply that, at every level, our justice system has a full workload. Any measure that risks adding to the workload of provincial Superior Courts should be taken with caution and with a clear sense of what the implications will be, particularly on the provinces. At the very least, further reflection demands that we should know what these implications are when proposing legislation.

To get a general sense of the caseload we're talking about, we can consider the fact that, on any given day right now, there are between 300 and 400 federal inmates in administrative segregation. The median length of stay is 11 days. If the numbers are remotely comparable under the new SIU system, we would be looking at thousands of 48-hour reviews every year. It is not clear what form these reviews would take, whether they would involve a paper review or an actual hearing, what kinds of submissions the parties would make or how long the process would last. If it's intended to be a serious process, it would have to be more than just a quick rubber stamp.

To avoid compounding the problem of court delays, new judges would have to be appointed. The government estimates that 35 to 40 independent adjudicators would be required to review SIU placements at 48 hours. One cannot know whether the number of Superior Court judges would be similar, but that's exactly the problem. We should know and must know before moving ahead with something of this magnitude. Increasing the number of Superior Court judges means amending the Judges Act and that means having the provinces amend their corresponding legislation. Naming more judges means more spending both federally and in the form of judges' salaries and benefits and provincially in the form of facilities, administration and support staff.

We don't know whether any or all of the provinces would be willing to amend their legislation and devote additional resources for this. Parliament cannot impose a measure that affects the resources of provincial Superior Courts to this extent without prior consultation with the provinces. We must be sure that provinces are prepared to make the necessary legislative changes and allocate necessary funds. Clearly, the time for those negotiations is before, not after, imposing a requirement for judicial oversight in Bill C-83.

Should this chamber insist on this amendment, despite the implications and lack of prior consultations with the provinces, court delays would multiply. By the time the federal and provincial governments are completing their budgetary and legislative processes and the new judges were in place — assuming every jurisdiction gets on board — we may already have dug our judicial system quite a hole.

Another issue to consider is that judges are appointed permanently to a specific court and can only hear cases in their jurisdiction. Any unexpected changes or long-term evolution in the locations where SIUs arise or any future changes to the law could lead to insufficient judicial capacity in one province and excessive capacity in another.

The system of independent external decision makers, however, offers flexibility to adjust their number and location as required. In other words, there are considerable practical problems with the proposal to implement judicial oversight at this stage of the legislative process without thorough consultations.

Another key point is that, while courts have not examined the new system proposed by Bill C-83, several courts have issued decisions about the existing system of administrative segregation. Not one has said that judicial oversight is necessary or required. In fact, the Ontario Superior Court said precisely the opposite. According to the court:

> The reviewing tribunal can have adequate independence without having all the attributes of a judge.

The court went on to say that internal review is preferable as it is more expedient.

Moving to the United Nations now: When addressing solitary confinement, which involves conditions far more restrictive than those contemplated in Bill C-83, the United Nations standard minimum rules for the treatment of prisoners, known as the Mandela Rules, require "independent review and not judicial oversight." Let me repeat that: Mandela Rules require independent review, not judicial oversight.

In addition, when the Correctional Investigator specifically addressed Bill C-83, he recommended the independent chairperson model, which is a system of independent adjudicators appointed by the minister. The bill provides for this independent adjudication by way of independent external decision makers, so-called IEDMs.

I'd like to stress at this time the independence of these external decision makers. Work is currently under way and the government is seeking to appoint experienced members, lawyers, mediators, civil servants, many of whom will likely have experience working on other boards, tribunals or commissions. The law requires that they not have worked at Correctional Services in the five years preceding their appointment and that they have knowledge of administrative decision-making processes. Throughout the review process, their work will be entirely independent from public servants and political actors.

The IEDM process is in addition to the review by the warden at five and 30 days and by the commissioner at 60 days and every 60 days thereafter, alternating with the reviews of the IEDM.

It is clear, honourable senators, that judicial oversight is not the only way to protect the rights of inmates. It is plainly not the only path to Charter compliance.

I appreciate that some honourable senators would feel more comfortable with Bill C-83 if a judge were systematically part of the process. This sentiment is linked to the desire to ensure the constitutionality of the bill. I'll turn now to the question of constitutionality.

The very nature of the laws that govern our correctional system is that they place restrictions on a person's freedom. It is, therefore, inevitable that they engage certain Charter rights and that they be subject to legal challenges. Neither I nor anyone else in this chamber can substitute our conclusions for that of the justices who may be called upon to evaluate Bill C-83's provision at some point in the future, should this bill pass, but there are good reasons to agree with the government's position that Bill C-83 is constitutional. I'd like to get to that.

I acknowledge that some in this chamber may end up having a different perspective on the constitutional analysis. The government and I may not persuade all of you and I respect that. Before I get into the legal analysis, I'd like to make a few points about what I see as the Senate's role in considering the judicial oversight amendment that the house has decided to reject.

• (1850)

If there's one thing we know, it's that constitutional law is arguable, particularly in the abstract. In some instances, Senate amendments brought on constitutional grounds can limit court challenges to federal legislation. At the very least, such concerns may prompt the government and the other place to think twice as was done, for example, in 2016 for Bill C-14, and now for Bill C-83, where many changes were, in fact, accepted. However, Charter compliance issues are rarely black and white. In my view, at this stage, it is neither fair nor balanced to assert with little nuance that Bill C-83 is not constitutional without the judicial oversight amendment, as though the matter was settled law. In fact, frankly, it is nowhere near settled law.

Where there is a lingering ambiguity, once the Senate has made its concerns clear to Canadians, the government and the other place, the appropriate forum to resolve the issues with finality is the judicial branch. This is uniquely an environment where each litigant has a guaranteed procedural right to make a full case with the benefit of an exhaustive evidentiary record before an impartial decision maker. The courts are best equipped and constitutionally empowered to assess, with the benefit of complete arguments from both sides, whether there is a limitation to a protected right or freedom and, if so, whether the breach is justified in a free and democratic society.

With respect to Bill C-83, the government is confident its constitutionality will be upheld. The government's rationale involves the following considerations.

Let us first look at the litigation surrounding administrative segregation, the current approach for dealing with inmates who cannot safely be housed in the general population.

In the last few years, the Ontario Superior Court, the Ontario Court of Appeal and the Supreme Court of British Columbia have all rendered decisions about the constitutionality of administrative segregation. The Ontario Superior Court has made findings on a related class action. These are important rulings and they can definitely inform our deliberations. However, if we try to apply them directly to Bill C-83, we run into several significant obstacles.

For one thing, there are many inconsistencies between the various court decisions. In the class action, for example, the court found breaches of the Charter section 7 protections of life, liberty and security of the person, and section 12, which prohibits cruel and unusual treatment. However, in the case brought by the Canadian Civil Liberties Association in Ontario, the Superior Court found that the law does not violate section 12, and it found that a change to the oversight mechanism would be sufficient to bring it in line with section 7.

The Ontario Court of Appeal did find a section 12 violation but upheld the rest of the initial ruling. That contrasts with the findings of the court in B.C., which did not find a violation of section 12 but did find broader infringement of section 7, as well as infringement of section 15, which protects equality rights.

As for the direction provided by the courts, the Ontario court favoured internal review of placements in administrative segregation, which it said can meet the constitutional standard for fairness as long as the review is conducted by a correctional officer who does not report to the initial decision maker. In B.C., on the other hand, the court found that the reviewer must be external to correctional services.

The B.C. court ruled that segregated inmates have a right to counsel at review hearings and that administrative segregation is prohibited for inmates with mental illness and/or disability, although the court did not define those terms.

On these points, the courts in Ontario have not made equivalent findings. In fact, the class action specifically involves inmates with serious mental illness, yet the court did not agree that their placement in administrative segregation resulted in an immediate Charter breach.

There are also inconsistencies in regard to the length of time that inmates in general may spend in administrative segregation. The Ontario Superior Court had no cap. The B.C. court had a cap without specifying a limit. The Ontario court capped at 15 days, while the judge in the class action case found that Charter breaches occurred after 60 days for inmates voluntarily in administrative segregation and after 30 days for involuntary placements.

Understandably, one of the reasons the government has appealed the various rulings is the need to reconcile all of these discrepancies. If anything, going back to my comments about the Senate role at this stage in the process, the collection of cases pertaining to the now invalidated administrative segregation provisions shows that this is a highly complex field of law that is evolving and is far from being settled or black and white.

Bill C-83 proposes to replace that system with SIUs, segregated intervention units. In due course, the courts may ultimately review the new regime on its own merits, which brings me to the next difficulty with applying these court findings to Bill C-83. The litigation is ongoing. We are currently awaiting a decision from the B.C. Court of Appeal about the findings in that province, and when that comes, it is quite possible that at least one of the parties will appeal to the Supreme Court of Canada.

In the case involving the Canadian Civil Liberties Association, leave to appeal to the Supreme Court is already being sought and the class action is also under appeal. In other words, there is no judicial finality about any of this — a point that was raised in the letter from the Honourable Ministers Goodale and Lametti earlier this week.

If the task were simply to modify the existing system of administrative segregation to comply with the court findings, we wouldn't know which of the findings to comply with or which findings might end up being overturned or altered on appeal.

Crucially, though, Bill C-83 does not propose simply to modify the existing system. The court's analysis and findings have all related to administrative segregation. Bill C-83 introduces a new system of segregated intervention units that differs in a substantial way from the practice of administrative segregation. We cannot presume that limitations placed by the courts on the use of the first system apply equally to the second.

I know there have been questions about whether the differences between administrative segregation and SIUs are truly significant, so let's examine those differences.

Under the new SIU system proposed in Bill C-83, inmates will be offered twice the number of hours out of the cell, meaning a minimum of four rather than two. They will have far greater access to dedicated programs and interventions. They will be offered at least two hours of meaningful human contact every day. With the current system of administrative segregation, inmates have minimal access to programs and other rehabilitative interventions and meaningful interactions with other people can be rare.

"Meaningful human contact" is a term drawn directly from the United Nations Mandela Rules regarding the treatment of prisoners. In SIUs, meaningful human contact will include interactions with staff, volunteers, elders, chaplains, visitors and other compatible inmates. The distinctions between the two systems are more than significant. They are, in fact, fundamental.

Further, the bill includes a review of SIU placement at five working days by a correctional officer with the authority to overturn the initial decision, as well as an external review if inmates don't get their minimum hours out of the cell and meaningful contact after five consecutive days. The current system only provides for review under the authority of the warden, and the latter is not bound by the reviewer's decision.

For all of the reasons I've outlined — the inconsistent court findings, the ongoing appeals and the fundamental differences between administrative segregation and SIUs — the court decisions do not allow us to reach any definitive conclusions about the constitutionality of Bill C-83. We must, therefore, examine the bill on its own constitutional merits.

As outlined in the Charter Statement prepared by the Minister of Justice, the provisions of Bill C-83 that deal with SIUs potentially engage sections 7, 12 and 15 of the Charter.

Section 7 provides the right to life, liberty and security of the person may only be limited "in accordance with the principles of fundamental justice." Because the transfer of an inmate to an SIU would impose additional constraints and conditions on the inmate, it would engage their residual right to liberty and potentially their right to security of the person.

The question, therefore, is whether the limits on these rights permitted by Bill C-83 are in line with the principles of fundamental justice.

As the courts have found, one of the principles of fundamental justice is procedural fairness, and Bill C-83 contains numerous elements to provide for procedural fair decision making. To begin with, the grounds for initial placement and continued confinement in an SIU are clearly articulated. Within one working day, an inmate must receive oral reasons for their transfer and written reasons within two working days.

As indicated in the letter sent by Minister Goodale, internal reviews of the SIU placements move continually up the chain of command from the initial decision made by a staff member to the reviews by the warden on the fifth and thirtieth days and subsequent reviews by the commissioner. This supports procedural fairness by ensuring that reviewers are outside the circle of influence of the person whose decisions they're reviewing.

Crucially, for the first time ever in Canadian federal corrections, Bill C-83 creates a system of binding, independent external oversight with the creation of the independent external decision-makers.

• (1900)

The independent external decision-makers will intervene when an inmate has not had four hours out of their cell or received two hours of meaningful human contact for five days in a row or 15 out of 30. The external decision-makers will also review placements when a health-care professional's recommendation is not being followed, and at the 90-day mark and every 60 days thereafter for any inmate who still remains in an SIU.

The bill requires Correctional Service Canada to provide external decision-makers with any information they request. Within reasonable time limitations, external decision-makers must provide all the information they were considering to the inmate. Inmates are entitled to make written representations, and decision-makers are entitled to communicate with them. All decisions by the independent external decision-makers can be reviewed by the federal court. Even without the involvement of a provincial Superior court, these measures combine to create a review system with substantial protections for procedural fairness.

Another important principle of fundamental justice under section 7 of the Charter is that limits on liberty and security of the person may not be arbitrary, overbroad or grossly disproportionate. According to the Supreme Court of Canada, arbitrariness asks whether there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law's purpose. Overbreadth is a matter of whether the law is so broad in scope that it includes some conduct that bears no relation to its purpose. Gross disproportionality refers to situations where the deprivation of rights is totally out of sync with the objective of the measure.

With Bill C-83, there is a direct link between any limits on liberty and security of the person, and the purpose of the segregated unit. There are several provisions designated to ensure that an inmate's confinement in an SIU remains closely and rationally connected to the law's objectives at all times.

The bill clearly establishes that the reasons for transferring someone to an SIU are to protect the security of the penitentiary and the safety of the people in it, as well as to prevent interference in ongoing criminal investigations or serious disciplinary investigations. Inmates may not only be transferred to an SIU if there is no reasonable alternative, they must be transferred out as soon as possible. These limitations are backed up by the review process I've outlined, which exists in part to ensure that any continued confinements remain directly connected to the bill's security objectives.

Closely related to section 7 rights is section 12 of the Charter, which prohibits cruel and unusual treatment. Canadian courts have found that incarceration is not per se cruel and unusual, including when inmates are transferred to conditions that are more restrictive than those of the general population in the prison. As explained by the Supreme Court of Canada, such treatment may be cruel and unusual in circumstances where its effects are so excessive as to outrage standards of decency. Therefore, the material conditions of detention are crucially important.

On this point, it is worth noting that the various courts have examined the existing system of administrative segregation and have disagreed about where it violates section 12. Compared with administrative segregation, the conditions of detention and SIUs will be significantly improved. As well as being entitled to twice as much time out of their cells and meaningful human contact for at least two hours every day, inmates in SIUs will benefit from significant investments that the government is making in mental health care and rehabilitative services.

Over the next six years, the government has allocated $448 million to accompany the implementation of this bill. That includes approximately $300 million to hire hundreds of new employees, including parole officers, program officers, Aboriginal liaison officers, behavioural counsellors and others, specifically to provide programs and interventions to inmates in SIUs. Also, $150 million over six years will be spent hiring new mental health professionals to work in SIUs and throughout federal corrections.

This funding reinforces provisions of Bill C-83 that protect the independence of health-care providers within the corrections system and empower them to intervene when they believe an inmate should be transferred out of an SIU or have their conditions changed for medical reasons. Once again, there will be regular internal reviews and binding independent external oversight to help prevent any individual inmate from falling through the cracks. All of these services and resources, and the entitlement to meaningful human contact every day, support the government's position that Bill C-83 is consistent with both sections 7 and 12.

Finally, as noted in the Charter statement, Bill C-83 potentially engages equality rights protections under section 15. This section of the Charter prohibits discrimination, including on the basis of race, national or ethnic origin, colour, religion, sex, age, mental or physical disability. There is no question that certain groups are overrepresented in federal penitentiaries. That includes Indigenous peoples, people of African descent and people with mental illness. It is important that the laws governing our corrections system includes safeguards to avoid adverse effects on particular groups, and, indeed, Bill C-83 does.

Under Bill C-83, each inmate's circumstances and experience of placement in an SIU will be individually and repeatedly assessed. The bill requires Correctional Service Canada to consider systemic and background factors when making decisions affecting Indigenous inmates.

The mental health investments and the enhanced role of medical professionals will help ensure adequate care for inmates with mental illness. SIUs will be subject to subsection 87(a) of the existing act requiring consideration of an inmate's state of health and health-care needs. Bill C-83 expands subsection 4(g) of the current act, which requires that CSC respect and be responsive to the needs of the full diversity of its population.

For these reasons, Bill C-83 complies with section 15 protections of equal rights, as well.

In short, the measures introduced in Bill C-83, which include robust review mechanisms, are designed to ensure that SIUs will be used as intended: as a last resort, for as little time as possible, in the interests of safety and rehabilitation.

Senators, I thank you for your attention to this point. I've gone on at some length because these are important matters and this is an important bill. While I appreciate the intent of the proposal to add judicial oversight, appropriate procedural safeguards for the new SIU systems can be put in place without placing additional burdens on the courts and provinces.

I hope I have made clear why I believe Bill C-83 is consistent with the Charter and why judicial oversight of the SIU placements is unnecessary and, for practical purposes, undesirable.

Before I conclude, there is one final and more basic point that should be emphasized. Quite simply, this bill will make our corrections system better than it is right now. I say this as a former deputy solicitor general of some 30 years ago, when I see how the system has evolved to this point.

The new system is designed to provide continued access to interventions and programs even when inmates are separated from the general population. A new system and new resources will mean better mental health care for federal inmates, including those separated from the general population, as a better early diagnosis and treatment that could potentially prevent and reduce the need for separation.

The new system will be overseen by independent external reviewers with decision-making authority as opposed to the current system's review mechanisms, which are entirely internal. The new system entitles inmates to twice as much time out of their cells and meaningful human contact for at least two hours every day, unlike the current system where there's no legal requirement to offer any meaningful contact at all.

Those are on top of all the other elements of Bill C-83, which I've not focused on in this debate. Those include the introduction of patient advocates, protection of professional independence of health-care workers, mandatory consideration of systemic and background factors for Indigenous inmates, use of body-scanner technology to reduce the need for strip searches, reintroduction of the principle of least restrictive measures as consistent with safety and greater access to recordings of parole hearings for victims of crime.

Let me be clear: This will not solve all of the problems of Correctional Service Canada, some of which involve addressing fundamental issues of organizational culture. It may not go as far as some honourable senators would like or do exactly what some honourable senators would like it to do, but it will make the federal corrections system better. It represents a significant reform to current practices. The rights of inmates will be enhanced with the passing of this bill.

This bill has benefited from deliberations in this Senate. This house has made its concerns clear to Canadians, the government and the other place. Ministers Goodale and Lametti have heard the issues raised by the Senate and have engaged in a discussion that doesn't have to end with this bill. The debate over this bill clearly demonstrates an interest among us for improving Canada's corrections system. That's a very good thing.

• (1910)

If we want to, we can come back in the fall and develop new and innovative measures to further strengthen Canadian corrections, but today I believe the Senate should defer to the elected chamber and the government its ultimate accountability for the policy choice it has made.

To insist on further amendments in the final days of this Parliament could put the benefits of the bill in peril, with the direct impact on the inmates whose well-being is addressed. If we don't adopt this bill, there could be a serious legislative vacuum as early as this summer when the current law is set to expire. A responsible government cannot allow this to happen.

The reality that inmates sometimes need to be separated for safety reasons has been acknowledged by the Correctional Investigator, by the John Howard Society, by the courts and by former inmates themselves. In the words of the British Columbia Court of Appeal:

> Administrative segregation or a more appropriate alternative regime must be in place to protect inmates who would be exposed to risk in the general population and to provide safety for persons who work in penitentiaries.

Bill C-83 is that more appropriate model. Even if it is not what all honourable senators would consider ideal, I would suggest that we accept this message and make Bill C-83 law.

Some Hon. Senators: Hear, hear!

Hon. Jane Cordy: May I ask you a question?

Senator Harder: Of course.

Senator Cordy: I'm somewhat familiar with the bill, but I was busy dealing with Bill C-69 so I didn't have time to get into the details. I'd like to talk about the independent panel. I have a few questions on that.

I was interested to hear you say that the Mandela Rules call for independent oversight and not judicial oversight.

I'd like clarification about the independent review panel. My concern is how independent will they be? Will they be part of the department? And to whom will the panel report? I was pleased when you said that they won't have been able to have worked for Correctional Service Canada for five years prior if they're appointed.

I'm also wondering, will independent panel members have access to the prison and will they have access to prisoners in privacy?

Senator Harder: I thank the honourable senator for the questions. Obviously not all of the prescriptions of work have been developed, but it is the intention of the government that those appointed will be appointed through an independent process, some of the criteria of which I've spoken.

The prohibition of a five-year absence from corrections is designed to ensure that there is not a more recent experience with or employment in Correctional Service Canada. The Correctional Investigator recommended the independent arm's-length investigative or oversight approach. That is the one the government has adopted. It's not dissimilar to administrative oversight in other areas of public administration and is designed to ensure that there is both intimacy in their work environment in prisons and meeting with prisoners, but they are not incorporated in the organizational structure of Correctional Service Canada.

Hon. Serge Joyal: Would you accept another question, honourable senator?

Senator Harder: Of course.

Senator Joyal: In listening to you carefully, two things struck me.

The first one is that the system, when it evolves to be more humane, it evolves because outsiders, outside organizations challenge it. The system by itself doesn't have the dynamics to police itself, to meet the standards of the Mandela Rules and others. The Mandela Rules are a minimum. If you meet the Mandela Rules, you're not in the dream world. They are the bare minimum to maintain human dignity. That's what the Mandela Rules are.

So the system itself is not able to move forward. You mentioned that yourself, and I appeal to your former experience.

We have this bill because there have been all those challenges and all those court decisions: the Supreme Court, the appeal courts, Ontario, B.C., and maybe another one next week. It seems to me that if the government wants to address, in good faith, the need to improve the system, why doesn't it ask the Supreme Court if this bill meets the threshold of all those decisions that seem to be nuanced from one another? Then we would know that we would not involve ourselves again in another round of changes. Meanwhile, the people in the prisons are bearing the cost of being the object of challenges in court. That seems to me to be the reasonable approach.

The government has had an opportunity since it has to defend itself in all those court hearings, so it seems to me that it's the more reasonable approach. There aren't many precedents whereby the government, which can send a reference to the Supreme Court, has asked the court's opinion on a bill to make sure that in considering the impact of a bill on the physical and psychological integrity of people, we have the right answer.

Now we patch up one side and then the other. Why should we not get a reference to the court?

Senator Harder: I thank the honourable senator for his question.

I'd like to address the cultural change issue before I get to the legal issue. The senator is absolutely right that cultural change is difficult in any institution, but particularly in structured institutions of a command-and-control nature, like military corrections and other services. Cultural change comes with legislative change. We've changed immigration law significantly, which I know something about, by establishing independent tribunals and the like over the years. That helped change and sophisticate the culture. So, law is part of cultural change.

Independent oversight is part of change, and this law provides independent external oversight of a process that never had external independent oversight. There too there is a parallel on the immigration side.

I mention this because simply a reference to the Supreme Court does not in itself engender the cultural change that you are suggesting, quite appropriately, needs to take place in Correctional Service Canada, and the leadership of the minister and senior team is designed to do exactly that. That's on the cultural side.

With respect to the decision by the government not to have a reference to the Supreme Court, the government's view is that there are a number of court cases involving not the SIU model but the pre-existing model that have the inconsistencies I've described, that are well advanced in the appeal process, and there is an expectation that there will be guidance in the next while.

The model being introduced in this bill has not been tested before any court. I expect that it will be. But it is the government's view that reference to the Supreme Court is not the appropriate way to seek guidance on this bill at this time.

Hon. Kim Pate: Senator, would you accept another question?

Senator Harder: Of course.

Senator Pate: As the former deputy minister responsible for corrections, you'll be well aware that the Corrections and Conditional Release Act when it was introduced was heralded as a new piece of human rights legislation that would embed more than the things you've outlined that were supposed to be in place for segregation as it currently exists.

You'll recognize that there were advisory bodies set up for women prisoners, for Indigenous prisoners, and that many of those were either disbanded by corrections or they dissolved because they basically were not listened to.

The current model and the proposed model in Bill C-83 require corrections to monitor itself and to advise up the chain to get to this advisory body. The minister, before the Social Affairs Committee, acknowledged that there was a concern and a possibility that the conditions in the structured intervention units could become the same as segregation units.

• (1920)

Do you not agree that where conditions amounting to segregation or in any way at risk of amounting to segregation, where they exist, the constitutional requirements are that we meet the requirements of due process, of entitlement to access to a fair tribunal, not an advisory body, and that the courts are in fact the best place to provide that kind of oversight?

Senator Harder: Thank you for your question.

In the political culture of Canada over the last 30 years, there have been ups and downs of an engagement for reform mindedness in the prison system. I pay tribute to Ole Ingstrup, first at the Parole Board and then at Corrections Canada, where he led major reforms that were viewed at the time as world-leading.

We can debate at another time how that culture has shifted. With respect to your specific question, it is the model that is inherent in this bill that there be independence of oversight, the IEDM, and that as it goes up the chain, it's not dependent on the initiating, supervising or initial decision maker.

There is a sense of balance and independence in the process. You are absolutely right, this is going to require a cultural shift and a determination by the leadership of the organization to meet the standards that the bill is now requiring of them. The oversight that I would invite the Senate to undertake is to ensure that the standards that the minister has committed to — that the law will, if it's adopted, require — are transparently and rigorously brought forward and that this bill actually becomes a lever point for the cultural change that I think you and every senator would wish to see in our corrections system.

Senator Pate: Would you accept another question, Senator Harder?

Senator Harder: Of course.

Senator Pate: Would you agree that if the Supreme Court of Canada determines that in fact segregation or structured intervention units must be reviewed by way of judicial oversight that there will not be any of the procedures that you pointed out, it will be a requirement that will need to be imposed?

Senator Harder: The Government of Canada has always accepted the direction of the Supreme Court. My point tonight is that the Supreme Court or any court for that matter has been asked to judge on the provisions of the bill we have before us. There have been judgments made, and I reference them with respect to the existing system. The government has benefited from those judgments in developing the system that we have before us tonight and will be further adjusted as courts provide that guidance.

That is the way that modern governments interact with judicial decision-making.

Hon. Marty Klyne: Honourable senators, I begin by acknowledging that we are on the unceded Algonquin, A-nish-in-'a-beg Territory.

I am rising to address the message received from the house as the sponsor of Bill C-83, which amends the Corrections and Conditional Release Act.

I could probably start out by saying what he said, but I will endeavour to try to fill in and cover some other trails.

Bill C-83 ensures that, while in a structured intervention unit, prisoners will have full access to programs such as health care, addiction, educational and social services and other necessary programs for their rehabilitation.

In addition to the increased support services that will be provided to prisoners in SIUs, they will be offered at least four hours out of their cell every day, double what is currently provided while in segregation, with two of these hours reserved for hours of meaningful, social interaction compared to the current regime which offers none at all.

The bill is clear that an inmate may only be in the SIU if there is no better alternative. The moment that a reasonable alternative is identified or the inmate no longer poses a safety risk, Bill C-83 requires that they be moved out.

The argument has been made that the structured intervention units are just administrative segregation with a different name. Honourable senators, this argument ignores all the advances that are presented by this legislation, including positive amendments that the government has accepted from the Senate.

When compared to administrative segregation, the SIUs are advanced in their approach to the current regime. As president of the Union of Safety and Justice Employees or USJE, which represents employees who provide rehabilitation, probation and support services to prisoners, Stan Stapleton stated today in a press release:

> As a long-standing federal employee of 30 years who has worked in maximum and medium security federal prisons, USJE believes Bill C-83 is a step in the right direction towards reforming the current practice of solitary confinement. It will provide for more meaningful human interaction with individuals, while still allowing for the management of extremely violent offenders.

He followed up with:

> This includes greater medical attention, access to programs and more 'face time' with correctional professionals, which USJE believes will ensure more effective and lasting rehabilitative treatment for offenders which will directly influence public safety outcomes.

Bill C-83 also strengthened the review process, as Senator Harder related. But I find it to be worth repeating.

In addition to continued access to the ombudsman for federal offenders, the Office of the Correctional Investigator, Bill C-83 adds a review process that provides the binding decisions of an independent, external decision maker, including the right of an appeal to the Federal Court by the inmate or Correction Services by virtue of section 18 of the Federal Courts Act.

I will remind you, honourable senators, that through its perusal and study of Bill C-83, the Standing Committee made several valued amendments and the government has accepted several of these amendments; specifically, a requirement that within 24 hours of being admitted into SIU, a mental assessment will be conducted by a qualified professional, and if required, the inmate will be moved from SIU to appropriate mental health services.

As well, that the person conducting the mental health assessment is a specially trained professional focused on mental health such as a psychiatrist, psychologist, psychiatric nurse or primary care provider with psychiatric training.

Also, that a mandatory mental health assessment be made available for all inmates within 30 days of placement in a penitentiary.

Honourable senators, the Senate has provided extremely important improvements to Bill C-83. All the good that the accepted amendments could do is at risk if we do not support the message.

Regarding humaneness, the new system of SIUs puts heavy emphasis on intervention, meaningful social interaction, programming, and rehabilitation all aimed at the inmate's unique needs and ultimately safe reintegration into the general population as soon as possible.

Honourable senators, I want to address some of the concerns that I have heard recently from some of you and hopefully correct some of the misunderstandings that have appeared.

I have heard colleagues state that this bill can be killed by the Senate because the void will be filled by the Superior Courts who will do a better job. Senators, if we agree with this approach, I argue that we would be abdicating our responsibility by refusing to address what the government has put before us for a future decision by the Supreme Court.

The reality is that if Bill C-83 does not pass, the Supreme Court will ultimately have to rule on the existing law. There is no certainty at all about what they could decide or would decide.

Even if all the court rulings to this point are ultimately upheld, Bill C-83 is still a constitutionally viable response, as we've heard, introducing a new system to replace administrative segregation.

Some senators have stated that the government does not have to do anything because Corrections could have everything proposed in Bill C-83 through policy. From my point of view, we are a parliamentary body being asked to act on a response from government to legislate. If we follow the logic of this perspective, we are woefully ignoring the government's request to discharge our parliamentary duties.

• (1930)

Honourable colleagues, policy changes are not good enough because they are too easily undone. Bill C-83 establishes requirements in law providing a minimum of four hours out of cell and at least two hours for meaningful human contact every day. In addition to this, introduction of the independent external decision makers does require legislation, as any external oversight mechanism would require a legislative change.

I've also heard concerns that the independent external decision maker will be confined to a paper review. Colleagues, IEDMs are federal commissioners who are expressly allowed to communicate with the inmate without hindrance, at any point in time, through writing or in person, and the inmate can make representations directly to them.

The IEDMs are important because it is the very first time that anyone external to CSC will have binding oversight authority over inmate placements. Under the current system, there are hearings, but they are conducted by people named by the warden, and they only result in recommendations that the warden is free to ignore.

IEDMs are important because they are being created solely for the purpose of decision making around continued SIU placement and would have more capacity to meet with inmates.

A lot more work needs to be done, and I get that. I agree with Lisa Kerr, a law professor from Queen's University who has worked with the BCCLA and the John Howard Society, stating today that, "The bill would be a step forward, in my view. Not a perfect step and not the best step it could have been."

The message comes at a time when the Senate should accept it with the will and intention of revisiting the issues identified during the study of this bill, as well as other issues and concerns.

I will support colleagues to address outstanding concerns that were not accepted by the government in their message when the Senate returns in the fall. I am committed to making progress toward addressing the societal ills that lead to the overrepresentation of Canadians from minority communities and the continued work necessary for preventing people from ending up in prison in the first place.

Honourable colleagues, Bill C-83 goes a long way in improving the treatment of prisoners and in solving the issues and inherent problems within the CCRA and, finally, by squarely addressing the concerns brought forward by the court rulings.

Honourable colleagues, I support the message on Bill C-83 and ask you to do the same. Thank you.

Hon. Stan Kutcher: Honourable senators, I rise today to address the message from the other place on Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act.

My contribution to this debate is not to urge you to vote in a specific manner but, rather, to share my deliberations about this bill with you as you weigh your options. These are issues that I have struggled with in trying to determine how I would address this message.

There are three areas that I would like to share. These are: the impact of the bill on mental health outcomes for incarcerated persons; the need for cultural change in Correctional Service Canada; and the need for independent oversight of segregation orders.

First, on mental health, it is my opinion that this version of Bill C-83 may have the impact of significantly improving mental health outcomes for incarcerated persons. Mental health assessments are vital to understanding the psychological harms that can occur in federal prisons and are essential for being able to identify the mental health care needs of those incarcerated.

We know that about three quarters of federally incarcerated persons have a mental illness. This data underscores the importance for providing ongoing treatment and for ensuring that each person's rehabilitation plan is informed by their mental health care needs.

Our chamber passed amendments on Bill C-83 that made mental health assessments mandatory for all federally imprisoned persons within 30 days of entering a federal institution and within the first 24 hours of an individual being transferred to a structured intervention unit. Furthermore, these assessments will now also need to be carried out by either a psychiatrist, psychologist, psychiatric nurse or a physician who has had

psychiatric training. This is to help ensure that these statements are consistent with expected professional standards. These amendments were accepted. None of these were in the original bill.

High-quality mental health assessments can help direct needed mental health care as well as inform the rehabilitative plan for each federally incarcerated person. Given my experience in mental health care, I am of the opinion that this can be best achieved by ensuring that the person conducting the mental health assessment is a mental health professional who has the competencies needed to do the job and to do it well, and that every incarcerated person be afforded this opportunity.

Members of this chamber know only too well what can happen if a proper mental health assessment is not provided. For example, in the fall of 2007, Ashley Smith died in a segregation cell after spending more than a year of continuous segregation in a federal prison. Ms. Smith was never provided with a comprehensive mental health assessment or treatment plan. Hindsight cannot tell us what the outcome would have been had she received a proper mental health assessment. However, due to this bill, in the future, every federally incarcerated person will receive a mental health assessment when entering a federal prison and within 24 hours of being placed in a SIU. This is a step forward.

I do believe that one of our roles as senators is to protect the human rights of all individuals in Canada. Being put in a federal prison is harsh punishment. However, we must ensure that the human rights of those incarcerated be protected. We must also ensure that those who have a mental illness and are incarcerated do not suffer the indignity of having their rights to mental health care taken away because they have been incarcerated.

In 1991, the UN General Assembly adopted the Principles for the protection of persons with mental illness and the improvement of mental health care. That declaration said:

> . . . persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

Our commitment to protecting people with a mental illness should not waver because they have been incarcerated. Indeed, in that harsh circumstance, they may need more support.

Colleagues, we must continue to protect the most vulnerable members of our society by improving mental health interventions for federally incarcerated persons.

Second, cultural change: A common theme that we heard from many witnesses during our study of this bill was the need for cultural change in Correctional Service Canada. The importance of this cannot be overstated. I want to personally thank our colleague Senator Kim Pate for her indefatigable work at trying to make that happen.

I've had experience in my professional life as a physician working to create cultural change in hospitals, universities and health systems in Canada and globally. This is not easy work. It takes immense effort, and, unfortunately, it takes a long time. It is very difficult to make the necessary changes and to make them in a meaningful and sustainable way, yet it is work that must be done. In some situations, legislation can be part of that work.

It is my opinion that this bill can be an impetus to cultural change, but it cannot be a stand-alone, nor can it be the vanguard of that change. It can direct change, but it cannot be the change agent. It will require close monitoring to ensure that what has been determined to happen actually does happen.

In this respect, our chamber has already moved ahead. For example, the report on the human rights of incarcerated persons will make a valuable contribution. There will be other work that we as senators can and must do.

• (1940)

Lastly, the independent oversight of segregation orders. In my contemplation of how to respond to this message from the House of Commons, I have thought long and hard about the importance of independent oversight of segregation orders and the implications of judicial oversight as the best vehicle to provide this.

However, I have been unable to find evidence on what form of independent oversight is better than any other form. I acknowledge that independence is essential in the oversight for segregation. This has been recognized in recent court decisions, and Rule 45 of the *Nelson Mandela Rules* states:

> Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review. . . .

The question I am struggling with is: Should the independent review that is currently embedded in Bill C-83 be overturned in favour of judicial oversight? What is the evidence that we can turn to to help us with that decision?

On this topic, we have heard many different opinions. We have heard from learned parliamentarians in both the other place and in this chamber. I have spoken to numerous colleagues about this, and I thank each and every one of you for your advice. I have also spoken to legal experts outside of Parliament. The court decisions that I referred to above suggested independent oversight but did not specifically identify judicial oversight as the preferred vehicle. And I must say that, after all of this, I still do not have a clear answer. Thus, I am tempted to declare a state of equipoise regarding these two positions.

I certainly share the opinion that has been put forward by all of those who have engaged with me on this issue, that this bill is not going to solve all the challenges of segregation. That is a more complex issue that will require ongoing work. I also do not think that this bill is as strong as the version that our chamber sent to the other place, and I am disappointed that all the amendments that we made were not accepted. However, particularly with regard to the mental health components, I think it is a better bill now than when it first arrived here in spite of the many reservations that I and others have about it.

Honourable senators, I personally have not had sober second thought on this bill. I have had sober 20-second thought. It has been vexatious, to say the least.

I appreciate the passion, dedication and detailed considerations of these important and complex topics that I have heard from all of you. I thank you tonight for listening to my thoughts, and I hope that as you decide on how you will vote on this message, that you will consider my deliberations as well. Thank you.

The Hon. the Speaker: Question, Senator Pate?

Senator Pate: Would the honourable senator take a question?

Senator Kutcher: Certainly.

Senator Pate: Thank you very much. And thank you for your eloquent description of the incredible work you put into the amendments as well. They're certainly wonderful.

You mentioned the *Study on the Human Rights of Federally-Sentenced Persons*. I don't know if you're aware, but because that motion has not come to the floor, in fact there won't be a report. Were you aware of that?

Senator Kutcher: When I wrote the speech, I was not aware of it. Senator Bernard did tell me something when I arrived in the chamber that there had been a motion that had not been accepted. So the answer is "sort of."

[*Translation*]

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise to speak to Bill C-83.

I'm sorry to disagree with my colleagues, but the prison system does not just involve criminals. It also involves victims, correctional officers and the general public. I am speaking on their behalf.

As I said at committee report stage, this bill has serious and as yet incalculable consequences not only for the safety of Correctional Service of Canada employees, but also for the safety of the Canadian public and, of course, the victims.

In his speech, Senator Harder talked about mental health. It is too bad that he spent only two minutes on that, since 30 per cent of men and 40 per cent of women in the prison system suffer from mental health problems. However, that is still a far cry from 75 per cent.

The main problem with regard to mental health is that it is the poor cousin in the provincial public health system. It is unrealistic to think that one day the provinces will find a way to resolve the problem of mental health issues in Canada's prison system.

I will keep this brief. I am extremely troubled by the elimination of what is known as the "least restrictive" measures. The onus was on the government to prove that this change was needed. Furthermore, I fully agree with Senator Joyal's suggestion of using adjudication instead. We know that the officers of the Correctional Service of Canada are currently locked in a dispute with the government, but this problem should have been resolved with a reference to the Supreme Court, not through legislation.

Representatives of correctional officers are deeply concerned about these changes. It is important to maintain the system's capacity to make decisions consistent with the protection of society. The Parole Board of Canada needs to be able to make decisions that are necessary and proportionate to the purpose of conditional release. Its decisions must be based on an assessment of the offender's risk and the gravity of the offence committed.

An approach based on proportionality would have been much more reasonable than this approach based on the least restrictive measures. A proportionality-based approach would have provided greater protection for victims and the public and ensured that the highest-risk criminals went to prison.

In passing Bill C-10 in 2011, the intent of the legislators was precisely to incorporate the concept of proportionality, which has always been central to our legal system.

The government will invest hundreds of millions of dollars to bring this legislation into effect, although the Auditor General, who just completed a fairly comprehensive study on recidivism, has told us that the recidivism rate calculated by the Canadian government is completely inaccurate.

The millions of dollars that will be spent on implementing this bill could have been used instead to conduct a complete assessment of the programs designed to help incarcerated persons. I would remind the chamber that, at this time, inmates end up being reincarcerated four times, on average, and the reincarceration rate hovers around 70 per cent.

Rather than passing a bill that will further liberalize our penitentiaries and endanger people with mental health issues, the people who protect us, and society in general, it would have been much wiser to conduct an in-depth study of the role of the Canadian corrections system and the effectiveness of its programs, and then adopt appropriate measures in order to lower the recidivism rate as much as possible.

The government is once again putting the cart before the horse by thinking that everything will work out fine and injecting money into the system, rather than looking at it with a critical eye.

We obtained the following statistics on correctional institutions in Canada: the recidivism rate in provincial prisons is roughly 60 per cent, while the re-incarceration rate is around 70 per cent.

I believe it's time to stop investing money in systems managed in silos like prisons and penitentiaries. We have to assess how inmates are treated, the type of programs they're offered, and the effectiveness of those programs.

In 50 years there has never been an external assessment of the rehabilitation programs in federal penitentiaries. Every assessment has been done by those who administer these institutions. The time has come for us, as a government, to invest $2.5 billion in Canada's correctional system, in addition to the $500 million envelope.

• (1950)

This bill is not acceptable. What was needed was a bill to make the government conduct a thorough review of how offenders are managed and the record of penitentiaries with respect to mental health. This would ensure that offenders don't return to jail over and over. Yves Thériault, the Quebec author of *Tout le monde dehors!*, called our prisons and penitentiaries revolving doors.

The time has come for the government to assess the performance of an organization that unjustly incarcerates individuals, sometimes for far too long, but that all too often also releases those who may be dangerous. This organization, which has not been assessed in 50 years, must absolutely be carefully studied. Thank you.

[*English*]

Senator Pate: Senator Boisvenu, would you take a question?

Thank you, Senator Boisvenu, for that overview. Are you aware that, in fact, in the early 1990s there was an external review of all of the therapeutic programs provided for federally sentenced women by Dr. Kendall, that concluded that Corrections should not be running mental health programs, but that they should be administered by provincial or territorial health resources?

[*Translation*]

Senator Boisvenu: Yes. It's important to remember that in the Canadian corrections system, 8 per cent of inmates are women, because it's mainly men who commit serious crimes. They are the ones I'm concerned about. What's more, they are much more likely to reoffend than women.

For several years, I worked with Philippe Bensimon, an eminent researcher who has a doctorate in criminology and 27 years of experience working in and studying the Canadian corrections system. He told me that he had applied for funding to carry out structured research on all of the programs available, but the Correctional Service of Canada always turned him down. In the Canadian corrections system, research tends to be done in-house. As Philippe Bensimon said, that approach allowed the government to prove that the millions of dollars it was investing were actually going somewhere. Furthermore, Mr. Bensimon claimed that the rehabilitation programs offered in our prisons were there for the benefit of the employees who ran them, not the inmates.

Basically, what I'm saying today is that no private company would stay in business under that kind of management. Seventy per cent of inmates in our corrections system reoffend after release, which means that we keep spending money dealing with the same people over and over again. We need to allocate substantial funding to rehabilitation to ensure that criminals don't keep going back to prison for a third or fourth time.

[*English*]

Hon. André Pratte: Honourable senators, the question before us today regarding Bill C-83 and the message from the other place is whether this chamber will stand up to defend a very small, very vulnerable and very unpopular minority: inmates in federal penitentiaries.

I'm not an expert on prison issues. I've only visited jails a couple of times, but I think we can easily imagine what being deprived not only of freedom, but of dignity, does to a human being. The annual report of the Office of the Correctional Investigator, in 2014-2015, described segregation:

> . . . as the most onerous and depriving experience that the state can legally administer in Canada . . .

In 1980, the Supreme Court described it as "a prison within a prison."

This is what administrative segregation is: a deprivation of dignity. In many ways, it is even a deprivation of humanity. Being deprived of all intimacy, freedom of movement and significant contact with other human beings is not human, be it for 22 or 20 hours a day.

There are exceptional circumstances, of course, in which authorities have no choice and they must isolate an inmate. But the *Mandela Rules*, which Canadian representatives helped draft, as well as superior and appellate courts, have determined that such segregation should not last more than 15 days and that segregation decisions should be independently reviewed after five days.

The problem with Bill C-83 is that it is not designed to balance the needs of jail security and the rights of the inmates. It is designed to maintain segregation as much as possible, making the fewest and smallest changes available so that segregation can remain intact while simultaneously evading legislative and judicial sanction for the time being. Honourable senators, the courts will see through this subtle exercise, and so should we.

If we pass Bill C-83, it will take years before its constitutionality is brought into question. It is true that it is not our role to substitute ourselves for the courts. However, it is our role to protect minorities and there are few minorities as vulnerable as those whom we deprive of freedom.

Of course, they have done wrong and they should serve time for that, but they're still human beings and they should still be protected by Canadian law. The Charter of Rights and Freedoms does not spare the less popular from its protection. It does not distinguish, discriminate or differentiate in all its application.

When the Senate intervenes to protect minorities, we do not usurp the role of the Supreme Court. We fulfill our duty. We exercise our judgment based on what we know, based on the expertise that brought us to be appointed, based on what we've heard as legislators — not as judges — on what we've seen and on the court decisions that we have in front of us. We cast our vote, doing our very best with the evidence we have at the time we are called to vote.

[*Translation*]

Dear colleagues, three years ago, I had just been appointed to the Senate, and senators were debating medical assistance in dying. The Senate had amended Bill C-14 to guarantee access to medical assistance in dying to those suffering from grievous and irremediable pain but where death is not reasonably foreseeable. However, the government rejected that amendment and we had to decide whether to insist on it.

Senator Joyal did an excellent job making the argument that we should insist. In his opinion, it was up to the Senate to ensure compliance with the Canadian Charter of Rights and Freedoms, to the extent possible, and to protect minorities.

Senator Joyal said, and I quote:

> We are a country of minorities. Look at us individually where we come from, and there will be more diversity in the years to come. If there is no chamber of Parliament in this Canada — not a democracy, a parliamentary democracy; there is a difference between the two. It means that the elected majority cannot do its will all the time at the expense of the minority. That's the essential feature of our chamber.

I, on the other hand, made the case that we should not insist and that, in a struggle between the other place and the Senate, the Senate would be the one to come out the loser in the eyes of the public. I continue to make that argument. I did so yesterday during the debate on Bill C-48.

However, in the discussion on medical assistance in dying, I was wrong and Senator Joyal was right. It was the Senate's duty to help a suffering minority even though public opinion wasn't on our side. Who knows, actually, maybe Canadians would have supported us.

One thing we know for sure now is that, because the Senate didn't intervene, sick and suffering Canadians have to petition the courts to exercise their right to a medically assisted death and they have to wait years for a final judgment.

Personally, I don't want to make the same mistake in this case. Inmates aren't very popular. That fact alone should prompt us to zealously protect their basic rights as defined by the Charter, rights that we as legislators interpret. We demonstrate our commitment to upholding basic rights by protecting the most vulnerable, despised and misunderstood.

• (2000)

[*English*]

Honourable senators, a few weeks ago, I visited the Laval penitentiary. They don't call it a penitentiary, however. They call it the Federal Training Centre, except the inmates are not trained for anything anymore. But the name has persisted. Yet, no doubt about it, it is a penitentiary.

For inmates who are in administrative segregation — another fine term invented by prison officials — the wait is, of course, unbearable. There is just no way that a stable person can stay in these small cells for days and weeks without their mental health being affected. For mentally ill inmates the effects can be absolutely irreversible.

As Justice Benotto of the Ontario Court of Appeal put it:

> The effect of prolonged administrative segregation is thus grossly disproportionate treatment because it exposes inmates to a risk of serious and potentially permanent psychological harm.

For his part, Justice Leask of the B.C. Supreme Court stated that administrative segregation ". . . is a form of solitary confinement that places all Canadian federal inmates subject to it at significant risk of serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide."

If Bill C-83 is adopted, the situation of segregated inmates may, in the best of circumstances, minimally improve. For the most part, words will change — "structured intervention units," "independent decision maker" — terms will change, but reality, very little.

Bill C-83 does not attempt to eliminate "the hole" from Canadian jails. It tries to put a bow on it and call it something new. It may make us legislators feel slightly better about the treatment of inmates to let their plight reach the back of our minds once again.

Judicial oversight after 48 hours is much preferable to the system of independent decision makers because the independent decision makers arrive very late in the process, sometimes as late as 90 days — three months — in solitary confinement.

The independent decision makers will be appointed by the minister and their only qualification, according to what's in the bill, is to have knowledge of administrative decision making processes in general.

Finally, when the government changes, the decision makers eventually change also.

Through their cells' food slots, these inmates are calling for help. They don't know much about the Senate's role, if anything, but we know. We repeat in our speeches that one of the Senate's fundamental roles is to protect minorities. Well, senators, now is the time to act.

Honourable senators, I will vote to reject the other place's message. I will do so with the full knowledge that if the "yeas have it," Bill C-83 may die on the Order Paper, or maybe not.

Seeing as the Government of Canada is not committed enough to the fundamental rights of this vulnerable group, the Senate has no choice but to intervene. If we were content to let the courts deal with this problem, we would fail to reach our constitutionally mandated potential to protect the most vulnerable from the will of the majority.

Some senators are concerned that if Bill C-83 dies on the Order Paper, chaos will ensue in our prisons. There would be a legislative gap and security in prisons will be compromised. This is simply not the case.

The CCLA case that went before the Ontario Court of Appeal led that court to strike down the rules around administrative segregation as unconstitutional. The court proceeded to a suspension of invalidity, meaning it suspended the effects of its declaration of unconstitutionality so as to allow the government enough time to comply. This suspension has been repeatedly extended, allowing more time at each occasion. Despite being struck down, segregation is still operating right now as we speak, and it will continue to operate if Bill C-83 dies, because of this suspension.

Most recently, the Supreme Court of Canada has agreed a stay to ensure that segregation stays in place until it can make a ruling on the constitutionality of segregation. In actuality, the death of Bill C-83 will allow the Supreme Court of Canada to clearly and unequivocally set the constitutional parameters of the Corrections and Conditional Release Act. Throwing in a pseudo-solution like Bill C-83 will do nothing on that front.

[*Translation*]

When the highest court in the land is seized with this matter, it will examine the legislative intent, our intent. I believe we should reject the message from the other place to convey the will of this chamber, the Senate of Canada, protector of minorities.

[*English*]

Honourable senators, the Ontario Court of Appeal stated:

> Public perceptions of the appropriate way to treat inmates have evolved, thanks in large part to the efforts of inmates and their advocates. What was once considered acceptable — the death penalty for example — is no longer. Today, as society has become informed about the harm caused by solitary confinement, the public's views have changed also.

Honourable senators, as Nelson Mandela said, "No one truly knows a nation until one has been inside its jails."

Senators, our response to the government's message on Bill C-83 should reflect the view that what is happening in the isolation cells of Canadian jails, whatever their name, is not worthy of Canada. Thank you.

[*Translation*]

Hon. Pierre J. Dalphond: My colleague Senator Pratte and I have different perspectives on this.

Honourable senators, I rise briefly to urge all of you, especially those who are disappointed in the government's response, to nevertheless vote in favour of Senator Harder's proposal that we agree to this response. I realize that we have a duty, as members of this chamber of sober second thought, to look out for those who have been forgotten and the most vulnerable, and not just for those who have the means to hire highly paid lobbyists.

To that end, I want to commend Senator Pate on the remarkable work she has accomplished since her initial work with the Honourable Louise Arbour as part of the inquiry into the prison for women in Kingston. I will add that she is absolutely right to take an interest in matters that affect inmates, including the most vulnerable among them, those who have mental health problems and who are put in forced isolation.

[*English*]

It can be tempting to view prisoners as undeserving of fundamental rights and to dismiss these rights. However, we as a nation are judged by how we choose to treat our citizens. That is all our citizens, including our prisoners.

In the words of Nelson Mandela, who spent 27 years in prison:

> No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.

I completely agree with this sentiment.

[*Translation*]

The Senate listened to stakeholders and noted the serious shortcomings of the current prison system with respect to inmates who are in serious psychological distress or who pose a risk to themselves or to institutional security. It also considered the comments of judges who had to rule on how the correctional system currently treats inmates with mental health issues and who suffer from being in segregation.

With all these elements in mind, the Senate committee proposed various amendments to adequately meet the challenge of respecting inmates' fundamental rights, and the Senate agreed with the committee. This afternoon, the government and the House of Commons — without taking a recorded division — agreed, on division, to accept many of the amendments but also to reject certain ones. One of the elements rejected was the possibility of having a judge of a superior court determine whether the segregation measures are justified.

• (2010)

To me the lack of any review of decisions to segregate, which are often made hastily by institutional management, is a fundamental omission considering the serious and irreparable consequences of an extended separation. However, as Senator Harder explained in his speech on the message from the other place, and as others explained thereafter, Bill C-83 addresses many of the flaws in the current system and brings in internal and external measures to review administrative segregations, instead of using provincial superior courts.

That said, with all due respect, we're not here today to decide whether our amendments that were rejected would've led to better solutions to ensure that inmates' fundamental rights are respected or that inmates with mental health problems are better treated, but whether the mechanisms brought in through Bill C-83 are demonstrably unconstitutional and require us, exceptionally, to insist on our amendment, which calls for a review before a provincial superior court judge, rather than the authorities specified in Bill C-83.

The new measures in Bill C-83, which Senator Klyne outlined in his speech at third reading and again today — notably an assessment of prisoners' mental health at the beginning of their incarceration, and the addition of specialized resources in psychiatric intervention to come up with a treatment plan for people with mental health issues — allow inmates to spend at least four hours a day out of their cells, in other words, double what is currently allowed, and require correctional authorities to refer prisoners with serious mental health issues to appropriate resources. I see these measures as considerable improvements over the situation we have today.

In a tweet posted this morning, Professor Lisa Kerr, whom my colleague Senator Klyne quoted a few minutes ago, said she agrees that these measures are an improvement, although the proposed system is not perfect. She said, and I quote:

[*English*]

> Big day in Parliament for C-83. The bill would be a step forward, in my view. Not a perfect step, & not the best step it could have been. But I worry about what a new government could do, & what the SCC will ultimately do.

She's an expert in these matters.

[*Translation*]

In my opinion, rejecting the message so the bill dies on the Order Paper would mean maintaining the status quo that had been declared unacceptable by both courts of appeal, because it would be a violation of the basic rights set out in the Canadian Charter of Rights and Freedoms.

Moreover, following last Friday's Supreme Court ruling, the government was given more time to legally apply the existing act until the Supreme Court decides on whether to grant leave to appeal the Court of Appeal for Ontario's decision. If leave is granted, the existing law would remain in force until the Supreme Court's judgment some months from now. However, experts say the passage and coming into force of Bill C-83 would be an immediate improvement for prisoners suffering from mental illness. Based on my own analysis, the new provisions are a vast improvement over the existing system.

[*English*]

In another tweet this morning, the John Howard Society said:

> Will the @SenateCA kill Bill C-83 today? Legislative vacuum dangerous for protecting isolated prisoners from serious harm.

Instead of creating a vacuum or maintaining a no longer acceptable system, I rather think that it is better to vote for Bill C-83 and put in place as soon as possible new and beneficial measures, and to leave it to the courts to determine later if the review process is deficient and how it could be improved.

For all these reasons, dear colleagues, I invite you to vote yes to the message. Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Do you have a question, Senator Pate?

Senator Pate: Yes, if the honourable senator would take a question.

The Hon. the Speaker pro tempore: Will you accept a question, Senator Dalphond?

Senator Dalphond: Yes.

Senator Pate: Senator Dalphond, in all of your years as a jurist, what kinds of arguments would you have accepted if someone brought before you two tweets versus constitutional opinions? Legal experts who voiced one side; and then two tweets on the other side. How persuasive would you find that argument?

[*Translation*]

Senator Dalphond: Thank you, dear colleague, for the question.

[*English*]

There is no doubt that in a court of law — maybe in the U.S. tweets apparently are official statements from the president. In Canada, I'm not sure that the tweet is a legal document that could be a supporting opinion.

However, experts will be testifying in the courts. They will file briefs, will be cross-examined and there will be a full debate, which we are not having here today. Each of us thinks about these opinions, but we haven't heard experts. We haven't seen the briefs. I think the John Howard Society, because it's very involved in protecting and defending imprisoned people's rights is telling us to wake up; don't make a mistake. The system is actually bad, very bad, and this law will provide improvements. Let's go for the improvement.

That's what I'm saying. I'm not saying I would be using that in a judgment, I'm just saying that these are opinions that matter. There are people following this file. This morning they are calling us to proceed and go forward. Thank you.

Senator Pate: Honourable senators, the message regarding Bill C-83 asks us to pass this bill without the Senate amendments necessary to prevent the violation of Charter and human rights of men and women isolated in Canadian prisons.

Knowing the suffering and the permanent, irreversible damage that isolation can cause, I cannot accept this motion.

As senators with a duty to uphold the constitutional rights of all Canadians, particularly those who are most marginalized, I do not believe that this chamber should accept it either.

Precedent tells us that there are rare cases where it is not only possible for the Senate to insist on our amendments but it is also our duty to those we represent.

For six reasons, the case for upholding the Senate amendments to Bill C-83 is clear.

First, Bill C-83 was not an election promise that Canadian voters gave their elected representatives a mandate to address. Rather, the bill was a response to court cases affirming that segregation is unconstitutional and requiring the government to develop new, constitutionally compliant legislation.

Second, the Senate amendments did not merely seek to second-guess a questionable policy decision. Instead, they addressed clear and serious concerns that the bill will be unconstitutional without them. The Senate was warned of this risk by constitutional experts at committee. We responded with a minimally invasive compromise: Not the end to segregation by any name, particularly for those with mental health issues, as recommended by the United Nations and the inquest into the death of Ashley Smith. Instead, we targeted the minimum constitutional standards required to protect Canadians from conditions of isolation capable of amounting to torture.

Since then, a coalition of 100 legal academics, practitioners and experts wrote in support of those amendments to ensure that the bill not violate the Charter and human rights.

Third, no credible, independent counter to the position that the bill is unconstitutional has come forward. The only legal minds at committee to argue that the bill was constitutional were representatives of the government itself. In making this argument, the government did not pretend that Bill C-83 would ever meet the restrictions that courts have imposed on segregation in order to safeguard constitutional rights. Rather, they argued that even those minimal standards do not apply to Bill C-83 because the isolation it proposes is something different than segregation. This position contradicts what the Minister of Public Safety himself stated at committee when he acknowledged that conditions amounting to segregation could persist within the structured intervention units proposed by Bill C-83.

• (2020)

Fourth, this is not a situation in which the Senate would be standing in for a court by making a decision regarding constitutionality. When supporters of Bill C-83 have urged that the constitutionality of this bill cannot be determined until the Supreme Court has ruled on segregation or perhaps even on the bill itself, they overlook that at least one part of the constitutionality issue has already been settled definitively and against Bill C-83. The government has chosen to accept and not to appeal the Ontario Superior Court's ruling that in order for segregation to be constitutional there must — must, honourable colleagues — be an independent decision maker who has authority to release the prisoner from segregation after five working days.

As a result, in a situation that the minister acknowledged can persist under Bill C-83, where the conditions of segregation last for five working days, as a matter of settled constitutional necessity, Bill C-83 must include an independent reviewer with authority to release a prisoner. Bill C-83 simply does not allow for this measure. On cross-examination before the Court of Appeal, CSC acknowledged that the earliest point at which the bill's independent decision maker would be in a position to order release of a prisoner from segregation would be after 12 days, not the five working days required. The courts have accepted that permanent harms can occur within 48 hours of isolation, and the United Nations considers that 15 days in segregation can amount to torture.

The Ontario Court of Appeal has now expressly raised doubts about Bill C-83, stating that the government has not explained how the bill will address this very constitutional flaw.

Fifth, the reasoning in the message from the other place is disturbingly incomplete. The text does not even acknowledge the constitutional frailties. While supporters of Bill C-83 have previously argued that the Correctional Investigator does not believe judicial oversight to be necessary, at the Social Affairs Committee the Correctional Investigator stressed that strengthening oversight was "the" single-most important amendment the committee could make to uphold constitutional rights, specifically naming judicial oversight as the preferred manner in which this could be achieved.

The text of the message states that this form of judicial oversight would place undue burdens on the court system. The evidence on which the government bases this argument is not clear, to say the least. Corrections estimates that about 5,000 prisoners were placed in segregation throughout last year. This number pales in comparison to the estimated 23,000 individuals per year eligible for bail reviews that the Supreme Court of Canada recently affirmed courts are not only capable of but, in fact, must deal with in an efficient manner in order to ensure that constitutionally protected due process rights are upheld.

The actual number of applications is expected to be much lower than 5,000, in no small part due to the reality that the requirements for CSC to apply to court would create an incentive to uphold their responsibility to find workable alternates to isolation and separation. Other Senate amendments refused by the other place aimed to further lower this number by fulfilling recommendations from numerous inquests and inquiries that encourage the more expansive use of existing but currently underutilized alternatives. For example, while accepting amendments to improve mental health assessments that our colleague Senator Kutcher spoke about, they refused the amendment that would require that CSC then transfer those found to have disabling mental health issues out of segregation and into psychiatric hospitals or other appropriate health services, effectively neutering the impact of such assessments.

The Senate worked to rehabilitate Bill C-83, with the provision that corrections must seek permission from a Superior Court in order to keep an individual in a structured intervention unit beyond 48 hours. The government has rejected this amendment, yet has not informed us what alternative to judicial oversight they are proposing in order to meet the constitutional requirements for independent review.

Sixth, the Senate amendments seek to protect constitutional rights of prisoners, a marginalized group that, as Senator Pratte rightly pointed out, lack the voice within the democratic process to exercise their own rights, and that the Senate therefore has a particular duty to represent. Courts have already found the current system discriminatory against Indigenous and Black people and those with mental health issues. These and other marginalized groups are likely to continue to be disproportionately subjected to isolation and its devastating harms under Bill C-83.

Let me be clear, honourable colleagues: If Bill C-83 does not include the Senate's amendments, prisoners will be better off if it does not pass. If the bill does not pass we return to the current system, which the Supreme Court of Canada has allowed to stay in place until it can rule on the constitutionality of segregation in the coming weeks or months. The current system is abhorrent, but at least it contains certain minimal limits on human rights abuses, the product of years of litigation and human suffering. In particular, there is now a 15-day hard time limit on segregation and the requirement for independent review after five days.

If we allow Bill C-83 to change the name of "segregation" to "structured intervention units," without judicial oversight, we risk starting back at square one. We will almost certainly hear the same arguments that we have heard in this place that these constitutional limits on segregation do not apply because of this name change. If we pass Bill C-83 in the form that it is being sent back to us, we are handing corrections a system where they have virtually unlimited discretion to keep people in isolation nearly indefinitely. Courts have recognized that harm can start almost as soon as a cell door closes and that anything longer than 15 days is cruel and unusual punishment, which violates section 12 of the Canadian Charter of Rights and Freedoms.

Let us be clear: If we pass Bill C-83 without the Senate amendments, we put the onus of going back to court to once again challenge the use of isolation on those directly and negatively impacted by segregation — prisoners, who too often struggle for access to pen and paper, let alone telephones, legal resources or other external advocacy or representation.

As we worked on this bill together in the chamber and at committee, as we compromised and crafted amendments, as I contemplated my response to the message from the other place, as I stand before you now, I recall events that occurred 25 years ago. On April 22, 1994, women at the Prison for Women in Kingston were unlawfully stripped, shackled and left in segregation cells, naked or wearing only flimsy paper gowns by an all-male emergency response team. Today, the violation of these women's Charter and human rights is recognized as a travesty and a massive display of force exercised in the face of virtually no resistance.

Many of you will recognize these events as the place where, in many ways, the Senate amendments we debate today began. As she then was, future Supreme Court Justice Louise Arbour was named commissioner of an inquiry into those events. Her approach was clear and unclouded by electoral or political issues. She recognized that the only way to respond to the risks and harms of segregation would be to shift a culture of human rights abuses and denial within corrections toward one capable of upholding the rule of law, something that would require meaningful, external oversight. Justice Arbour concluded: "I see no alternative to the current overuse of prolonged segregation but to recommend that it be placed under the control and supervision of the courts."

For more than 23 years, this recommendation has remained unimplemented and the culture of corrections has not merely remained unchanged but has become firmly entrenched. Based on expert testimony urging judicial oversight of segregation, we passed amendments requiring correctional authorities to apply to superior courts for permission to isolate an individual for more than 48 hours. We sought to ensure the constitutional rights of prisoners would at last be respected by putting them in the hands of the courts, as Justice Arbour recommended.

There is another reason, however, that I think back to the stripping, shackling and unlawful segregation at P4W in 1994. As the first outside person to go in after that event, I advocated that prison officials release all of the women from segregation and unshackle the one woman who was still restrained and had been for six days. I was advised that I was misinformed about their circumstances and treatment. When I insisted on what I had witnessed myself, I was counselled, cajoled and then cautioned against being so easily "conned."

• (2030)

To say that moment and its aftermath were a turning point for me is an understatement. It taught me that for the prison officials to respond in such ways, they must believe that information the women and I had about what had happened would either never emerge or, if it did, it would never be believed.

The pressure to recant intensified and my integrity and employment were repeatedly threatened over the ensuing year, until the eventual airing of the video of those events by "The Fifth Estate." This experience clarified that with the privilege of walking in and out of prisons comes the responsibility of identifying and remedying the violations of human rights that I have witnessed. I do not, and, with the evidence that senators have seen and heard, this chamber does not have the luxury of remaining silent.

We cannot accept and cannot ignore that failing to insist on the Senate amendments means failing to insist on respect for the human and Charter-protected rights of all Canadians. We cannot abdicate our —

The Hon. the Speaker pro tempore: Senator Pate, your time is up. Five more minutes, honourable senators?

Hon. Senators: Agreed.

Senator Pate: Thank you, Your Honour, and senators.

We cannot abdicate our responsibility. We should not punt this decision to courts to perhaps resolve in the future, not when we know now that this bill is likely unconstitutional, when we know now that people are suffering and will continue to suffer because of something we might authorize. We have an obligation to do what is right. We have an obligation to stand up for our amendments. *Meegwetch*. Thank you.

Hon. Murray Sinclair: Honourable senators, I was not on the list. I apologize for not having given notice, Your Honour.

The debate that has gone on this evening has been excellent in terms of listening to one side and the other. I want to apologize to those who asked me earlier how I thought I was going to vote with respect to this. I kept indicating that my preference always is that, when government legislation is before us, we should allow the government to govern and see if there is a constitutional question. I have not been persuaded that the constitutional issue is that clear. Knowing judges and courts as I do, I can tell you that there is as good a chance that the Supreme Court of Canada would rule the provisions that are before them in the upcoming CCLA case constitutional as much as they might rule that it's unconstitutional. There's no safe predicting of that.

However, having indicated to others before this evening that I was likely to uphold the legislation and to allow the message to go forward, I want to say, quite frankly, I think I'm changing my mind because of the debate that's going on here.

Difficult cases always cause one to toss and turn. That has been my experience as a judge and one of the reasons why I learned early on not to come to a decision too quickly. You hear lawyers arguing cases in front of you all the time. When a good lawyer speaks first, you often think that's the end of the case; I'm just going to rule that way. When another good lawyer talks second, then you say, "Well, maybe I'll go that way." You end up reserving in order to consider the arguments and perhaps do your own work.

This was one of those situations where I have given careful consideration to the words I've heard here this evening. I've listened carefully to the debate. I am persuaded by a few points that have been made that perhaps this legislation shouldn't be allowed to go forward, one of them being that we are being called upon in this case to consider the situation of a very legally vulnerable population. I recognize that there are many people who are placed in segregation, perhaps, who are there for their own protection but also for the protection of others because they have been acting out and might be injuring or threatening other people. At the same time, I'm also pretty convinced that most of the inmates who end up in segregation are probably suffering from some kind of a mental health issue that is not being properly treated.

I was listening to some of the words spoken by Senator Kutcher. I was also looking back at some of the transcript evidence that had been filed with the committee. I can see where the research on that point seems to be very strong.

This legislation contains provisions that would guarantee those treatment programs and services would be provided to inmates. However, I ask myself: Would this bill have benefited Ashley Smith? Would it have benefited Eddie Snowshoe, who our colleague Senator Simons told us about? Would it have benefited Adam Capay, the young man who spent almost five and a half years in solitary confinement and came out of it, at least? We're not sure he went into it with a mental health problem, but he certainly came out of it with mental health issues; I'm not sure that it does.

The reason I'm not sure it does is because in the provisions before us, there doesn't seem to be any independent oversight that the corrections services can't control to inform those who are called upon to look at what they're doing to believe them when they say, "We're doing all of that." Independent oversight is a crucial question.

I said earlier on in one of our discussions that judicial oversight is guaranteed under our Constitution at present. An individual can go to court and, in particular, inmates can go to court and have their reclassification and segregation decisions overturned by a court or reviewed by a court. The time that's going to take is quite long. It can take years. In addition, they need to have access to a lawyer; they need to have access to a court; they need to have access to the information. There's nothing in this bill that guarantees that, in fact, they would be informed that they have that right. It may be that by practice that will be the case, but I'm not sure.

One of the issues that I thought about as I was listening to the debate was during the hearings of the Truth and Reconciliation Commission, we toured as many of the residential schools that were still standing at the time that the hearings were going on. In every one of them, there was a small room, usually under a staircase, where the residents would be confined if they were not listening to what the teachers were telling them. In each of those little rooms, some of them only two or three feet tall, you could see scratch marks on the wall and sometimes even bloodstains still on the walls from where the students, as children, had tried to claw their way out or leave some kind of evidence of their being there.

It was incredibly horrible to look at. It reminded me, as I was listening to this debate, that when there is not an appropriate judicial or independent oversight of those decision-makers who place people in that position, that, in and of itself, is an indication of the inadequacy of the law.

Does this bill provide that kind of guarantee? I don't think it does.

• (2040)

I recognize, as well, as Senator Pratte talked about and Senator Pate confirmed, that CSC is currently under judicial oversight, with the ruling on the CCLA case that they have to provide access to an independent body to be able to rule on the adequacy or appropriateness of a segregation decision. There has to be a five-day review, and there has to be a maximum 15-day placement, based upon the court's direction. Whether Correctional Service Canada will actually do that, the courts will

find out when the appeal is heard. That being the case, the court will ultimately take that into account when deciding upon the overall constitutionality of the current system.

I recognize, as well, from the information shared with us by Senator Harder that the government believes that judicial resources will be overextended, and there has not been adequate consultation with the provincial court systems that will be at play. But the reality is that, right now, we could have an influx of civil law cases going to court, and the court system could be overwhelmed by that. That's not going to stop people from going to court, and it shouldn't stop people from going to court. So the reality is that we go with the best planning we can, and if this legislation says that inmates can go to court, then they have to plan adequately for it.

Overall, this particular message that comes back from the house and the arguments in favour of the message have not persuaded me, in fact, that we should support the message, so my intention is to vote against it. Thank you.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that in relation to Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act —

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Is there agreement on the bell? Fifteen minutes.

Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: We will return for the vote at 8:57 p.m.

Call in the senators.

• (2050)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Kutcher
Bellemare	Lankin
Black (*Alberta*)	Lovelace Nicholas
Boehm	MacDonald
Boniface	Marshall
Bovey	Martin
Busson	Marwah
Cordy	Mégie
Dalphond	Mitchell
Dasko	Mockler
Dawson	Moncion
Day	Munson
Deacon (*Nova Scotia*)	Neufeld
Deacon (*Ontario*)	Oh
Duncan	Omidvar
Dupuis	Patterson
Dyck	Plett
Eaton	Poirier
Forest	Ravalia
Francis	Ringuette
Frum	Saint-Germain
Furey	Smith
Gagné	Stewart Olsen
Gold	Tannas
Harder	Tkachuk
Hartling	Verner
Housakos	Wells
Klyne	Woo—56

NAYS
THE HONOURABLE SENATORS

Anderson	Joyal
Bernard	Massicotte
Black (*Ontario*)	McCallum
Boyer	McCoy
Campbell	McPhedran
Carignan	Miville-Dechêne
Christmas	Moodie
Cormier	Ngo
Coyle	Pate
Dean	Petitclerc
Forest-Niesing	Pratte

Greene	Sinclair
Griffin	Wallin—26

ABSTENTIONS
THE HONOURABLE SENATORS

Boisvenu	Richards
Galvez	Seidman
LaBoucane-Benson	Simons—6

[*Translation*]

QUESTION OF PRIVILEGE

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I am prepared to rule on the question of privilege raised by Senator Marshall on June 17, 2019. The matter was the object of further consideration on June 19, 2019.

The question of privilege concerned the alleged release of certain emails from Senator Marshall's Senate account following a request for information by the Senate Ethics Officer. If access was provided, this occurred without Senator Marshall's consent, and without her being formally advised. Senator Marshall indicated that she had been cooperating with the Office of the Senate Ethics Officer as part of an inquiry, but learned through informal communications that her emails had been accessed. She found this fact deeply concerning, and emphasized that senators must be aware of this risk.

When the Senate considered this point on June 19, both Senators Housakos and Downe were disturbed by the fact that a senator's emails can be accessed without any type of warning or chance to cooperate. At the very least, they indicated, colleagues must be aware of this fact when considering how they use this tool. Senator Marwah also urged senators to reflect on this event, and, if appropriate, to work to amend the governance instruments that may have led to this situation.

Senator Andreychuk, the chair of the Standing Committee on Ethics and Conflict of Interest for Senators, also intervened on June 19. She provided an explanation of the operation of the *Ethics and Conflict of Interest Code for Senators* and its interaction with the *Senate Administrative Rules* in this case. The Senate Ethics Officer is under an obligation to conduct an inquiry promptly and in confidence. This helps to protect all those involved. Senators and all other persons involved in an inquiry are obliged to cooperate with the Senate Ethics Officer, and are also bound to respect confidentiality. Senator McPhedran then noted the importance of such confidentiality provisions to ensure a fair and unimpeded investigation.

Honourable senators will know that the *Ethics and Conflict of Interest Code for Senators* gives the Senate Ethics Officer broad powers to seek information needed to conduct confidential inquiries. In accordance with the provisions of the Code, the Senate Ethics Officer only receives access to emails in the context of an inquiry. Confidentiality is necessary to maintain the integrity of the process and to protect those involved in the inquiry.

This case suggests that all senators may not be sufficiently aware of the ethics regime created by the Senate. The broad nature of the Senate Ethics Officer's powers to access information without warning is an issue upon which senators may want to reflect. We have an obligation to better understand the regime that we have established and how it operates. The Standing Committee on Ethics and Conflict of Interest for Senators will no doubt take this matter into consideration when recommending future changes to the Code. This regime is, however, the framework within which we currently operate.

Under rule 2-1(2) the Speaker's authority in relation to the Code is limited to matters incorporated into the Rules. So, while I must be cautious, I do feel that I can emphasize that the obligations of both cooperation and confidentiality flow from decisions made by the Senate itself. They are, therefore, the result of the Senate exercising its control over internal affairs.

As noted in the ruling of March 22, 2018, the rights of individual senators are "subject to the Rules, procedures and practices [of the Senate], which are expressions of the Senate's own parliamentary privileges, both to manage its internal affairs and to control its proceedings". I should also remind colleagues that parliamentary privilege does not protect all electronic communications by a senator. Each communication must be assessed to determine if it is directly linked to a parliamentary proceeding. In this case, it is not currently possible to determine whether access was actually given to emails that might be subject to privilege.

Rule 13-2(1) sets out four criteria that a question of privilege must meet. The fourth criterion is that a matter "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available". When a request for access to emails is received from the Senate Ethics Officer, it is, under the *Senate Administrative Rules*, referred to the Subcommittee on Agenda and Procedure of the Standing Committee on Internal Economy, Budgets and Administration, which will then deal with releasing the information. It therefore seems that there is another reasonable parliamentary avenue through which concerns about these events can be raised and additional details sought, that is by raising the issue with the Internal Economy Committee and its steering committee. I do, of course, note the obligation of all senators, including those on the Internal Economy Committee, to respect the blanket confidentiality of inquiries under the Code.

As such, the requirements for a case of privilege have not, at this time, been met, and a case of privilege cannot be established. Let me be clear, given the unusual combination

of circumstances in this situation, if it does later become clear that privileged information was improperly released, Senator Marshall would not be prevented from raising the issue as a new question of privilege.

Before concluding, there are a number of related issues that I must address. In raising her concerns, Senator Marshall has brought to light how the interaction of various core governance and ethics instruments may lead to access to information that colleagues might normally expect to be private. We should reflect on whether this is desirable, and what, if any, adjustments to our governance and ethics regime may be appropriate.

This said, however, I must note that I am deeply troubled about how these events came to Senator Marshall's attention. She told the Senate that she learned of them "through the grapevine". The Code imposes a strict obligation of blanket confidentiality, which was obviously not respected. I must also note again for senators that any matters considered in camera must respect the obligations of confidentiality that flow from this process. Senators, their staff and employees of the administration must take these obligations seriously. They reflect decisions of the Senate and should always guide us in our actions.

Finally, without evidence to the contrary, we should never call into question the integrity and diligence of those who assist us with our work. This restraint is particularly important in the case of the Senate Ethics Officer. It is unhelpful to criticize him for fulfilling his duties under the Code, which we as senators have adopted to govern his work. If, as a Senate, we have concerns with the operation of the Code, which we ourselves have established, then these issues should be openly debated and resolved here, in the Senate Chamber.

• (2110)

[*English*]

IMPACT ASSESSMENT BILL
CANADIAN ENERGY REGULATOR BILL
NAVIGATION PROTECTION ACT

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR CONCURRENCE IN COMMONS AMENDMENTS AND NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Gagné:

That, in relation to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, the Senate:

(*a*) agree to the amendments made by the House of Commons to Senate amendments, including amendments made in consequence of Senate amendments; and

(*b*) do not insist on its amendments to which the House of Commons has disagreed; and

That a message be sent to the House of Commons to acquaint that house accordingly.

Hon. Douglas Black: Honourable senators, I rise tonight for my final observations in respect of Bill C-69. Barring a miracle — and Senator Harder earlier in the week indicated that he's not a great believer in miracles — nor am I — I believe the die has been cast on Bill C-69, despite the fact that an amendment package was endorsed by this chamber and sent to the House of Commons that would allow projects to be built in this country, allow investment to return to this country and take the "Closed for Business" sign out of the window of this country. We had a bill that would have advanced those objectives with the amendments approved by the Senate. Unfortunately, what has returned will not achieve those objectives.

My sense is there is no appetite for further amendments, so there will be no surprise that, of course, I will vote against Bill C-69. My comments today are really reflections for the purpose of the record because this matter will be revisited at some point in time. I want to reflect on the process and the likely results of Bill C-69.

My principal reflections — and I am going to keep it as short and focused as I can — is one I want to commend the Senate and my colleagues for the work that this body did. It's an outstanding piece of work. I've only been a senator for seven years, but I've never seen the Senate work so diligently and cooperatively together in a very difficult circumstance.

The bill that arrived from the House of Commons was, to put it nicely, not fully baked. We took the time and energy at many levels to endeavour to create a piece of legislation that would work. I am deeply indebted to my colleagues for taking that matter so seriously.

Of course we had disagreements. I have a view; others have other views. But I respect everyone's view in this chamber because I know you took the time necessary to understand the issues involved.

I particularly want to ever so quickly recognize three senators who I think made an outstanding contribution and allowed us to get to the point that we did. My colleague, our colleague, Senator Wetston — who unfortunately is not with us tonight — my friend, my law school classmate and an individual who made a very real and strong contribution to endeavouring to get a package that worked.

I also want to acknowledge Senator Richards. If Senator Richards had not taken the position he did at committee, we would never have had the opportunity to fully explore the amendment package that was agreed to by this Senate.

Some Hon. Senators: Hear, hear.

Senator D. Black: Finally — and I presume some will be surprised — my great friend Senator Mitchell. It is fair to say that we were on different sides of this issue. I can tell you throughout the last year that I've been so intimately involved in this file, he has shown nothing but courtesy to me and to those who I have been working with.

To my friend, who I understand will be voting differently tonight, I respect that he had a very tough file and he handled that file in an admirable way.

Some Hon. Senators: Hear, hear.

Senator D. Black: My second reflection, unfortunately, in my view, is that Bill C-69 will be no more effective than CEAA 2012 was in getting projects built in Canada. With CEAA 2012, I think we all agree, the pendulum had swung a bit too far in one direction. Bill C-69 has swung it in the other direction with the same effect: A level of uncertainty that is too great for projects to be developed.

Thirdly, I would observe, as I think is well understood and was underlined by our colleague Senator Dasko earlier this evening, that Albertans are currently deeply alienated from Canada and their sense of the power structure in this country. The question they ask is very simple: Why would a majority agree to policies that so clearly punish economic success from an industry that sets the global standard in responsible, renewable and non-renewable energy development and First Nations engagement? That is the question that is asked. We'll simply leave it at that. We're all hopeful we can navigate this, but I think, as we all understand today, it is a very real issue in this country.

My next observation is that, unfortunately, after TMX, which was approved yesterday and, of course, this is a great announcement. There's no taking anything from it. There's no sense being churlish about it. It's an announcement that was needed. I commend the government for making the announcement. We need construction to start, and we need to ensure that the heavy water that is going to flow is addressed by the government.

• (2120)

I would remind our colleagues that it was a year ago that this chamber supported the bill which I sponsored, Bill S-245, which was a piece of legislation which declared the Trans Mountain pipeline in the general advantage of Canada. There is a whole series of practical business and constitutional reasons that flow from that, but I am indebted to my colleagues for that as well. The House of Commons should have passed that legislation, and they wouldn't have had to buy a pipeline.

That's for another day. I suspect we'll be revisiting Bill S-245, or some successor of it, again as there are going to be very real difficulties as we move forward.

It's odd to reflect that at this particular time in Canadian history, where our opportunities for trade are limited, whether it's in agriculture or other areas, that we seem to be taking proactive steps to restrict the export of our most significant export project.

I would also point out to colleagues that all the rhetoric that was advanced as we debated this turns out not to just be rhetoric. Since the decision was taken last week that the House of Commons was not going to accept the amendment package that was put forward by the Senate, I can tell you a couple of things.

While the Toronto Stock Exchange Index has advanced quite strongly over the last four or five days, the sub-index that deals with midstream companies, the very companies that build pipelines, storage and midstream facilities, has hit all-time lows. Some companies have lost between 70 and 90 per cent of their value since the decision was taken by the House of Commons.

I would also point out a couple of comments from Canadian business leaders. The CEO of Imperial Oil, a company well known to us all, owned principally by ExxonMobil, said last week:

> . . . unfortunately cause us to step back and deeply consider any and all future major growth opportunities . . . .
>
> When we see a policy like this, a bill like this, there is no balance in it. The proof will come over time, when parties quit investing.

That type of comment was underlined by Satoshi Abe, President of Japan Canada Oil Sands, who has invested in Canada on behalf of the Japanese for over 40 years. They've invested well in the billions of dollars, in this country.

He indicated:

> Increasing regulatory hurdles and uncertainty simply adds to the challenges making Canada unattractive when compared to other jurisdictions.

This is all since last Wednesday. That is underlined by other leaders in the industry across Canada.

I would observe, as we heard very eloquently from Senator Busson earlier today, and I remember hearing from Senator Nancy Greene Raine when she was with us last year, that we need to know that oil will move, and oil is going to move on trains. What has happened over the last number of months, certainly over the last year, year and a half, is the amount of oil carried on trains is up 500 to 600 per cent. This is not an ideal circumstance. Our very Transport Committee, a year or a year and a half ago, examined this issue and alerted the Senate to the risks that we're incurring.

The spectre that Senator Busson raised, and I still remember Senator Nancy raising the spectre, she said, literally, "I watched these trains move through central British Columbia on these high trestles." Whose interest is that in, as Senator Busson indicated so eloquently tonight?

I live in Canmore. I see the trains go through heading into the Rocky Mountains. There used to be 30 or 40 cars. Now there are 140 cars.

My colleagues from Toronto see these trains rumbling through the centre of Toronto, through the centre of Rosedale in Toronto, and Lac-Mégantic, Winnipeg, Regina and Vancouver. What

interest do we possibly think we're serving in that regard? We have to simply pray to God that there is not a disaster, because it's going to be a very tough mirror to look into.

May I also observe that First Nations, who wish to move from poverty to prosperity, are deeply frustrated with the decision that's been taken, not only those who currently are developing resources on their lands and will lose economic value, indeed are losing economic value, but those depending on new opportunities. There will be no Eagle Spirit. There will be no engagement with new pipelines, whether by way of storage facilities, owners and pipelines, because there will be no projects. Opportunities will close.

Of course, tax and royalties will decline. Senator Harder very eloquently indicated yesterday when talking about Trans Mountain that we're not talking about tax and royalty revenues in the thousands or hundreds or millions of dollars. We are talking in the billions of dollars. Trans Mountain is going to generate billions of dollars for both industry and government. All of that revenue from other projects is going to be lost and the consequences that flow from that.

Honourable senators, we also need to know that litigation is going to increase. The principal driver for the work that I and so many others did was to endeavour to limit the litigation risk, because that's what is keeping proponents from moving forward.

Our inability to craft a package of amendments is going to see an increase in litigation. The reasons are provinces are unhappy with Ottawa, and provinces aren't happy with each other. My province has already served notice that they are going to take action on all of Bill C-48, Bill C-69 and the price on carbon. That's in the last three or four days.

British Columbia has indicated they are going to take further action in respect of the pipeline projects. That's before we get to people who are feeling disadvantaged by the process under Bill C-69. Unfortunately, that risk is going to enhance.

Finally, I have an observation that I wish to share with you, really for the benefit of the record only. As many of you may know, I have been actively involved for the last year in coordinating and working with a group of organizations, people, agencies and governments across the country to develop the package of amendments that ultimately came before the Senate.

There was a process that was followed, but to suggest that the amendments that were accepted were the ISG amendments and the amendments that were rejected were the Conservative amendments is just simply disingenuous. That is not how it worked. The way it worked was like-minded parties developed a package of amendments and endeavoured to find the vehicles required to get them before the Senate. That's what happened and that's what worked.

I'm indebted to my ISG colleagues, Senator Wetston, my friends across the aisle and anyone who was prepared to recognize the risks involved and to take up the challenge. That's how it worked. For anyone to say these were the Conservative amendments and therefore they can't be approved is just simply disingenuous.

What do I hope we could achieve? This phase of the battle is over. We're going to vote tonight and miracles may happen, but this phase of the battle is over.

I'm urging constructive dialogue on developing an energy strategy for this country, not rhetoric, a hope, or a wish. We need a plan. We need a plan that involves all interests, renewable and non-renewable.

A lot of work was done by a lot of organizations over the last decade. It's there to be done. Someone somewhere needs to pick up that work and endeavour to move forward to develop a strategy so we don't need to go through this again. We don't need to put the country through this again. We'll understand what our national interest is, and we'll work collectively toward it.

Finally, I want to thank the tens of thousands of Canadians who wrote, spoke out and in many cases marched in the belief that their voices would be heard. I want to thank the nine premiers of this country. Nine premiers, colleagues.

The Hon. the Speaker: I'm sorry, Senator Black, but your time has expired. Are you asking for five more minutes?

Senator D. Black: May I?

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

Hon. Senators: Agreed.

Senator D. Black: I wish to thank the First Nations groups, the Chambers of Commerce, the think tanks, the environmental groups and the project developers. A broader coalition of opposition I have never seen developed. I am appreciative to people for their efforts.

• (2130)

As you can imagine, I have heard, as many of you have as well, from hundreds if not thousands of Canadians who have expressed their ideas, their concerns and their frustrations. I thank them every day — and I mean every day — wherever I am. People come up to me in airports, grocery stores and coffee shops, wherever I am, to express their frustrations but, more importantly, to thank me and my colleagues for the work we're endeavouring to do. I simply want to underline that this is my work. I'm working on behalf of the resource industries, renewable and non-renewable, and everyone who is touched by those, and that work will continue.

Thank you, colleagues.

Hon. Mary Jane McCallum: Honourable senators, I rise today to speak on the message from the House of Commons on Bill C-69.

I would like to first thank the Energy Committee for their understanding and support in passing an amendment I had put forward on behalf of the Native Women's Association of Canada. This specific amendment dealt with the inclusion of a culturally relevant gender-based analysis within regional and strategic assessments. Although a GBA is required for impact assessments, it was conspicuously absent within these other

regional and strategic assessments. To rectify this oversight, I, along with NWAC, had proposed adding, on page 55, as clause 1(ao)(iii)(b):

> . . . include a gender-based analysis of the effects of the policies, plans, programs or issues being assessed.

Colleagues, to my disappointment, this subclause was subsequently removed in the other place.

I would like to put on record the disservice this does to Indigenous women and men, especially those who live in First Nations, Metis and Inuit communities near project developments, and especially where work camps have been situated.

Honourable senators, gender-based analysis is about regaining equality and balance. It is an analytical process used to assess and document how diverse groups of women, men and non-binary people may experience policies, programs and initiatives. With First Nations, Metis and Inuit, the other factors that come into play are race, ethnicity and the historical colonization and discrimination that has allowed First Nations, Metis and Inuit peoples to be marginalized and made vulnerable, especially the women. In this section, I am speaking about First Nations, Metis and Inuit women.

In her 2006 Discussion Paper Series in Aboriginal Health, No. 4, entitled, *First Nations, Métis and Inuit Women's Health*, our esteemed colleague Senator Yvonne Boyer stated:

> Canada's institutions that claim to be value free continue to reflect a male construction of reality. The implementation of colonialism through sets of male created and centred values has shaped institutions, laws, legislations and policies that have had a long-lasting negative effect on the health of Aboriginal women. Colonial laws and policies were developed that targeted the power of Aboriginal women as family anchors. For instance, the Indian Act, residential schools, sterilization laws, mental health laws, forced removal of children and enfranchisement were integral in attacking the essence of Aboriginal woman as caregivers, nurturers and equal members of the community.

She continues by stating:

> Women made integral decisions about family, property rights, and education. Underlying principles of gender balance streamed through early Aboriginal society. The issue of balance, however, is not to be construed or constructed as similar to the Eurocentric or feminist or western legal tradition understandings of "balance" as equating "equality." Aboriginal law is not ordered around Eurocentric values or perceptions of what is "balance" or "equality." Rather, for Aboriginal women, balance is understood as respecting the laws and relationships that Aboriginal women have as part of the Aboriginal law and ecological order of the universe. Professor Patricia Monture-Angus notes: . . . Aboriginal culture teaches connection and not separation. Our nations do not separate men from women, although we recognize that each has its own unique roles and responsibilities. *The teachings of creation require that only together will the two sexes provide a complete philosophical and spiritual balance. We are nations and that requires the equality of the sexes*.

Senator Boyer goes on to say:

> Unlike European culture imposed through colonization, Iroquoian culture was not centered on conflict or subordination. . . . each gender had a role and that each gender was superior in their sphere of responsibility. Both gender roles were viewed as equal and necessary for the health and survival of the community. . . .
>
> The common thread running through all groups of Aboriginal society is that equality and gender balance was foremost, the men couldn't survive the harsh conditions without women and women could not survive without the male counterpart. Professor Emma LaRocque notes:
>
> > Prior to colonization, Aboriginal women enjoyed comparative honour, equality and even political power in a way European woman did not at the same time in history. We can trace the diminishing status of Aboriginal women with the progression of colonialism. Many, if not the majority, of Aboriginal cultures were originally matriarchal or semi-matriarchal. European patriarchy was initially imposed upon Aboriginal societies in Canada through the fur trade, missionary Christianity and government policies.

Honourable senators, members of the Senate Energy Committee heard witness testimony about the devastating impacts that energy and resource extraction have on women and northern communities, effects which are exacerbated by the economic boom and bust cycles.

These adverse impacts are explained in the Feminist Northern Network's article, entitled, *Gendered and Intersectional Implications of Energy and Resource Extraction in Resource-Based Communities in Canada's North*. Through this article, the authors indicate that public discourse around resource development often focuses on economic growth and employment. However, these aspects are emphasized at the expense of ignoring the deep and lasting social and cultural effects that this degree of development has on communities.

Resource development of all kinds places strain on the physical and social infrastructure of these communities, affecting the tax base, the availability of affordable housing, access to health services and transportation systems. Resource development affects community life, both when large numbers of workers migrate in and when they leave. Further, the costs and benefits of resource development are not evenly distributed across populations or communities.

Colleagues, in the aforementioned Feminist Northern Network article, it is noted that the arrival of resource development projects can affect communities' substance abuse rates. Sexual exploitation, sex work and human trafficking can increase when resource development projects enter a community. We have heard women from these communities recounting rape and violence that has been suffered. As we know, substance abuse

often turns into gender-based domestic violence and child abuse. Ultimately, resource development projects can disrupt and negatively impact Indigenous traditions and cultural practices.

Honourable senators, I would like to quote from Canada's National Action Plan 2017-2022, *Gender Equality: A Foundation for Peace*. Specifically, I would like to quote from the letter from the ministers, wherein they state:

• (2140)

> . . . in conflict settings, women face particular threats. They must often defend themselves against sexual and gender-based violence . . . Today's status quo—marked by unequal power relations and discriminatory social norms, practices and legal systems—keeps women and girls from influencing processes that profoundly affect them.

In a section entitled *Canada's own challenges: Learning from our experience*, this federal report goes on to say:

> Although Canada is not a fragile or conflict-affected state, women in Canada face a variety of challenges including gender-based violence. Indigenous women and girls in particular face intersecting discrimination and violence based on gender, race, socioeconomic status and other identity factors, as well as underlying historic causes — in particular the legacy of colonialism and the devastation caused by the residential school system . . .Canada has committed to a renewed relationship with Indigenous peoples in Canada. The government wants to right the wrongs of the past and address current issues and concerns . . . . It has accepted the Calls to Action outlined in the Final Report of the Truth and Reconciliation Commission of Canada and confirmed its intention to adopt without qualification the United Nations Declaration on the Rights of Indigenous Peoples . . . Nevertheless, much work remains to be done before Indigenous peoples in Canada have adequate housing, quality education and safe drinking water, before they no longer face discrimination, and before Indigenous women and girls no longer have to fear for their physical safety.

Colleagues, for the many reasons I have highlighted, I commend our Energy Committee for taking an important step in protecting vulnerable members of our society when they adopted this amendment to include a gender-based analysis in regional and strategic assessments. I felt it important to now put on the record my dismay and disappointment that the other place did not agree with the necessity of this vital consideration.

In light of the recent release of the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, this amendment seems particularly important, as it falls in line with the report's recommendations. I would like to draw the attention of honourable senators to the report's Calls for Justice, specifically No. 1.9, which states:

> We call upon all governments to develop laws, policies, and public education campaigns to challenge the acceptance and normalization of violence.

Although this critical amendment was ultimately defeated by the hand of the government, I thank you all, again, for your initial support in accepting this important and meaningful step towards equality. Thank you.

Hon. Elaine McCoy: Honourable senators, I want to say, very briefly, since I abstained throughout the process, that the very worst case scenario that I anticipated has come to pass. The balance that the Senate amendments managed to reinsert into this bill, I thought, was adequate. I'm very sorry the government has decided not to recognize that it would have helped them and all participants to realize what the government hopes to happen with this bill.

Having said that, I want to say that I believe the impact assessment act, as it will be, is going to be deeply flawed. It will be deeply flawed. I think there are four areas that will need to be addressed and corrected in due course.

First, the political decision makers. To have a cabinet and/or minister making decisions is not a good sign. When we went overseas teaching other people how to conduct impact assessments, we always said, "Try not to politicize the decisions; try to have an arm's-length, independent decision maker." And here we are in Canada adopting a practice that is more often seen in jurisdictions that we would not boast about in regular dinner party conversations.

Second, we have not succeeded in establishing a vehicle or a practice by which government policies are clearly articulated and decided upon prior to the impact assessment being undertaken. That is one of the problems that we've been suffering from over the last seven to ten years. We need a platform. We need a space in which government policy decisions are thoroughly vetted and participated in by all of the citizens and interests that are applicable in Canada and then apply that policy, which is by that time a known entity in the assessment process. You know it ahead of time, you know what it contains and you have something you can work with — not something that changes and is declared, seven years later on a rainy day in November, after you've spent $800 million and have all of your approvals or at least recommendations for approval, and at the last moment an announcement of a government policy that would have stopped the practice ahead of time if it had been made appropriately.

Third, the expertise of assessors will be sorely missed. I can only recommend to you the transcript of the committee. I think the witness Andrew Roman put it all very well, as he said, "You can't be a judge if you don't hear the evidence." You can't be a judge if you sit there and rely on someone else's summary. You can't take a briefing note and become an insightful assessor. You have to know what you're doing and you have to have sat through the evidence and you have to have listened and digested it. That's not been established.

Fourth, there are still too many platforms for court challenges. They have not been eradicated from this bill. Indeed, what we call a privative clause in legal terms, which is a judicial review process, has not been narrowed sufficiently to contain the integrity of the assessment process. What you find is people dashing off to court and arguing their point of view all over

again, which allows for so many exits. You're forever rushing off and delaying the process. So it's uncertain and it doesn't actually address everything in context.

Those are four major, fatal flaws in the process that I think have not been secured. In the final analysis, I will also say that the process does not rely on legislation; it relies on management. Process management will be very important. It requires discipline from those who are involved. We will keep our fingers crossed that the impact assessment agency, in particular, which has been given additional authority, will also find the backbone and the professionalism to actually exercise disciplined management of the process.

I will leave it at that. Thank you very much.

Hon. David Tkachuk: Honourable senators, we're back to the future here. I am referring, of course, to the experience we had with Bill C-49 about this time last year. We proposed 18 amendments to that bill, most of which the government promptly rejected. It accepted only two. Here we are again. We send Bill C-69 to the house with 188 amendments, and they send it back with almost all of the amendments stripped — amendments that were supported by the provinces, the official opposition and the industries that will be most affected by this bill, the ones whose project proposals will be subject to this new review process.

• (2150)

But, we're told, the government accepted a record number of amendments, which some are citing as proof that the new, improved Senate is doing good work. What they have left out is that they were the government's own amendments, funnelled through the ISG. Of course they're going to accept them.

Honourable senators, we made 188 amendments. The house made 100 amendments. That's almost 300 amendments. When the Minister of the Environment appeared before the Standing Senate Committee on Energy, the Environment and Natural Resources to testify on Bill C-69, she said:

> Bill C-69 has benefited from the input of literally thousands of Canadians over months and months of consultation and engagement. In fact, the process began in January 2016.
>
> For three years, people across this country have provided input, including industry, academia, and our indigenous, provincial and territorial partners.
>
> Two expert panels and two parliamentary committees held their own meetings, conducted studies, heard witnesses and reviewed comments from the public. This input has benefited and strengthened the bill.

Senator Mitchell, at second reading, said:

> Bill C-69 is based upon an extensive, transparent, 14-month consultation process designed to capture the diverse views of Canadians, including Indigenous peoples, industry, provinces and territories and the general public. This involved two expert panel reviews, two parliamentary standing committee reviews, hundreds of meetings and written submissions and thousands of online comments.

It boggles the mind. After all these consultations with Indigenous peoples, industry, provinces, territories and the general public, all those expert review panels, all those hundreds of meetings, written submissions, thousands of online comments, the Senate would see the need to make 188 amendments to Bill C-69 and send it back to the house.

Exactly how intensive were these consultations? How engaging were these engagements that the Liberal members in the other place felt compelled to make 100 amendments to their own bill and the Senate 188 more?

Some in this place consider it cause for celebration that the government rejected nearly all the Conservative amendments and accepted so many more. "Historical, unprecedented," one ISG senator tweeted. "I think this is proof of what the new Senate can do."

And the old Senate as well, I might add. Some of us have been around long enough to remember the Federal Accountability Act, to which the Senate made 180 amendments, all of which were proposed by the opposition, and the Harper government accepted close to 100 of them. To call this message historical, unprecedented and proof of what the new Senate can do is like putting lipstick on a pig: Let's not pretend that it fixes the bill.

On the weekend, the Minister of Environment explained why she rejected the opposition amendments. In reference to Senator Black, and at the risk of being disagreeable, I'm going to quote her. The main reason, she said, is that they were proposed by the oil industry.

> Let's be clear on what Conservative politicians want. . . . They want us to copy and paste recommendations written by oil lobbyists.
>
> That's why we rejected 90 per cent of the Conservative amendments.

I have a couple of things to say about that.

First, Rachel Notley will be shocked to learn that she is now a Conservative politician and a shill for the oil lobby. As will Alberta Liberal leader David Khan. They both signed a letter to the Prime Minister and Senator Harder backing the amendments — all the amendments — as a package.

Second, if the industry was good enough to consult with and listen to when this government conducted its consultations leading to the introduction of Bill C-69, why would she reject their recommendations out of hand now? Not because of their substance, apparently, which she did not even address, but simply because they came from the oil industry.

This is the same industry she spoke glowingly of at second reading of the bill in February 2018:

> Our government understands the importance of the resource sector to our economy. Over $500 billion in major resource projects are planned across Canada over the next decade. These projects would mean tens of thousands of well-paying jobs across the country and provide an economic boost for nearby communities . . . .

But when the same industry supports Conservative amendments to her bill, she vilifies them. That is a whole other level of hypocrisy.

By the way, the Harper government did not gut the environmental assessment process; nor was public trust eroded in how the NEB made its decisions. The NEB has existed since 1959 and is recognized in Canada and worldwide as an expert regulatory authority. There was no need to get rid of it. Anything wrong with the environmental process could have been fixed by amending CEAA 2012. This government is obsessed with Stephen Harper and has a mania to erase all things Conservative.

So the only reason I can think of for getting rid of the NEB is that it was the legislation of Conservative Prime Minister John Diefenbaker from the Province of Saskatchewan.

Some Hon. Senators: Hear, hear.

Senator Tkachuk: Third and finally, the amendments we proposed were not simply Conservative amendments; they are the people's amendments — those who live in the provinces and towns most affected by this bill. Listen to what they have to say.

The Deputy Reeve of Lac Ste. Anne County notified me last week of a motion a councillor had moved in that municipality that included these words:

> THAT proposed legislation in the form of Bill C-69, without the Senate amendments, will be detrimental to the viability and sustainability of Lac Ste. Anne County and the energy sector.

She asked the "Honourable members of the Senate of Canada . . . to defeat Bill C-69 if it returns to the Senate without all the amendments originally passed in the Senate."

The Mayor of Bonnyville wrote to ask that the Senate defeat or reinstate the previous amendments to Bill C-69, which were originally passed from the Senate to the government. "Please consider the livelihood and well-being of our community when you vote," he wrote.

Councillor Ray Prevost of Bonnyville moved a similar motion to the one I cited above:

> THAT the Town of Bonnyville Council encourage Honourable Members of the Senate of Canada to defeat . . . Bill C-69 if it returns to the Senate without the amendments originally passed by the Senate.

Greg Sawchuk, Reeve of Bonnyville, wrote me, pleading that the Senate consider the thousands of local workers in the oil industry there. He wrote:

> Industry works with residents, municipalities, First Nations and Metis Settlements in a cooperative manner to ensure that the environmental footprint of their businesses is minimized. Ensuring the ongoing attractiveness of the region is a significant goal for the industry, as it is an incentive for trained workers to make their home here.
>
> Industry has long worked with our local indigenous population to create jobs, to build business partnerships, provide ongoing training and offer scholarships to local students. Cold Lake First Nation operates over 40 businesses tied to the oil and gas industry, employing its own members and others from Indigenous communities in British Columbia and Saskatchewan. They are nationally recognized for their unique partnerships with the oil and gas industry, winning many business awards for their cooperative endeavours.

Thorhild County Council and Wood Buffalo Council each implored the Senate to defeat Bill C-69 if it is returned here without our amendments. The Wood Buffalo motion includes these words:

> THAT proposed legislation, in the form of . . . Bill C-69 without the Senate amendments, will be detrimental to the viability and sustainability of the region of Wood Buffalo and the energy sector.

You will recall, honourable senators, that Wood Buffalo includes Fort McMurray, a town devastated by wildfires a few years ago. Now with Bill C-69, this government is hell-bent on adding insult to their injury.

Before I end here, I'd like to thank the Deputy Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, Michael MacDonald, all my colleagues and independent Senator Richards for their work on the committee. I also want to thank Senator McCoy, who often came to the committee and asked questions that were tough and good questions, and much appreciated.

Honourable senators, with this message, the government has done all of us — all those in this place who worked so hard on the amendments — a disservice. That's what the government has done. They have done the people of Bonnyville, Thorhild, Wood Buffalo, Lac Ste. Anne County and other towns and cities in Canada that support the resource industry a disservice with this message.

• (2200)

Mark my words, these people will let them know exactly how they feel this October.

Some Hon. Senators: Hear, hear.

Hon. Richard Neufeld: Honourable senators, I rise to speak to the message from the House of Commons on Bill C-69.

Bill C-69 has been coined "the no more pipeline bill," based on the false assumption that this bill solely addresses the oil and gas industry. This bill has wide-ranging implications on many sectors of our economy and touches on many facets of major infrastructure projects and resource development in Canada.

If Canada can't get major projects off the ground, like pipelines, high frequency trains, bridges, clean electricity and transmission lines, marine terminals, we risk serious harm to our economy. Naturally, this implies less good-paying, family-supporting jobs for Fred and Martha and less revenue from royalties and taxes to fund our country's many generous social, health and education programs.

It goes without saying that this bill has the potential of totally disrupting investor confidence in Canada and putting a wrench in major infrastructure projects. For example, last month at a three-day Canada gas and LNG exhibition and conference in Vancouver, one expert panellist proposed that LNG — Canada's $40 billion project, the largest in Canada — would probably never have been sanctioned if it had to pass the Trudeau government's proposed new impact assessment review.

I remind colleagues that LNG Canada is scheduled to responsibly liquefy and export the cleanest natural gas in the world to Asian markets to help displace coal and reduce worldwide GHG emissions.

Despite what we may believe, I honestly think this government wants to shut down, perhaps in a subtle way, the oil and gas industry. Yet the Liberal government wants to rely on clean LNG to get global carbon credits so it can get closer to its climate change goals.

In his second reading speech, Senator Mitchell told us that Bill C-69:

> . . . aims to ensure that the impacts of resource projects are being reviewed rigorously so as to build public and Indigenous peoples' trust and to meet the exacting interpretations of the courts, and it will implement provisions to sustain and enhance industry's competitiveness and investor confidence.

I think it's fair to say the government aimed, took a shot in the dark and seriously missed the target with this bill. We often heard in our committee hearings that competitiveness and investor confidence would be further eroded with this bill. Our committee tried to fix that.

Now, some months later, he recognizes that the final version of the bill will have been significantly enhanced by the work of the Senate. There is no doubt about it: Bill C-69 was a bad bill from inception and we heard some rather eye-opening and mind-boggling testimony during our committee's proceedings.

In my humble opinion, the Senate's 188 amendments finally made Bill C-69 kind of workable. Many premiers have urged the government to accept the Senate's full amendment package, but the government has said, "Thanks, but no thanks."

Much credit is due to the Senate and its comprehensive review of this bill, in particular, the 14 members of the Standing Senate Committee on Energy, the Environment and Natural Resources. We held meetings in nine Canadian cities. Despite what some may think, I believe there was much value in that exercise.

I am particularly proud of the work of the Senate's official opposition. Some have accused us of being obstructionist or wanting to delay the passage of Bill C-69 indefinitely. Last week, Minister McKenna told Don Martin that Conservative senators delayed this for a year. I reject that accusation. I can't speak for my caucus colleagues, but I've always wanted to improve this bill. I am happy our caucus pushed hard to have the committee travel and to do a thorough review of this bill. I think we all greatly benefited from those hearings.

I also think many Canadians benefited from this experience. When we hit the road, many finally felt like someone was genuinely listening to them and to their concerns. After all those hours of meetings, a few things have become crystal clear to me. First, Bill C-69, like Bill C-48, has been one of the most toxic, polarizing and divisive bills that we have had to deal with since my appointment to the Senate.

As I said a few weeks ago, Trudeau brags about bringing people together, about finding the right balance between the economy and the environment and not engaging in divisive politics. He has been extremely unsuccessful on that front and it became quite evident during our many meetings.

He has managed to alienate an entire segment of the Canadian population. This was not exclusively an east versus west issue. Need I remind you that nine of the 10 provinces had various degrees of concerns with this bill?

Second, and to our credit, the Senate did outstanding work in listening to Canadians on all sides of the issue. We should be tremendously proud of that. I tip my hat to all those behind the scenes who worked hard on this file. I know it has been grueling and at times frustrating. I think the bill we sent to the house was a much better piece of legislation.

Third, the Trudeau Liberals utterly failed Canadians when consulting with them on drafting Bill C-69.

When was the last time a government bill underwent more than 300 amendments from both Houses of Parliament? My goodness, the bill is only 359 pages and that's cover to cover.

It goes to show you the poor quality of the government's work. I truly believe our Senate amendments made this bill better. It would work for industry and help stimulate our country's economic prosperity and protect our environment. However, the government has rejected dozens of our amendments. In fact, it even brags about accepting so many of them, implying that we should be satisfied with the outcome. In other words, we should count ourselves lucky they accepted any.

In a speech last week, Minister McKenna argued that the government accepted amendments that made sense and not those from Conservative politicians.

She said:

> Conservatives in the House and the Senate want to replace environmental reviews with pipeline approvals. . . . Their goal has been to weaken the rules, and we all know where that road leads.

Allow me to remind the honourable minister of a few facts. On May 16, the bill was severely amended in committee and it was agreed unanimously that it be reported back, as amended, to the chamber. The bill was then passed on division in the Senate on June 6 with the committee's full suite of amendments.

Some have argued that the changes the committee made went too far. They claim that senators were influenced by big oil to pass these amendments or that we are capitulating to the demands of the oil and gas industry. Rather, I would suggest that the Senate's amendments were a compromise that actually found kind of a balance the government has been bragging about all of these months.

I am obviously disappointed but not surprised that the government rejected the bulk of the amendments that came from our side and that were endorsed by the Senate, I might add.

In response to the message from the other place, I would like to focus on just one element we amended, which the government has rejected, that touches on public participation.

Before I address why I think the standing test element is useful, I want to share with you a moment during one of our hearings that justifies establishing some parameters around public participation or, at the very least, allowing for some sort of mechanism to ensure that those affected by a project or experts on the matter aren't drowned out by others.

Let me set the stage for what happened at the Fort Garry Hotel during our public hearings in Winnipeg, on April 12. Our second panel that morning included some Metis and First Nations leaders, including elder David Scott of the Swan Lake First Nation. During his appearance, environmental activists who were sitting in the audience, suddenly stood up next to our tables and unfurled some banners in protest. They stood there in silence, in front of the cameras, while our hearings went on. It was all done in a peaceful and respectful manner, until one protester decided to interrupt a senator who was asking Elder Scott a question.

• (2210)

Not only did this individual interrupt our proceedings, but he also disrespected our First Nation witness. Our meeting was briefly suspended while the protesters were kindly asked to leave the room. The protester announced, as he was exiting the room, that his group was going to hold a news conference elsewhere in the building.

I share this story with you for two reasons. First, I think it speaks volumes that when protesters are escorted out of the room, the media crews and reporters left to follow them to their news conference. They showed a complete disregard to Elder Scott and what he had to say. In other words, they were focused on the message from the activists, who showed up in small numbers but had loud voices. Clearly, Elder Scott's heartfelt and passionate testimony was not that important to them.

Second, as I said at the time of the encounter, individuals came in the room with a message to spread and perhaps some ulterior motives and actually overtook the proceedings. This, in my view, is what is currently happening on a larger scale with our resource development projects across this country.

While this story is anecdotal, I believe it reflects in some ways what the government was hoping to achieve with Bill C-69 in terms of public participation in the impact assessment process.

The government claims that removing the regulator's powers to deny standing will make public participation more meaningful. Under the current legislation, people who are directly affected by the construction or operation of a proposed project must be allowed to participate in the process. People who may have relevant information or expertise may also contribute to the assessment. Bill C-69 seeks to make impact assessments wide open by removing the "standing test."

Thanks to the committee's work, we amended the bill in order to make the public participation component of assessments more efficient, practical and more or less workable. One of the amendments adopted in committee, labelled as amendment 1(p)(iii), gave the agency the powers and flexibility to establish the manner that it considers appropriate for members of the public to meaningfully participate in an impact assessment, taking into account: one, the degree to which a member of the public is directly affected by the designated projects; and two, whether a member of the public has relevant information or expertise regarding the manners to be decided.

It became apparent to me that allowing anyone and everyone to have their say in project proposals could lead to the drowning out of voices from those who are actually directly affected. The situation with Elder Scott in Winnipeg reflects that concern.

In no way did the proposed amendment enforce the "standing test" and limit public participation. Rather, it gave the agency some direction in assessing the value of the public's participation.

I appreciate the government accepted an amendment we proposed, which gives the agency and the commission the ability to set some rules and expectations for public participation. I feel it does not go far enough.

If we do not weigh the interests of different parties appropriately, we risk creating a process that is terribly unfair. Directly affected local residents should receive the highest priority when project impacts are considered, otherwise their voices risk being drowned out, just like other Indigenous leaders during our meeting in Winnipeg. Some of the amendments that were adopted by the Senate tried to partially resolve that issue.

Honourable colleagues, environmental assessments are serious undertakings and we should not encourage those who would make a mockery of them to participate. To do so will only slow down project approvals in Canada, add unnecessary risk for investors and encourage businesses to execute projects in other countries.

Processes to rank participation, in other words, to focus on expert knowledge, relevant information and those who may be affected by a proposed project were used responsibly in the past. I strongly believe they would be used as responsibly in the future if our proposed amendments had been accepted by the government.

MP Shannon Stubbs made a good point in her remarks last week in the other place: "The standing test is not used to screen out worthy applicants. Rather, it's used responsibly to screen out only those people who would not add any value to the environmental assessment of projects. I believe it is in Canada's best interests."

I truly think it would be the responsible thing to do if we insisted on public participation amendments, but I won't. This is not a hill to die on. It certainly is an issue I felt needed to be addressed.

The Hon. the Speaker pro tempore: Your time is up.

Senator Neufeld: Thank you, senators.

Some Hon. Senators: Hear, hear.

Hon. Fabian Manning: Honourable colleagues, I am pleased to have the opportunity this evening to say a few words on the message from the house as it relates to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

While I am pleased to say a few words on the message, I am definitely not pleased with the bill as it stands before us today. In the limited time I have this evening, I will focus my remarks on the extremely negative effect the passage of this bill will have on my home province of Newfoundland and Labrador.

I also want to emphasize that these concerns are not only being brought forward by me but, indeed, are the non-partisan concerns for many people in my province, as well as those involved in the oil and gas industry, including Noia, the Newfoundland and Labrador Offshore Industry Association.

Bill C-69 is also of great concern to the provincial Government of Newfoundland and Labrador, which, by the way, is one of the only two provincially Liberal-led governments in Canada today. I would also like to add that the other provincially Liberal-led Government of Nova Scotia is fully supportive of the issues and concerns that the Government of Newfoundland and Labrador have put forward in regard to Bill C-69.

I ask for your indulgence in order to present a little piece of history. In 1985, the Government of Canada and the Government of Newfoundland and Labrador signed an agreement called The Atlantic Accord. This was an agreement to jointly manage the offshore oil and gas resources adjacent to Newfoundland and Labrador.

Section 2 (c) of the agreement reads:

> to recognize the right of Newfoundland and Labrador to be the principal beneficiary of the oil and gas resources off its shores, consistent with the requirement of a strong and united Canada;

Section 2 (d) reads:

> to recognize the equality of both governments in the management of the resource, and ensure that the pace and manner of development optimize the social and economic benefits to Canada as a whole and to Newfoundland and Labrador in particular;

In my opinion, Bill C-69 takes us in a completely different direction.

I want to stress the word "jointly." Through this agreement, the Canada-Newfoundland and Labrador Offshore Petroleum Board was born. There would be three members appointed from the federal government and another three from the province. Both governments would jointly agree on a person to be the chair of the board.

This accord was considered to be a watershed in the province's economic development. Its goal was "to make the province the principal beneficiary" of our offshore oil resources. The accord brought financial benefits, and with modifications in 2005 we reached the status of a "have" province in 2008. It was a great moment in the history of our province and a great moment as a partner in the Canadian Confederation.

The accord also provided for joint management, including environmental stewardship and safety. This has worked very well for Newfoundland and Labrador and, indeed, for Canada as a whole.

Once again I want to stress the word "jointly" because we, the people of Newfoundland and Labrador, support our provincial government in their objection to the fact that Bill C-69 flies in the face of the spirit and intent of the Atlantic Accord.

• (2220)

Our Premier, Dwight Ball, sent a letter to the sponsor of the bill in the Senate, Senator Mitchell, putting forward his government's objections to certain clauses of Bill C-69. He offered amendments which would address our province's concerns. During second reading, I put forward, word for word, one of the amendments proposed in the letter from Premier Ball and was very disappointed that this amendment, from the Government of Newfoundland and Labrador, from the people of Newfoundland and Labrador, supported by the Government of Nova Scotia, was rejected in the Senate.

On June 11, the Minister of Natural Resources for Newfoundland and Labrador, the Honourable Siobhan Coady, raised several of the government's concerns with Bill C-69 in a

letter to the Honourable Catherine McKenna and offered several concrete suggestions on how to address those concerns. Once again, no changes or amendments were forthcoming.

On Monday morning, June 17, I along with some other senators from Newfoundland and Labrador, held a conference call with Premier Ball and Minister Coady where we discussed any and all possible avenues open to us to have the concerns of our province dealt with in a productive way. Sadly, I have to say that at this stage in the process our options are extremely limited, if there is any option at all. This is very disappointing.

In 1949, our province brought into Confederation possibly the richest fishing grounds on the planet. When we joined Canada, the total control and management of that great resource was placed in the hands of people here in Ottawa. The dismal failure of the management plan has caused untold misery to the people of my province. The idea that resources of the ocean that were and still are so important to the people of Newfoundland were being managed by the people in downtown Ottawa, where the only water they ever saw was that of the Rideau Canal, I find very ironic. But I digress. I will leave that story for another day.

The oil and gas industry has been very positive for the people of my province. As an example, the average weekly wage in Newfoundland and Labrador in 1998 was $529, while in Canada it was $606. Fast forward to 2017 and the effect of the oil and gas industry, Canada's average weekly wage was $976, while Newfoundland and Labrador's was $1,035. Joint management has worked very well for the oil and gas industry in our province.

As I said before, Bill C-69 will take us back in the other direction. Bill C-69 takes away joint management and puts the power totally in the hands of the federal Minister of the Environment. In our opinion, this is wrong, unjust, unfair and in total disagreement with the spirit of the Atlantic Accord.

It may take up to three years for a permit to be awarded to an oil company now for the permission to drill an exploratory well. Our provincial government is asking that exploratory wells be taken off the project list. Why? Because there are jurisdictions that are leaders in environmental stewardship that are undertaking reviews of offshore exploration wells in a fraction of the time that we are: Norway, 79 days; Australia, 144 days; compared to Canada, 900 days. Something, my dear friends, is not right, and definitely not providing a stable and secure investment environment.

Bill C-69 will permit Newfoundland and Labrador to have two guaranteed seats on the environmental review panel that could be made up of five, seven or nine members or whatever amount the Minister of the Environment decides. I call it as I see it. This is not in any way joint management.

Bill C-69 says the Government of Canada will consult with the Government of Newfoundland and Labrador. The Government of Newfoundland and Labrador would like to see the word "consult" removed and replaced with the word "agree." After all, one would be led to believe that joint management is agreeing on issues, not consulting on them. Joint management is a 50-50 arrangement.

To give an example, your partnership with your spouse is a 50-50 arrangement. You consult for a while and then one person dictates how things are going. That's not the way it works.

The Atlantic Accord was signed in good faith many years ago. It has benefited Newfoundland and Labrador greatly, and has definitely benefited this country of Canada. It has worked well, and investors have told us time and time again that they want stable and competitive regulatory regimes. The Atlantic Accord provided that. Sadly, Bill C-69 takes that all away. The joint management regime is eroded and the Atlantic Accord is on life support. Premier Ball announced earlier today that he is prepared to invoke an arbitration clause in the Atlantic Accord if Ottawa does not respect the deal's joint management principles around offshore oil and gas resources. We support his government's efforts in that regard.

In closing, I want to make a comment in regard to Senator Black's reference to Fort McMurray. Fort McMurray, many have said, is the largest city of Newfoundlanders outside of Newfoundland and Labrador. It was. It has served us very well.

I went to Fort McMurray myself when I was 17 years of age for a couple of years. Many Newfoundlanders and Labradorians have done very well in Fort McMurray. But you have to go no farther than my hometown, a community of 300 people, to see the effects of the shutdown in the oil and gas industry in Alberta and how it has affected the small communities of Newfoundland and Labrador. This concern is widespread. This concern is not individualized. It affects the whole country. Bill C-69, in my view, is not where we need to be going.

Colleagues, in all sincerity, passage of Bill C-69 in its present form is a sad day for the province of Newfoundland and Labrador and my country of Canada, therefore, I cannot support the message from the other place.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Mitchell seconded by the Honourable Senator Gagné that in relation to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts — shall I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: All those in favour of the motion please say "yea".

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: I see two senators rising. Do we have an agreement on the bell?

Some Hon. Senators: Fifteen minutes.

The Hon. the Speaker pro tempore: The vote will take place at 10:42.

Call in all the senators.

• (2240)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Anderson
Bellemare
Bernard
Boehm
Boniface
Bovey
Boyer
Busson
Campbell
Cordy
Cormier
Coyle
Dalphond
Dasko
Dawson
Day
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Duncan
Dupuis
Dyck
Forest
Forest-Niesing
Francis
Furey
Gagné
Galvez
Gold
Griffin
Harder
Hartling
Joyal
Klyne
Kutcher
LaBoucane-Benson
Lankin
Lovelace Nicholas
Marwah
Massicotte
McCallum
McPhedran
Mégie
Mitchell
Miville-Dechêne
Moncion
Moodie
Munson
Omidvar
Pate
Petitclerc
Pratte
Ringuette
Saint-Germain
Simons
Sinclair
Woo—57

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Black (*Alberta*)
Black (*Ontario*)
Boisvenu
Carignan
Dagenais
Doyle
Eaton
Frum
Greene
Housakos
MacDonald
Manning
Marshall
Martin
McCoy
McInnis
McIntyre
Mockler
Neufeld
Ngo
Oh
Patterson
Plett
Poirier
Ravalia
Richards
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Verner
Wallin
White—37

ABSTENTION
THE HONOURABLE SENATOR

Downe—1

• (2250)

BUDGET IMPLEMENTATION BILL, 2019, NO. 1

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Boehm, seconded by the Honourable Senator Mégie, for the third reading of Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures.

Hon. Elizabeth Marshall: Honourable senators, I spoke at length last week on Bill C-97 at second reading. However, there is one issue which was subsequently discussed at Finance Committee and on which I would like to make some comments. That is the matter of "consultations."

Our Finance Committee is concerned about the intent of consultations conducted by the government after hearing the dissatisfaction and frustration expressed by some witnesses. It was a recurring theme heard not only at Finance Committee but also at other Senate committees who were studying other sections of the budget bill.

One of our primary roles as a chamber of sober second thought is to ensure all stakeholders' voices are heard in the legislative process, but the onus is on the government to ensure that it hears the views of all Canadians before tabling legislation. This includes transparent, concrete and wholesome consultations with industry and interested stakeholder groups that may be impacted by the proposed legislation.

While government officials who appeared before the various committees during the pre-study of Bill C-97 did indicate that they undertook consultations, we heard contradictory evidence from individuals and groups on a number of clauses of the bill — concerns that the government and its officials did not provide meaningful consultations and, in some cases, no consultations at all.

I can provide some examples. At the Agriculture and Forestry Committee, which was assigned Subdivision C of Division 9 of Part 4 of the Budget Implementation Act, government is proposing amendments to the Food and Drug Act, among other things to allow the Minister of Health to classify certain products exclusively as foods, drugs, cosmetics or devices, and also to provide oversight over the conduct of clinical trials for drugs, devices and certain foods for special dietary purposes.

Representatives from the agriculture and agri-food industry who appeared before the committee were quite concerned that they did not understand the implications of these changes on their sectors, especially in relation to existing regulations under the Safe Food for Canadians Act.

Carla Ventin, Senior Vice-President of Government Relations at the Food and Consumer Products of Canada, spoke at committee about the propose changes. She said:

> The cumulative impact of all of these changes will permanently alter the landscape of the food industry in Canada. What exactly these changes will look like and the impact they will have on the sector and Canadians is unknown. That is part of the problem.
>
> While we appreciate the government's ambitious agenda, it has been a challenge for industry to keep up. We see consultations that are rushed with short turnaround for comments or that have unpredictable timelines. For industry, this means it can be difficult to provide meaningful input. For government, this means that critical issues can be overlooked. For Canadians, this can result in unintended consequences.

Officials from Health Canada in the next panel explained to the committee that these changes were meant to improve regulations around advanced therapeutic products in Canada. Officials said that the proposed changes would not impact the agriculture and agri-food industries. Only during the Senate pre-study of Bill C-97 did these stakeholders receive a clarification about the proposed changes.

In Part 1 of the bill, the government is proposing the Canada Training Credit, a virtual savings account that accumulates $250 a year with a maximum lifetime cap of $5,000 that qualified Canadians can claim to reduce eligible tuition and training fees.

When stakeholders and experts were asked in committee if the government had undertaken consultations in respect of these proposals, Mr. Dan Kelly, President and Chief Executive Officer of the Canadian Federation of Independent Business said, "There was zero consultation whatsoever."

Mr. Larry Rousseau, Executive Vice-President of the Canadian Labour Congress, and other panel members, composed of tax professionals and academics, echoed those same sentiments.

In Division 25 of Part 4 of the bill, the government is proposing sweeping changes to Indigenous Services. Among other things, this division proposes the following: dissolution of Indigenous and Northern Affairs Canada by repealing the Department of Indian Affairs and Northern Development Act; the creation of Crown-Indigenous Relations and Northern Affairs Canada by way of the Department of Crown-Indigenous Relations and Northern Affairs Act and the designation of a minister responsible for overseeing the department.

It also proposes the creation of Indigenous Services Canada by way of the Department of Indigenous Services Act and designates a minister responsible for overseeing that department.

From my own preliminary reading of this part of the bill, I felt that the legislation wasn't robust enough. In a letter to the Standing Senate Committee on Aboriginal Affairs, the President of Nunavut Tunngavik Incorporated wrote:

> I appreciate that these proposed acts may be intended primarily for administrative purposes and to consolidate current government practice. Indeed, when I review them, I see little of substance, and perhaps partly for this reason many Indigenous groups have not commented upon them.

However, in a detailed submission provided with the letter, the organization highlighted its concerns with the lack of engagement on the part of the government when it was drafting this legislation. The submission read in part:

> This section of the Budget Bill invites many questions. Put succinctly, it lacks clarity.

They went on to say:

> It may be that these are simply "administrative matters" but administrative matters have both operational and political consequences in an environment that is ever-changing. The concerns we raise reflect the drafting of proposed acts in isolation from the Indigenous peoples affected by them. There has been neither consultation nor "engagement."

Honourable senators, it is inappropriate to draft legislation that potentially affects our well-being for decades to come, in isolation, and then enact this as part of an omnibus budget bill on a tight schedule with little opportunity for input.

The Banking Committee also heard concerns from the Insolvency Institute of Canada regarding consultations on Part 4, Division 5 of the budget bill indicating the process was rushed and there was little to no meaningful consultation with experts in the field, of the proposed amendments.

In fact, the testimony of officials was so different from the testimony of stakeholders that the Banking Committee recalled the officials for explanation.

The last example is reflected in testimony received after we had second reading of the budget bill last week and after I spoke, when an official of the Canadian Consumer Specialty Products Association, the CCSPA, testified on Part 4, Division 9 of the budget bill.

Here is what she said during testimony before the National Finance Committee:

> CCSPA has been and remains committed to working with this government on supporting an efficient and effective regulatory climate for businesses . . . . Issues can't be raised in isolation by departments without substantive consultation with key stakeholders.

She then went to say that her organization was given four days to provide comments on the legislation.

> . . . we have asked for the department to provide us an overview as to what the legislation is, what the current policy is and what the future looks like under these new amendments, but we have not received it as yet.

She also raised the issue of the *Canada Gazette* whereby the budget bill proposes to remove the requirement that certain business information must be published in the *Canada Gazette*. Rather, it is being proposed that this information will be published on the government website.

The issue of the continuation of the *Canada Gazette* arose during another committee meeting during which assurances were given by an official that the *Canada Gazette* would continue publication. I am not sure now.

Honourable senators, I use the Government of Canada web site and those of its departments. It's challenging, to say the least. I appreciate the concerns of the Canadian Consumer Specialty Products Association. Their concerns are well founded.

Honourable senators, that completes my comments on Bill C-97.

• (2300)

I'd like to thank the chair of the committee, again, Senator Mockler, Senator Pratte and Senator Day, the deputy chair, and all members of our Finance Committee, especially Senator Boehm, who was the sponsor of the bill, and other senators who spoke on the bill.

Also, thank you to our committee clerk, our analysts and other officials who provided assistance and support during our hearings. Thank you.

Hon. Senators: Hear, hear.

Hon. Nicole Eaton: With leave of the Senate, I would like to table my speech on third reading of Bill C-97. Because we lost an MP tragically today, Mark Warawa, I would like to table this speech instead of keeping you here any longer.

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

Hon. Senators: Agreed.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

ADJOURNMENT

MOTION

Leave having been given to proceed to Government Business, Motions, Order No. 282:

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 18, 2019, moved:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, September 17, 2019, at 2 p.m.

She said: I move the motion standing in my name.

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I wish to move an amendment.

MOTION IN AMENDMENT ADOPTED

Hon. Peter Harder (Government Representative in the Senate): Therefore, honourable senators, in amendment, I move:

> That the motion be not now adopted, but that it be amended by:
>
> 1. inserting the following immediately after the word "That,":
>
> "when the Senate sits on Friday, June 21, 2019, it sit at 1:30 p.m., and solely for the purposes of Royal Assent; and
>
> That,"; and
>
> 2. replacing the words "next adjourns after the adoption of this motion" by the words "adjourns on Friday, June 21, 2019".

The Hon. the Speaker: In amendment, it was moved by the Honourable Senator Harder that the motion be not now adopted but that it be amended by — may I dispense?

Hon. Senators: Dispense.

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

Hon. Senators: Agreed.

(Motion in amendment of the Honourable Senator Harder agreed to.)

MOTION ADOPTED

On the Order:

Resuming debate on the motion, as amended, of the Honourable Senator Bellemare, seconded by the Honourable Senator Harder, P.C.:

That, when the Senate sits on Friday, June 21, 2019, it sit at 1:30 p.m., and solely for the purposes of Royal Assent; and

That, when the Senate adjourns on Friday, June 21, 2019, it do stand adjourned until Tuesday, September 17, 2019, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to, as amended.)

(*At 11:03 p.m., the Senate was continued until tomorrow at 1:30 p.m.*)

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