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(HANSARD)

Wednesday, June 16, 2021

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Wednesday, June 16, 2021

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

Prayers.

THE SENATE

TRIBUTES TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, as I indicated yesterday, this week we are paying tribute to the Senate pages who will be leaving us this summer.

[*Translation*]

Juan David Gonzalez, who, unfortunately, isn't here today, just completed his BA in political science with a minor in public administration at the University of Ottawa. In September, he'll begin his master's in project management and hopes to one day earn his Master in Business Administration, or MBA.

Juan is proud to have represented the Spanish-speaking community and his province of Quebec here in the Senate. He's grateful to and wishes to thank the senators, the members of the administration and the office of the Usher of the Black Rod for this unique experience.

Hon. Senators: Hear, hear!

[*English*]

The Hon. the Speaker: Madison Venugopal. Madison will be entering her fourth and final year at Carleton University in law and sociology in the fall. After graduation, she aspires to attend law school and pursue a career in law. Madison is deeply appreciative for having had the opportunity to serve the Senate for the last two years and is grateful for having had an insider's view on how Canada's parliamentary system operates. Thank you, Madison.

Hon. Senators: Hear, hear!

[*Translation*]

The Hon. the Speaker: Olivier Tremblay-Venneri is proud to have represented the Franco-Ontarian community on the Senate page team for the last two years.

Olivier will continue his studies at the University of Ottawa in the international studies and modern languages program. His experience and the people he met in the Senate helped him to better understand our parliamentary system and our democracy. Thank you, Olivier.

Hon. Senators: Hear, hear!

[*English*]

SENATORS' STATEMENTS

FOOD DAY CANADA

Hon. Robert Black: Honourable senators, I rise today to acknowledge that we are quickly approaching the end of this session.

This past year has certainly been unpredictable, and at this time I would like to take the opportunity to say a sincere thank you to the entire Senate family, from the pages to the maintenance staff, to Senate administration and every staff member in each of our senators' offices here in Ottawa and beyond. Your ongoing support and tireless dedication make it possible for us to complete our work here in the Red Chamber and outside, and makes it a little easier to look good while we're doing it because of your work.

As we enter the summer, I would like to once again highlight the importance of buying and eating local food. In fact, just last week was Local Food Week in my home province of Ontario. This week-long event celebrates the bounty of fresh, healthy food that is locally grown, produced and processed here in the province.

That said, from coast to coast to coast, the whole country offers amazing varieties of agricultural products. In fact, I challenge each of you to build an entire meal from Canadian products. You could pick up some Alberta beef, pair it with asparagus from Ontario, alongside a heaping helping of P.E.I. potatoes and maybe even a glass of wine from beautiful British Columbia, or Ontario, and fresh strawberries from Quebec for dessert. The options to create a Canadian-made meal are endless.

And then I challenge you to post a photo of your meal on social media with the hashtag FoodDayCanada. Using this hashtag is another way we can all support our domestic agricultural sector by celebrating Food Day Canada on Saturday, July 31, and every Saturday of the August long weekend going forward.

Food Day Canada is an opportunity to highlight and appreciate the diverse and nutritious food products that we have access to. As founder, the late Anita Stewart would say, "Canada is food and the world is richer for it."

I think we've all learned how important it is to support locally owned shops over the course of this pandemic. Buying local helps a neighbour in your community keep their small business afloat, which can mean all the difference during these challenging times. It also helps boost our local economies, meaning more small and family-run businesses not only survive but thrive.

Honourable colleagues, I hope this summer you will take the opportunity to support your community in any number of ways, whether it's by shopping in your neighbourhood farmer's market, enjoying a meal on a patio or virtually attending a fair, festival or other locally organized event. Thank you. *Meegwetch*.

WORLD REFUGEE DAY

Hon. Ratna Omidvar: Honourable senators, I rise today to mark World Refugee Day on June 20. Life, as we know it, has never been easy for refugees, but I know that we must all appreciate how much harder it has become for them with the deepening of the COVID crisis. Borders have locked down, safe passage is hard to find, predators lurk around every corner and doors to entry are being closed rapidly. Refugees have always been last: last in terms of their rights, last in terms of access, last perhaps in our minds and definitely last in terms of health care in these complex times.

Just as one example, we've all heard about Cox's Bazar. People are already living there in unsafe and unsanitary conditions. Cox's Bazar in Bangladesh hosts 900,000 Rohingya refugees, with waves of the pandemic sweeping over them. And yet, as I read in *The New Humanitarian* last week, not a single vaccine has been administered by the government at this point.

And Bangladesh is not the only refugee-hosting country relying on COVAX for its supply. Other major refugee-hosting countries such as Uganda, Pakistan, Colombia and Lebanon host some of the largest refugee populations of the world. All have received just a fraction of the doses allotted to them through COVAX. It is no surprise that of the 157 hosting countries, only 54 — roughly one third — have vaccinated refugees.

• (1410)

In addition, even where vaccines are available, refugees face insurmountable barriers to getting them. There are issues of cost and language, there are information barriers, and there are issues of providing identification, to name just a few. Getting access to vaccines in conflict zones creates another set of challenges, and the United Nations humanitarian buffer vaccination zone has not launched yet.

Let's also be clear: The main reason these countries are at the end of the line is a woeful lack of supply for developing countries. Most of the vaccinations, as we know, are going to well-off countries such as Canada, the U.S. and in Europe. As welcome as the announcements of the vaccine donations from the G7 summit are, they would need to be accompanied by a timeline and with a special mention of host countries which house large refugee populations.

I and a number of other senators, along with civil society, governments and concerned citizens around the world, have called for vaccine patents to be temporarily waived so that more supply of vaccines can be produced and shared around the world. To this proposal, we wrote a letter to the Prime Minister. We have only heard nice words and no real action.

Today, coincidentally, June 17, Canada is acting as the host of the International Donors' Conference for the more than 5.7 million Venezuelan refugees who remain largely in the region. They need shelter, food and vaccinations.

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

THE TRAIL—TRANSITION HOUSING FOR VETERANS

Hon. Larry W. Smith: Honourable senators, I speak to you today to highlight the work done by Le sentier – Maison de transition pour vétérans, The Trail – Transition House for Veterans for the third time. I'm sure that you have understood by now the respect I have for military personnel, retired or active, and our veterans. We owe them a debt of gratitude and the assurance that they will be taken care of when they need help.

[*Translation*]

In my first two speeches, I told you about the early days of the non-profit The Trail. Today, I'm happy to speak to you about some of its accomplishments, despite the pandemic, and its plans for the future.

[*English*]

Le Sentier — The Trail has developed a drop-in centre on Monkland Avenue in Montreal that is ready to open and provide services as soon as the government authorizes its operations. The services of this facility will help with the assistance of specialized therapists and facilitators from Montreal's academic and community institutions, and identify the best services required for each individual client. This centre will also offer various peer-supported activities. Here veterans and retired military personnel have access to private meeting rooms, computer equipment and a group lounge, as needed.

The personnel of the Monkland Avenue drop-in centre are anxiously waiting to serve the military and veteran population of Montreal and surrounding areas. I look forward to presenting to you the plans for a state-of-the-art facility to be built adjacent to the veterans hospital in Sainte-Anne-de-Bellevue. They will work in collaboration and in cooperation with the services offered by Veterans Affairs Canada and the Quebec government to get our veterans, retired military personnel and their families ready and able to strive in the civilian world. Thank you.

NATIONAL SICKLE CELL AWARENESS DAY

Hon. Jane Cordy: Honourable senators, I'm pleased to speak to you today from the unceded land of the Mi'kmaq people.

On Saturday, June 19, Canada will once again celebrate National Sickle Cell Awareness Day as well as World Sickle Cell Day. As with most of our interactions over the past year, these celebrations will be held virtually. Nonetheless, we will join together as a community of those living with sickle cell disease and those who are carers, supporters and advocates.

This gathering, and the acknowledgment of June 19, are still so vital to the recognition of sickle cell disease in Canada, as well as to the Canadians who are living with sickle cell. While I would certainly prefer to be meeting in person, one of the advantages of the virtual world is that it widens the net, so to speak. It opens up the celebration to those who, because of distance or due to medical limitations, would be unable to attend and participate in person. Their stories are so important to how we move forward with a national strategy for testing and the treatment of this disease.

A few weeks ago, I was pleased to be a speaker for the African Congress on Sickle Cell Disease. This congress took place over several days, and it was very interesting to hear perspectives from all over the world about the approach to managing the disease within their regions. I look forward to speaking on Friday on a panel with the Sickle Cell Disease Association of Atlantic Canada, and then on Saturday delivering opening remarks for the Sickle Cell Disease Association of Canada. This year's theme for Saturday's event is focused around sharing sickle cell disease advocacy best practices.

Since my involvement with the sickle cell community — when I first met Lanre Tunji-Ajayi at an advocacy event on Parliament Hill in 2013 — I have witnessed how passionately groups here in Canada have worked on behalf of sickle cell patients. It has been incredible to join them in their efforts.

I would like to express my deepest thanks to Lanre Tunji-Ajayi, Biba Tinga and Rugi Jalloh for the work they have done and the work they continue to do with lots of other volunteers. They work tirelessly to keep sickle cell disease and the needs of those with sickle cell as their focus.

Honourable senators, please join us for virtual celebrations on Friday and Saturday, if you are able. And let's celebrate National Sickle Cell Awareness Day. Thank you.

HALIFAX HARBOUR INFILL

Hon. Colin Deacon: Honourable senators, the infilling of Halifax Harbour has produced new land for shopping areas, condominium complexes and container terminals. Unfortunately, the current process is not serving all Nova Scotians. Let me provide two examples.

In 2010, the municipality apologized for the mass evictions from and demolition of the predominantly Black community of Africville in the late 1960s. The municipality, with the province and federal support, also helped establish and fund the Africville Heritage Trust and rebuilt Africville's church. Unfortunately, the descendants' fight for justice continued with the decision to build a half-kilometre of infill directly in front of Africville. The current process is described as infill first, consult second.

The large infill now blocking Africville's historic view of the Bedford Basin has recently become the focus of a land swap discussion involving the municipality, Halifax Port Authority and the Africville Heritage Trust. I'm very hopeful that an amicable resolution will be found.

But increasingly, single-family homeowners have noted that they too can obtain a permit to infill the harbour in front of their water lots simply by applying to Transport Canada under the Canadian Navigable Waters Act. In an effort to control this and other activities, in 2019 the province passed the Coastal Protection Act. However, the legislation and regulations are not expected to come into force for another year. It's not clear yet whether the act will apply to all water lots as well.

As a result, there is currently no way for either the municipality or the province to stop an infill project once Transport Canada issues a permit, and that permission seems to be rarely withheld.

Another area of Halifax Harbour at risk is the beautiful and historic Northwest Arm, a narrow inlet that is 4.5 kilometres long. On a sunny day, the arm is teeming with Nova Scotians in kayaks and sailboats. There are both recreational and commercial fishing, with half of one lobster fisher's catch coming from traps in front of the arm's water lots.

If infilling of the arm's private water lots begins, it could result in a cascade of activity that could permanently reduce the water area of the arm by one third and the width of its entrance by half, introducing worrisome navigation risks. This loophole in governance currently allows some of Nova Scotia's wealthiest and most powerful landowners to appropriate public waters for private use. It's happened before and it's happening again.

These are among the reasons why Senators Coyle, Kutcher and I wrote to the Minister of Transport to ask that he pause his department's approval of applications for coastal water infill projects, except for those with both municipal and provincial support. This will provide the opportunity — and arguably the responsibility — to engage all stakeholders under an appropriate process.

• (1420)

We are hopeful that Minister Alghabra will prioritize this request. Thank you, colleagues.

NATIONAL INDIGENOUS HISTORY MONTH

Hon. Yvonne Boyer: Honourable senators, today, as part of Indigenous History Month, I rise in this chamber to continue speaking about the Métis Nation. Earlier this year, I spoke about the Métis people and our identity. Today I will explain the significance of the Métis heritage languages and what is at stake if our languages are lost.

The Métis have various distinct languages and dialects, including Michif Cree, northwestern Saskatchewan Michif, French Michif, Cree, Saulteaux and Bungi.

My ancestors spoke from the Red River spoke Southern Plains Cree Michif, also known as Heritage Michif. Heritage Michif is predominately composed of Plains Cree verbs and French nouns.

Michif acts as a vehicle for Métis history, world views, value systems and cultural knowledge. Our language communicates ecological knowledge, spiritual systems, legal orders, songs and oral stories. The same can be said for other Indigenous nations and languages. As put by one Cree elder, "When the stories disappear, our people will disappear."

Canada's earliest governments understood the relationship between Indigenous languages, culture and nationhood. This made Indigenous languages a clear target for Canada's assimilation policies, which we should now call what it truly was: cultural genocide.

At residential schools, First Nations, Métis and Inuit children were prohibited from speaking their own languages. Punishment for doing so was very severe. Due to this trauma, many Indigenous people lost their language or refused to speak it. As a result, Indigenous languages were not passed down to younger generations.

The Gabriel Dumont Institute in Saskatoon estimates that somewhere between 90% to 95% of Métis people are unable to have a conversation in Michif. Like many other Indigenous languages, due to colonization Michif is on the verge of extinction.

Many Métis elders and language speakers, such as Elder Norman Fleury, who is considered the world's leading language expert, have been hard at work to revitalize Michif and to ensure that the knowledge contained within our language will be passed down to future generations. Working with the Gabriel Dumont Institute and the University of Saskatchewan, Elder Fleury has made many strides to protect this crucial part of Michif heritage. Despite these efforts, Michif is still an endangered language and more must be done to protect it and all Indigenous languages.

The steps we take over the next few years will be critical to preserving this vital part of our culture. We must do this for our children and our children's children. Thank you, *marsee*, for listening with an open heart.

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SIXTH REPORT OF COMMITTEE TABLED

Hon. Sabi Marwah: Honourable senators, I have the honour to table, in both official languages, the sixth report of the Standing Committee on Internal Economy, Budgets and Administration entitled *Annual Report on Parliamentary Associations' Activities and Expenditures for 2020-21*.

STUDY ON ISSUES RELATED TO ITS MANDATE

FOURTH REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. Salma Ataullahjan: Honourable senators, I have the honour to table, in both official languages, the fourth report (interim) of the Standing Senate Committee on Human Rights entitled *Human Rights of Federally-Sentenced Persons* 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 Ataullahjan, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

THE SENATE

MOTION TO EXTEND TODAY'S SITTING ADOPTED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

> That, notwithstanding any provision of the Rules, previous order or usual practice, when the Senate sits today, it continue beyond 4 p.m., and adjourn at the end of Government Business, unless earlier adjourned by motion.

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?

Hon. Senators: Agreed.

(Motion agreed to.)

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

AUTUMN MEETING OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY, OCTOBER 4-6, 2019—REPORT TABLED

Hon. Percy E. Downe: Honourable senators, I have the honour to table, in both official languages, the report of the Canada-Europe Parliamentary Association concerning the Organization for Security and Co-operation in Europe Parliamentary Assembly's Eighteenth Autumn Meeting, held in Marrakesh, Morocco, from October 4 to 6, 2019.

WINTER MEETING OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY, FEBRUARY 20-21, 2020—REPORT TABLED

Hon. Percy E. Downe: Honourable senators, I have the honour to table, in both official languages, the report of the Canada-Europe Parliamentary Association concerning the Organization for Security and Co-operation in Europe Parliamentary Assembly's Nineteenth Winter Meeting, held in Vienna, Austria, from February 20 to 21, 2020.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to meet on Wednesday, June 16, 2021, at 4 p.m., even though the Senate may then be sitting and that rule 12-18(1) be suspended in relation thereto.

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?

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

QUESTION PERIOD

VETERANS AFFAIRS

SETTLEMENT OF CLAIMS

Hon. Donald Neil Plett (Leader of the Opposition): Leader, I have previously raised this with you. Mr. Sean Bruyea, a veteran, was personally attacked in a newspaper column by former Minister of Veterans Affairs Seamus O'Regan. Veteran Affairs also cancelled the reimbursement of child care expenses for Mr. Bruyea's son after his criticism of the minister was published in the media.

In April, just a few days before Mr. Bruyea's scheduled appearance before a House of Commons committee, he was contacted by the department and offered mediation in this dispute, as recommended by the Veterans Ombudsman 18 months ago. Leader, I am informed that since then Mr. Bruyea has heard nothing from Veteran Affairs about mediation despite his efforts to reach out to the department.

• (1430)

Leader, was the department's offer of mediation sincere, or was it made just to pre-empt his testimony before the Veterans Affairs Committee in the other place?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. My assumption is that the offer was sincere. I don't know the details that you raise. Thank you for raising them, and I'll certainly look into it.

Senator Plett: Thank you, leader, for assuring us that you will come back to us with an answer on that — hopefully very quickly, because I suspect it would take a phone call.

Leader, I suspect that if I ever got an answer from your government to this question, it would only say that the department will not comment on individual cases. While that may be true, it shouldn't be an excuse for their inaction, nor does the government's silence justify Veterans Affairs ignoring its own policies in refusing to support the specialized needs of children whose parents are veterans living with lifelong disabilities.

Leader, will you press upon the department the need for them to respond to Mr. Bruyea and all veterans in a timely manner?

Senator Gold: I most certainly will.

PRIME MINISTER'S OFFICE

SENATE APPOINTMENTS

Hon. Leo Housakos: My question is for the Government Representative in the Senate. Senator Gold, I think we can both agree that democracy functions best when the voice and the will of citizens are respected. The Alberta government has recently reinstated the Alberta Senate Election Act, a process that has elected Albertans who have served, such as Senator Brown and Senator Unger, and who are currently serving, such as Senator Black and Senator Tannas, this institution with distinction. The Government of Alberta has now called on Prime Minister Trudeau to respect the democratic process and appoint Alberta senators that will be chosen by the people of Alberta in the upcoming Senate elections scheduled for October 18.

Senator Gold, my question is simple: Will your government continue to appoint senators recommended by friends and donors of the Liberal Party while vetted by committees appointed by Justin Trudeau, or will your government commit to appointing senators democratically chosen by the people of Alberta?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I do not accept your characterization of the process whereby senators have been appointed by the current government, and I won't comment further. The government is committed to continuing and following through on its commitment to build a more effective,

independent and less partisan Senate. In that regard, it stands by the process that it has developed and implemented to appoint senators in a more open, merit-based and transparent way than has ever been done before.

Senator Housakos: Government leader, whether you accept the premise of my question or not, the truth is that the process for appointing senators is the same now as it has always been. It is a choice and a decision made by the Prime Minister. The one difference, of course, being that the previous government, under former Prime Minister Harper, actually respected the Senate election process in Alberta. Perhaps that's why when — at the first opportunity your government had to appoint the next duly elected senator from Alberta — you skipped right over him. Maybe Mr. Trudeau just couldn't pass up another opportunity to stick it to the people of Alberta.

Does your government intend to stick to the status quo of appointing senators, or can we have your commitment to respect the democratic process by honouring Senate nominations by Albertans, thus honouring the objective of our forefathers to ensure regional representation, which is unfortunately often underserved in the other place?

Senator Gold: The commitment of this government is to continue with the process of appointing senators in an open, merit-based, transparent way, as it has been doing since the election of this government.

IMMIGRATION, REFUGEES AND CITIZENSHIP

COVID-19 VACCINE ACCESS

Hon. Mary Coyle: My question is for the Government Representative in the Senate. Senator Gold, our colleague Senator Omidvar just reminded us that June 20 is World Refugee Day. In my town of Antigonish, many of us are walking extra distances daily to raise funding for SAFE, one of our amazing refugee sponsorship organizations. While walking, we're conscious of the 8,072 kilometres between our community and Syria, where many of our refugee families have come from.

As we know, Canada has been a leader in welcoming refugees. In 2019, we welcomed over 30,000 people. While this is a wonderful thing, we also know there are currently at least 26.3 million refugees worldwide looking for shelter from conflict, violence, human rights abuses and persecution.

Senator Omidvar mentioned the vulnerability to COVID-19 of the 900,000 Rohingya refugees living in Cox's Bazar in Bangladesh, especially given the prevalence of the Delta variant in the region. Senator Gold, could you tell us what Canada is doing to ensure these vulnerable people in Cox's Bazar, and other refugees, are vaccinated very soon? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you, colleague, for your question. The virus has proven what we all know — and the government certainly knows — that no one is safe in this world until everyone is safe. In that regard, I've been advised that Canada has been supporting partners such as the United Nations High Commissioner for Refugees, or UNHCR, who in fact has reported on the situation of Rohingya refugees in Cox's Bazar. Voluntary contributions from Canada and other countries support the UNHCR's work in developing countries to ensure equitable access to COVID-19 vaccines for refugees and other forcibly displaced persons, both within refugee camps and those living within host communities. I've been advised, in fact, that thanks to UNHCR's advocacy and the support of UN member states, at least 153 countries have adopted national vaccination strategies that include refugees.

Senator Coyle: Thank you, Senator Gold. Last week at our Foreign Affairs Committee meeting, we were fortunate to hear from Canada's ambassador to the United Nations, Bob Rae. I asked the ambassador about concrete actions that would be required to get the world back on track toward meeting the Agenda 2030 Sustainable Development Goals. He said the first priority was to get the world vaccinated and that we needed to help in both the production and distribution of vaccines.

Senator Gold, could you tell us what Canada is doing to help get the world vaccinated and, in particular, what we are doing to expand the production and distribution of vaccines?

Senator Gold: Thank you. That's an important question. With regard to distribution and expanding access, there are a number of things that one can say.

First, as we know, Canada is a strong supporter of the COVAX Facility, which works with all countries to ensure that at-risk populations — and they include those in refugee camps — have equitable access to COVID-19 vaccines. In that regard, to make sure that nobody gets left behind, the COVAX Facility has both created and operationalized what they call the humanitarian buffer. This is a reserve of vaccine doses set aside — as a measure of last resort — to which countries can seek access in order to vaccinate at-risk populations.

With regard to the larger question of expanding access to doses, as I've reported in this chamber before, Canada continues to be in discussions with other countries with regard to issues surrounding this, including but not limited to the question of patents or temporary waiving of patents. Canada has also, as we know, made commitments to distribute doses of vaccines to other countries as they become available.

NATIONAL DEFENCE

MILITARY JUDICIAL PROCESS

Hon. Rosemary Moodie: My question is for the Government Representative in the Senate. Senator Gold, on May 31, former justice Morris Fish published a report of the Third Independent Review Authority, directed to the Minister of National Defence. This report contained over 100 recommendations, which included the creation of specific offences for sexual misconduct and for hateful conduct. Ministers Sajjan and Lametti have committed to acting swiftly and, in fact, Budget 2021 does make some commitment to expand resources to combat misconduct and support survivors. Survivors in and out of the Armed Forces deserve to know when this support will come and that their government is truly committed.

• (1440)

Senator Gold, when will the funds be coming and when will they be released for survivors?

Hon. Marc Gold (Government Representative in the Senate): Thank you for raising this important issue. I don't have a specific date for when the funds will be released. I will certainly look into that. But I can say, on behalf of the Government of Canada, that it takes very seriously the recommendations of Justice Fish. As you mentioned, it has accepted the recommendations and is working to implement the first batch of them with dispatch. The government is also aware that despite its efforts — and the efforts have been considerable — it is clear that much more needs to be done, both with regard to those who have been victimized by inappropriate and wrongful behaviour within the military but more generally so that the culture within Canada's military is properly addressed and made a safer place for all those who serve in it.

Senator Moodie: The Fish report, Senator Gold, uncovered that as of February of this year 1,350 grievances were still outstanding. Over half of them are only at the initial stage. This would mean that there are hundreds of individuals in the Armed Forces who have grievances with their colleagues or superiors that have not yet been addressed, which could lead to increased issues within the forces. Is there concern in the government about the impact of leaving grievances unaddressed on military preparedness and our national security?

Senator Gold: The short answer is, yes, the government is very concerned about the situation in the Canadian military in this area. It is taking measures, including, as has been previously reported, the appointment of former justice Louise Arbour to build upon the work of earlier inquiries and recommendations. This is something that the government takes very seriously. It is a difficult and challenging problem, the solution to which will require continual and increased efforts, to which this government is committed.

CANADA MORTGAGE AND HOUSING CORPORATION

NATIONAL HOUSING STRATEGY

Hon. Vernon White: Honourable senators, to the Leader of the Government in the Senate, as everyone knows, the recent housing price explosion is not just hitting a few major cities, which has been the norm, but cities and towns across the country. Warnings from RBC and BMO senior economists indicate that a continuation could have a dramatic impact on the economy. The average price of a house in Canada now exceeds $700,000, and it appears there is no end in sight. At the same time, Canada's ratio of housing units availability continues to fall, impacting housing accessibility. Can you advise what plans the government has to help reduce the heat in the housing market, grow the housing market availability for those who are homeless and in need and counter what financial experts agree could have long-term negative impacts on our economy?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question and for raising this important issue for Canadians and especially for younger generations of Canadians, though not limited to them by any stretch of the imagination. The government knows that for many Canadians the most important investment they will ever make is in the purchase of their home, and that is an increasing challenge, as we know. As part of the National Housing Strategy launched with Budget 2019, the government did, in fact, appoint members to Canada's very first National Housing Council in November 2020. It's something that our colleagues Senators Lankin and Pate had asked for earlier that year.

In that regard, the CMHC, the Canada Mortgage and Housing Corporation, provides support to the council in the areas of administrative services and other resources. Both the council and the CMHC provide advice to the federal government on housing, as the CMHC also does to all levels of Canadian government and, indeed, to consumers.

I will make inquiries about more specific measures that may be under consideration, and when I have further information I'll be happy to report back to the chamber.

Senator White: I wonder if, while you're making your inquiries, you could check into potential plans for Indigenous communities, particularly in relation to accessible housing and growing the availability of housing units in those communities. In the past, there have been programs such as the Housing Assistance Program, or HAP, which were very successful at allowing sweat equity to be used, along with the support of government's funding for materials, so that they could grow this market. I know this is an area that CMHC has primarily stepped away from, compared to what they had done in decades previous.

Senator Gold: I'll certainly make inquiries. The issue of accessible, affordable, quality housing in the North and generally in Indigenous communities is a preoccupation for all of us who expect and want all of our citizens to have access to proper housing. The government — I don't have the figures at hand — has made and will continue to make investments to help Indigenous communities with this serious problem.

HEALTH

CANADIAN BLOOD SERVICES

Hon. Wanda Elaine Thomas Bernard: Honourable senators, my question is also for the Government Representative in the Senate. Senator Gold, as Canadians celebrate Pride Month and National Blood Donor Week, I feel compelled to ask the following question concerning the practices of Canadian Blood Services. Dr. OmiSoore Dryden, the James R. Johnston Chair in Black Canadian Studies at Dalhousie University, recently published an open letter to the Minister of Health outlining how the Canadian Blood Services screening questionnaire and protocol are steeped in anti-Black homophobia — screening questions that make potential blood donors ineligible to donate due to being born in specific countries in Africa or having a sexual history that discriminates against Black people, LGBTQ+ people and mostly Black gay queer men. Excluding potential donors based on these factors without testing blood for HIV perpetuates a stereotype that Black LGBTQ+ people are falsely assumed to have HIV.

Dr. Dryden also expressed concerns with the anti-Black racism she has experienced from Canadian Blood Services while advocating for the eradication of their discriminatory practices. Her calls for accountability and requests for this Canadian medical institution to address systemic discrimination have been met with aggression and attempts to silence and dismiss her concerns.

Senator Gold, how has the Canadian government allowed this institution to maintain a policy that actively discriminates against people based on their racial identity or geographic origin and sexual activity?

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for raising this important question. The government believes the gay blood ban is, in fact, a discriminatory practice. I have been advised that since 2015 this government has reduced the deferral period for donation to three months for men who have had sex with other men, significantly down from the five-year deferral period that applied in 2013, and it remains a matter under continuous study. The government has funded 19 research projects as part of the government's push for Canadian Blood Services and Héma-Québec to move towards a behaviour-based model and to abandon this discriminatory practice.

With regard to the ban based on African country of origin, I will request that information from the government and report back when I receive it. Thank you.

Senator Bernard: Senator Gold, in addition to addressing the systemic racism, what steps will the government take to restore faith in Canadian Blood Services by Canada's Black community?

Senator Gold: Senator, thank you. The government knows there's much work that still needs to be done to eliminate the facts of systemic racism in our health care system and the appreciation of the system. I'll have to request more information from the government and report back.

[*Translation*]

NATIONAL DEFENCE

MINISTER OF NATIONAL DEFENCE

Hon. Pierre-Hugues Boisvenu: My question is for Senator Gold. Once again, we learned through the media of the very close ties between General Jonathan Vance, Lieutenant-General Mike Rouleau, who is the Vice Chief of the Defence Staff, and Vice-Admiral Craig Baines. These reports show the defence minister's lack of leadership and incompetence. According to the information available to us, these three people played a round of golf together. It is as though the jailer had played a round of golf with the prison guard. That happened one day after the Fish report was released.

• (1450)

Incidentally, I'd like to quote a Radio-Canada article on the subject, which said, and I quote:

> . . . because he is second in command, Mike Rouleau has the power to issue orders to the Canadian Armed Forces's top police officer, Provost Marshal Simon Trudeau. The National Defence Act of 2013 states that "The Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation."

Senator Gold, these events reveal how military justice does a lot more to protect aggressors than it does to protect victims. Why did Minister Sajjan not immediately implement the recommendation set out in the Fish report to refer the investigation and prosecution of sexual assaults to civilian authorities?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. The government received Justice Fish's report and accepts all of his recommendations. It is working on implementing the first set of recommendations. As you can imagine, honourable senator, replacing one justice system with another takes a little time, especially if it is to be done properly.

Senator Boisvenu: Senator Gold, may I remind you that, before 1998 or 1999, victims could bring complaints to a civilian court. I'll put that question to you again. Given the minister's incompetence and lack of leadership in acting on recommendations such as those issued by former Justice Fish, isn't it time the minister resigned, as the opposition parties in the other place are calling for?

Senator Gold: Thank you for the question. The government is working with the minister and all staff to change the prevailing toxic culture. The government is committed to bringing about a radical shift within the institution and its culture to better protect those who protect us and serve with honour in the Armed Forces.

[*English*]

PUBLIC HEALTH AGENCY

NATIONAL MICROBIOLOGY LABORATORY

Hon. Thanh Hai Ngo: Honourable senators, my question is for the Leader of the Government in the Senate. Senator Gold, this is related to your response to my question last Wednesday regarding the firing of the two scientists from the National Microbiology Laboratory who are linked to the Chinese People's Liberation Army. You raised privacy concerns, and you gave the same rationale when answering Senator Plett's questions. Yet, Monday Minister Hajdu said it was a matter of national security.

Senator Gold, the questions regarding this important matter, which have been raised for the past week, were first dismissed by Prime Minister Trudeau, saying that it was anti-Asian racism.

Last week, it was privacy concerns. Now, it's national security. Experts are even saying this could point to espionage.

Senator Gold, Canadians deserve transparency, but the government is hiding something — the truth — and defying an order of the House. Why mention privacy as the reason when it's clearly much larger than that?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, but I have to respectfully disagree. There are a number of considerations, all of which bear upon the limitations of what the government can and, indeed, should make public. One of them is privacy considerations. There are laws in this country that protect the privacy interests of those who are subject to dismissal or other disciplinary proceedings, but there are also, as you correctly pointed out, national security concerns. These national security concerns are significant issues that need to be handled delicately.

That's why we have a dual-track system in our courts when issues are raised to make sure these are vetted before judges with special security clearance. Similarly, we have created in the Parliament of Canada the National Security and Intelligence Committee of Parliamentarians, who are also secured and have access to information that the rest of us simply do not, and should not, in the interests of national security.

For all these reasons, whether it's personal privacy and the rights of those dismissed, or national security considerations that bear upon our security as a country, I, on behalf of the government, have responded as I have.

Senator Ngo: This is not surprising, given the Chinese Communist Party's well-established record of intellectual-property espionage, as well as their aggressive and extremely dangerous bioweapons program.

Senator Gold, how were these scientists able to obtain secret-level national security clearance in the first place and, more importantly, what else is the government trying to hide? Could it be the privacy issues you keep referring to, which concern people, or perhaps that the government doesn't want to be linked to those two scientists?

Senator Gold: Respectfully, senator, the government is not hiding anything. The fact is the National Microbiology Laboratory is a secure facility. Everyone working at it and everyone visiting the lab must undergo security screening and adhere to strict security protocols, procedures and policies. The world we live in is a world that, notwithstanding the best measures one can put into place, people do sneak through. When that's discovered, thankfully, our security services and our government take the appropriate measures to deal with it. Not all those measures can be made public.

In a mature institution such as the Senate, you'll forgive me for insisting that we accept the realities of the world that we live in. Our democratic society and every other democratic society — in fact, every other society — has to find that proper balance between disclosure, publicity and the necessity of protecting national security. That's what was done in this particular case, and I can say no more about it.

CANADA MORTGAGE AND HOUSING CORPORATION

NATIONAL HOUSING STRATEGY

Hon. Tony Loffreda: Honourable senators, my question is for the Government Representative in the Senate and has to do with affordable housing.

The Canadian Real Estate Association recently revised its home price forecast and is now predicting that the average selling price will increase by 19% in 2021, even as resales declined and price increases slowed in May. There is no doubt that affordable housing has become a major concern in Canada. Last week at the Finance Committee we were reminded that Budget 2021 proposes to provide $1.5 billion for the Rapid Housing Initiative to address the urgent housing needs of vulnerable Canadians.

To my surprise, I noted that $1.5 billion in Budget 2021 is expected to provide 4,500 new affordable units, while the $1 billion announced in the Fall Economic Statement will provide 4,700 units.

I appreciate inflation is an issue, but it seems, six months later, we are paying considerably more for fewer units. How can you explain this discrepancy? It's important that the government adequately optimize resources. Can you reassure us that these units will all be built and occupied by the end of the fiscal year? We were told in committee that the goal is to create housing within a 12-month period.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. The government understands the value of wise and prudent fiscal management. To your question, I've been advised that the commitment in Budget 2021 will go towards " . . . a minimum of 4,500 new affordable units . . ." rather than a fixed amount.

Perhaps, more significantly, colleague, I've been advised that when the Fall Economic Statement was announced in September 2020, the government had expected some 3,000 units, but the government managed to do better cost-wise and it was able to increase the number, which is the 4,700 that you noted under the Fall Economic Statement.

• (1500)

ORDERS OF THE DAY

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator LaBoucane-Benson, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

Hon. Yvonne Boyer: Honourable senators, I join you today to speak in support of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. I would like to begin by acknowledging that I am speaking to you from the traditional and unceded territories of the Anishinaabe, Mississauga and Algonquin Nations. The people of these nations were the original stewards of the land that I reside on, and it is important to show our respect for their stewardship of the land by acknowledging them.

As I rise to speak to this important bill, I would like to begin by reflecting on the 392 children whose bodies have now been found in unmarked graves on the grounds of former residential schools across Canada. These tragic but very predictable discoveries have brought the topic of reconciliation to the forefront of our nation's public discourse. Now, as we stand here debating this important legislation, still grieving the loss of the children, I hope that our actions in this chamber can help bring justice closer to the families.

As I mentioned earlier, June is National Indigenous History Month in Canada, which to me seems like a very fitting time to be debating this historic legislation.

UNDRIP is an international document adopted by the United Nations in 2007 and has been ratified by over 140 countries. This declaration seeks to enforce rights that constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world. In Canada, UNDRIP aims to uphold the inherent rights of Métis, Inuit and First Nations, including their right to equitable health care services, free from discrimination.

While UNDRIP reaches far beyond health, I have chosen to focus my remarks on this area today because of the importance of the right to health across all aspects of the lives of Indigenous people in Canada.

I support Bill C-15 because it advances the alignment of Canada's laws with rights that are inherent to every Indigenous person in this country. It will also improve Canada's laws by aligning them with the constitutionally protected Aboriginal right to health found in section 35 of the Constitution Act, 1982, resulting in, among many things, better health outcomes for Indigenous persons and communities.

UNDRIP recognizes that Indigenous health is a question of human rights and is central to human dignity. As such, it supports Indigenous health governance by providing governments with an internationally applicable and consistent policy framework. Many articles within UNDRIP pertain directly to Indigenous health and can influence positive policy outcomes.

For example, Article 21 states that Indigenous people have the right to improve their social conditions, including improving their health, without discrimination. This speaks directly to the need to have more Indigenous doctors, nurses and other health care practitioners working within Canada's health care system. It also speaks to the inherent right of Indigenous people to self-determination, which is also reinforced in Article 23. Article 23 states that Indigenous people have the right to be actively involved in developing and determining health requirements. This means that Indigenous health initiatives need to be led by Indigenous peoples and be supported by governments, not the other way around, as so often is the case.

UNDRIP also recognizes the inherent Indigenous rights to protect their cultural beliefs and traditional medicinal practices. In addition to affirming the right to health care access free from discrimination, Article 24 states that Indigenous peoples have the inherent right to continue using their traditional medicines and to maintain their traditional health practices. This inherent right extends to environmental conservation and the protection of traditional medicines, including plants, animals and minerals. UNDRIP recognizes that environmental wellness is interconnected with the health of Indigenous peoples.

Over the long term, UNDRIP will improve Indigenous health outcomes and services in Canada in several ways, but there are some immediate concrete steps that the federal government can take to realize Canada's laws as being consistent with UNDRIP.

First, we must work to resolve jurisdictional disputes between provincial, territorial and federal governments once and for all, in a meaningful way. Indigenous people often do not receive the health care and services they require because of these jurisdictional disputes. For instance, the government has itself recognized the injustice and discrimination that stems from these jurisdictional disputes, as demonstrated by the unanimous passing of Jordan's Principle in the other place.

Colleagues, we have seen time and time again that discrimination and racism in health care can be deadly. This has been demonstrated by the case of Brian Sinclair and more recently by the death of Joyce Echaquan. We know that there are many more cases like this that go unreported.

These horrific cases are shocking for many, but to those of us who know and have experienced racism and discrimination in Canada's health care system, these stories are all too familiar. On

its own, Bill C-15 will not solve all these problems, but I do think it's a positive step forward that will lead to better health outcomes for Indigenous people in Canada.

Implementing an action plan to achieve UNDRIP's objectives will mean that the government will improve access to culturally appropriate and safe health care for Indigenous peoples. This must begin by fostering better relationships between federal, territorial, provincial and Indigenous governing bodies. We need better education for doctors on Indigenous issues and culturally appropriate care, as well as increased access to traditional healing practices and medicines that not only benefit Indigenous communities but can also improve Canada's overall approach to health care.

My own work in the field of coerced and forced sterilization has led me to conclude that increasing patient autonomy and access to Indigenous midwives and birthing centres is a step forward and extremely important to the health of Indigenous women and their children.

The current health care that Indigenous people receive isn't adequate, but Bill C-15 and the implementation of UNDRIP can provide a blueprint for change. Already, UNDRIP has led to positive changes for Indigenous people in the province of British Columbia. In November 2019, B.C.'s legislative assembly unanimously passed and began to implement UNDRIP as a framework for reconciliation. It has aligned B.C.'s laws with the inherent rights outlined in UNDRIP and set up decision-making processes that provide the province with more flexibility in its agreements with Indigenous communities.

This legislation has introduced transparency and predictability in the work between Indigenous peoples and provincial government. When Bill C-15 passes, I hope that it will improve Canada's federal relationship with Indigenous peoples in a similar and meaningful way.

Both this chamber and the other place have extensively debated a previous version of the UNDRIP bill put forward by MP Romeo Saganash in 2016. The Standing Senate Committee on Aboriginal Peoples heard from multiple witnesses that implementing UNDRIP will help recognize and affirm already existing and inherent Indigenous rights. Their testimonies echoed the recommendations from the Truth and Reconciliation Commission and of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

UNDRIP is, as is Bill C-15, a commitment to working together in the spirit of reconciliation. As my friend Ellen Gabriel so eloquently put it in her submission to APPA:

> My support for Bill C-15 comes from a place of conviction concerning the Declaration, and all the years that Indigenous Peoples worked to bring the Declaration to life. The Declaration represents a clear expression, for the 21st century, of what Indigenous Peoples have been fighting for all along: our right to live in peace and dignity, to overcome the impacts of colonization through exercise of our rights to self-determination, and to have our own Indigenous laws and traditions respected, instead of vilified.

Bill C-15 will bring hope to Indigenous communities that real changes can be made and that things will improve. As we sit in this chamber debating this important legislation, we must be aware that Bill C-15 risks — like so many other laws, reports and studies — just gathering dust. The implementation of UNDRIP cannot only be symbolic legislation or aspirational in its outcomes; it must become a living document and a commitment to Indigenous people in Canada. Within UNDRIP, there is much potential for real solutions to be brought to the table.

Senators, this is only the first step. Once we pass Bill C-15, we must get to work on making Canada a place that respects the international law and the international human rights of Indigenous people.

Canadians have placed their trust in us to do our job, and we must not let them down. *Meegwetch*. *Marsee*. Thank you.

Hon. Pierre J. Dalphond: Honourable senators, I rise in support of Bill C-15, respecting the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007.

• (1510)

Bill C-15 has two legal purposes, as I said yesterday, set out in clause 4 of the act. The first is to add the principles set out in the UN declaration to the rules of interpretation of Canadian law. The second purpose is to impose a framework for the federal government's implementation of the declaration in federal law.

UNDRIP is not an international treaty whereby a state commits to act accordingly upon signing. Rather, it represents the international community's expression of common standards of achievements for all people and nations, with declaratory influence, interpretive availability and customary force in international law.

With UNDRIP, we have a universal human rights declaration contextualized to Indigenous peoples who have, to quote the bill's preamble, ". . . suffered historic injustices as a result of . . . colonization and dispossession of their lands, territories and resources . . . ."

As Senator Francis reminded us in his speech:

> The UN declaration is the result of decades of work by Indigenous leaders. It does not create new rights. Instead, it sets out existing international human rights standards that are specific to the circumstances of Indigenous people. It is also a valuable tool for promoting the compliance of state parties to their obligations.

Like other UN declarations, UNDRIP is a call to action to countries around the world. It is thus up to the governments and parliaments around the world to respond by upholding its principles within their jurisdictions.

As you may know, in domestic law, which means Canadian law here, UN declarations are not binding. They are statements of important principles, however, that may be considered by domestic courts, as the Supreme Court of Canada explained in *Baker v. Canada (Minister of Citizenship and Immigration)*:

> . . . the values reflected in international human rights law may help inform the contextual approach to statutory interpretation . . . .
>
> The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries . . . . It is also a critical influence on the interpretation of the scope of the rights included in the *Charter* . . . .

As Senator Gold reminded us yesterday and Minister Lametti previously, UNDRIP has actually been referenced by Canadian courts to inform decisions relating to the interpretation of laws and duties of governments in Canada. With subclause 4(a) of Bill C-15, the declaration will now be fully recognized as one more interpretive tool for Canadian courts to use.

This is significant. As Senator Brian Francis relayed yesterday, many witnesses before the Aboriginal Peoples Committee have spoken about the importance of this affirmation, given that most lawyers, judges and the broader public remain ignorant or resistant to its application and interpretation.

Before I conclude on the interpretive purpose of Bill C-15, let me add that if a provision of the declaration is contrary to a treaty right in any instance, the treaty right will prevail, because such rights are entrenched and protected by section 35 of the Constitution Act, 1982, prevailing over rules of interpretation established in any statute. Incidentally, this point is clearly reaffirmed in clause 2 of the bill.

I now move to the bill's second purpose, which is the federal government's response to UNDRIP's calls to action. Under clause 5 of the bill, the government must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure the consistency of federal laws with the declaration instead of waiting for disputes and court decisions. In other words, the government must be proactive. This will be achieved through the action plan contemplated at clause 6 of the bill.

Bill C-15, like former member of Parliament Romeo Saganash's Bill C-262, sponsored in this place by our former colleague Senator Sinclair, is not only a federal response to the declaration itself but is also a response to Calls to Action 43 and 44 of the Truth and Reconciliation Commission that he chaired, as well as Call for Justice 1.2(v) of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Of course, UNDRIP is also a call to action for provincial governments. I hope they will, like British Columbia has, respond to this UN call to action reiterated by the TRC.

But for now, it comes down to us to respond. In my view, as senators, we must ensure that the Senate is on the right side of history. This is particularly the case as the bill before us embodies an election commitment and the democratic will of Canadians to accept the truth of our history and advance reconciliation in a transformative way. We must face history. The Senate is one of the places where the cultural genocide was perpetrated. With the adoption of Bill C-15, we can initiate a process that may help to rebuild our relationship with the Indigenous peoples of Canada.

[*Translation*]

As a senator from Quebec, I want to express my solidarity with Indigenous peoples in their long and difficult quest for self-determination within the Canadian federation. We now realize the egregious mistakes of our colonial past and we promise, including through the action plan, to review our laws, regulations and our way of doing things in order to respect the constitutional rights of Indigenous peoples under section 35 and no longer wait to be forced by the courts to fulfill this responsibility.

[*English*]

Finally, I have a few comments around the meaning of "free, prior and informed consent," especially in resource development.

Explanations of this concept in House of Commons and Senate proceedings have been provided by both the Minister of Justice and legal scholars. As Minister Lametti said at the Aboriginal Peoples Committee on May 7:

> Free, prior and informed consent is about working together to build consensus through dialogue and other mechanisms and enabling Indigenous peoples to meaningfully influence decision-making; it is not a veto over government decision-making. FPIC does not remove or replace government decision-making authority but it sets into place a process which will ensure meaningful participation.

Lawyer and former member of Parliament Romeo Saganash from Quebec stated at the House of Commons committee on March 11:

> Veto and FPIC are two different legal concepts. One is absolute, and that is veto, whereas as the other one is relative. Like all human rights, the right to free, prior and informed consent is relative. We have to take into consideration a lot of other factors and facts and the law and the circumstances of a given situation. . . .

Supporting this interpretation, the declaration contains a balancing provision in Article 46. In contemplating limits on Indigenous rights, article 46 reads, in part:

> Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

• (1520)

The UN Expert Mechanism on the Rights of Indigenous Peoples supports this point. From its 2018 study:

> Any decision to limit indigenous peoples' rights within the exceptional circumstances of article 46 must be accompanied not only by necessary safeguards, including redressing balance-of-power issues, impact assessments, mitigation measures, compensation and benefit sharing, but also by remedial measures taking into account any rights violations. . . .

Accordingly, free, prior and informed consent contemplates a contextual analysis in any dispute resolution, similar to what the Supreme Court of Canada said in the *Marshall* case on fishing rights.

However, the whole point of Bill C-15 is to move away from adversarial dynamics, including litigation, and toward meaningful participation and partnership. In resource development, buy-in from communities, such as through share ownership, is the basis for investor certainty, which is very important, as Senator Tannas pointed out yesterday. Indeed, Bill C-69, adopted in 2019 for environmental assessments, already referred to the declaration. Going forward, the idea is to avoid court fights and social unrest from land infringements, which in the absence of treaties — such as in many areas of B.C. — are viewed as illegitimate by many Indigenous First Nations.

I also note that Bill C-15 does not impose any obligations on nations. Participation in the action plan is voluntary, and nothing is taken away. Bill C-15 simply provides a clear process for ensuring that federal laws are drafted and adopted in a manner consistent with UNDRIP before they reach the courts, if they ever do.

Finally, I was pleased to see that the House of Commons committee added a paragraph to the preamble of Bill C-15 to repudiate the racist doctrines of discovery and *terra nullius*. If the Senate matches the House of Commons in its commitment to reconciliation, we can place those doctrines where they belong, in the garbage bin of history, with all other notions of White supremacy.

With Bill C-15, let us take an important step forward together as a nation of nations. Thank you. *Meegwetch*.

[*Translation*]

Hon. Renée Dupuis: Honourable senators, I rise today at third reading stage of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

I'd like to begin my speech by quoting Joséphine Bacon, an elder, an Innu woman, poet, filmmaker and member of the Pessamit First Nation, who said the following in the recent film entitled *Call Me Human*, directed by Kim O'Bomsawin:

> I do not have a feline gait, I have the back of female ancestors, the bowed legs of those who portaged, those who gave birth as they walked.

Joséphine Bacon continues:

> I dressed up to accentuate the very marrow of my bones, a survivor of a story that is not told.

The Pessamit First Nation is on a reserve on the shores of the St. Lawrence, on the North Shore, in a part of the region that later became the Senate division of The Laurentides, which I represent.

I thank the members of the Standing Senate Committee on Aboriginal Peoples for reviewing the bill and welcoming countless testimonies that provide diverse perspectives on this bill.

Bill C-15, passed by the other place on May 25, was preceded by Bill C-262, introduced by MP Romeo Saganash. I supported Bill C-262 at second reading stage and it died on the Order Paper in 2019.

During the campaign that followed, the government promised to reintroduce the bill, which it did in an amended version when it introduced Bill C-15 currently before us.

I'd like to point out that this bill didn't spring up out of nowhere. It is the result of decades of hard work by many Indigenous peoples from Canada and around the world to ensure that their fundamental rights are recognized.

I'd like to share an example of a situation I witnessed first-hand when I was pregnant with my eldest daughter. On March 1, 1977, Innu and Atikamekw chiefs appeared before the House of Commons Standing Committee on Indian Affairs and Northern Development. They were accompanied by their witnesses, Innu and Atikamekw hunters, who gave evidence in their own languages, which was translated by their interpreters. They opposed Bill C-9, which expropriated their traditional lands, without compensation, contrary to the principles of the right of expropriation and contrary to Canada's and Quebec's constitutional obligations. Both levels of government had an obligation to recognize the rights of Indigenous peoples and to compensate them before undertaking any work in those areas, in accordance with the Quebec Boundaries Extension Act, 1912.

The Innu and Atikamekw First Nations continued their tireless efforts even outside Canada, on the international stage, first in 1980, before the Russell Tribunal, which examined the violations of the territorial rights of the Indians of the Americas, in Rotterdam, then in 1985 before the working group created in 1982 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, whose mandate was to examine the situation of Indigenous peoples.

The determination of these nations and of other Indigenous peoples eventually reached the UN, where work on the rights of Indigenous populations living within the borders of states began in the 1980s. These efforts led to the United Nations Declaration on the Rights of Indigenous Peoples.

Bill C-15 has two purposes, as several of my colleagues have pointed out. I want to focus on the fact that the preamble of the bill and clause 4 affirm that the declaration has application in Canadian law in the area of human rights, which distinguishes it from the broader areas of civil and political rights and economic and social rights which are set out in international covenants.

Furthermore, I remind senators that the framework for the Government of Canada's implementation of the declaration, which is stipulated in clause 4, is directly connected to subsection 91(24) of the Constitution Act, 1867, which states that the federal Parliament has exclusive jurisdiction over adopting legislation regarding Indians and lands reserved for the Indians.

Over the years the courts have stipulated that the exclusive federal jurisdiction over Indians includes First Nations, Inuit and Métis.

Clauses 5, 6 and 7 of the bill differ from clause 4 in that they create two types of obligations. One obligation is that the federal government must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the declaration. This will require a large-scale legal review of federal laws. The second series of obligations is for the minister responsible, who will be designated by cabinet to implement the bill. This minister will have to, in consultation and cooperation with Indigenous peoples, prepare and implement an action plan to achieve the objectives of the declaration.

Three types of measures set out in clause 6 will have to be incorporated into this action plan.

First, we need to provide for measures focused on human rights, particularly those that seek to "eliminate all forms of violence, racism and discrimination, including systemic racism," as well as training measures.

Second, monitoring, oversight and accountability measures with respect to the implementation of the declaration must also be part of the action plan. It's important to note that any measures other than those I mentioned here could also be included in the action plan since the list is not exhaustive.

Third, the plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan. All of this must be done no later than two years after the law comes into force.

I'd also like to emphasize another type of obligation that is imposed on the minister, the one related to accountability. Once the action plan has been prepared, the minister must cause it to be tabled in each house of Parliament and make it public.

What's more, the minister must prepare an annual report within 90 days after the end of each fiscal year on the measures taken and the preparation and implementation of the action plan. This report must be tabled in each house of Parliament.

• (1530)

Honourable senators, it is our responsibility to demand answers from the government about how it will discharge that obligation. We'll have the opportunity and the responsibility — which is a crucial aspect of our role — to perform a detailed analysis of the action plan and the annual reports the minister must table in accordance with the bill.

We must examine not only every annual report, but also changes in the compliance analysis over time knowing that the legal revision process will take several years. Truly holding a government accountable is tied to how Parliament and, in our case, the Senate, discharge their responsibility to demand accountability on an ongoing basis, especially in cases like this one where we know in advance that the work will take several years and must be focused on achieving specific objectives.

Honourable senators, it must no longer be left to the courts to interpret, without any guidelines, the rights of Indigenous peoples. In that regard, the United Nations Declaration on the Rights of Indigenous Peoples sets out the guiding principles on which the courts must base their decisions. The last 39 years were marked by a government strategy or by the inability of successive governments to reach a consensus on the scope of the constitutional rights that were recognized and confirmed for Indigenous peoples in 1982. The end result is that the politicians left it up to the courts to rule on these questions, piecemeal, as issues were brought to their attention, which, in my view, has been socially and economically counterproductive.

Indigenous peoples are the ones who pay the price, first and foremost. However, in a way, the entire population pays, in the form of delayed projects or blockades, not to mention the violent incidents that both Indigenous and non-Indigenous people bear the brunt of. In fact, the political impasse has persisted until now, and court decisions about Indigenous peoples' constitutional rights haven't led to legislative change, which still leaves the exercise of these rights on hold, as we've seen yet again recently.

Honourable senators, if, in response to the repeated calls from the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls, among others, we are to open a path to truth and reconciliation, it is up to us, as legislators, to ensure that the framework set out in Bill C-15 is adopted, if only to remind us that the real work has yet to begin. Canada must commit to the transitional justice mechanism that comes with a commitment to truth and reconciliation. The documentation of the truth must be complete, and we must recognize the facts, the truth. We must be serious about these two conditions when we claim to want reconciliation. Otherwise, we're asking Indigenous peoples to reconcile with each other, which is absurd, or else we're asking them to reconcile with us, but we're unwilling to recognize the truth.

We know that Bill C-15 doesn't have unanimous support among Indigenous peoples. I hope that doesn't come as a surprise to us, esteemed colleagues. There's a lot of diversity among Indigenous cultures, and the legal situations in different communities, even within the same nation, vary. This means that some of them will certainly, for political and legal reasons, not want to change their legal relationships with the state, which they fought hard for years to negotiate. Others may also find that the implementation of the declaration, as set out in Bill C-15, doesn't do enough to protect them.

Article 32 of the declaration has drawn a great deal of attention, to the point of nearly overshadowing the other provisions. That article, which deals with free, prior and informed consent, focuses on the development and use of Indigenous peoples' lands, territories and other resources.

I want to emphasize that under our current regime, the government has a duty to consult and cooperate with Indigenous peoples, and this is already enshrined in Canadian law through various Supreme Court decisions since 1990.

The Supreme Court has even ruled that, in certain cases, which it considers to be rarer, Indigenous peoples have a veto over the development of territories and projects. I would now like to discuss *Delgamuukw v. British Columbia*, a 1997 ruling in which the court decided that an incremental level of engagement is needed with Indigenous peoples in decision-making about their lands once their Aboriginal title has been established. The court found that there is a duty to at least consult with Indigenous peoples in all cases. Here's an excerpt from the decision, and I quote:

> In most cases, [the duty] will be significantly deeper than mere consultation.

In other words, at the very least there is mandatory consultation in every case.

> Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands.

The duty of consultation ranging from a minimal consultation to obtaining the consent of Indigenous peoples therefore has clearly been part of our regime for 24 years, that is 10 years before UNDRIP was adopted.

The Supreme Court further expanded on the reasoning in *Delgamuukw* in *Haida Nation v. British Columbia* in 2004, on the specific notion of "unproven claims." In this case, the concept of a spectrum was adopted. According to the court, at one end of the spectrum, when "the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor," we must at least give notice to the interested parties, disclose information and discuss with them. At the other end of the spectrum, the ruling states, and I quote:

> . . . lie cases where a strong *prima facie* case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high.

The consultation can require participation in the decision-making process or provision of a report to show that Indigenous concerns were considered and the impact they had on the decision. Between the two extremes of the spectrum, the extent of consultation will be determined based on the specific circumstances of each case. A duty to accommodate could be necessary when the claim is based on solid evidence and a decision could significantly infringe on the rights that are being asserted.

The court also specified that this process doesn't give Indigenous groups a veto over what can be done pending final proof of the claim. According to the court, accommodation involves "seeking compromise in an attempt to harmonize conflicting interests and move further down the path of reconciliation," and good faith efforts to understand each other's concerns and move to address them, but it doesn't require a duty to agree.

In closing, honourable senators, Bill C-15 isn't a quick fix for over 150 years of systemic discrimination in federal legislation, government programs and administrative practices based on stereotypes about Indigenous peoples. We know that redress measures must be put in place in all cases of discrimination. The intent of Bill C-15 isn't to have us believe that the future will be easy, either.

What this bill does is require governments to come up with an action plan. In that sense, Bill C-15 protects us from the vicissitudes of governments choosing not to respect known principles as set out in the declaration.

In my opinion, passing Bill C-15 is but one step in a lengthy process that started a long time ago, a step that will enable us to do a better job of measuring our commitment to advancing reconciliation and restoring the confidence of Indigenous peoples in the transformation of their relationship with the Canadian government. Thank you.

[*English*]

Hon. Pat Duncan: Honourable senators, I rise today believing that I am on the traditional territory of the Algonquin First Nation.

I rise today to address Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. I want to start by explaining that when I use the word "Indian," it is because that is the word used in the quote, including in the legislation as recent as 2003.

Overall, 20% of the Yukon's population is Indigenous or First Nation. In rural or smaller communities, the Indigenous population of the community is as high as 80%. Honourable senators may be aware that 11 of the 14 First Nations in the Yukon are self-governing or have a modern-day treaty between Canada, Yukon and their First Nation. Three First Nations do not have self-governing agreements. These First Nations have a unique relationship with Canada; they are not "on reserve."

• (1540)

In 2014, the Yukon Legislative Assembly passed a motion supporting Canada's endorsement of UNDRIP. As of April 2021, the Yukon Legislative Assembly is composed of 19 members elected along party lines. Four members are First Nations and eight are women.

Honourable senators, it is important to know in this picture of the Yukon how we got here.

The Yukon has been home to First Nations peoples, ancestors of the Indigenous peoples like the Vuntut Gwich'in, for many thousands of years. Non-Indigenous people came to the Yukon for fortune during the gold rush in 1898. To quote the "Bard of the Yukon," Robert Service, "I wanted the gold, and I sought it . . . ." In 1942, it was the Americans who came to build a highway to protect Alaska and the pipeline at Norman Wells in the Northwest Territories. Again, returning to Robert Service, "I wanted the gold, and I got it . . . Came out with a fortune last fall . . . ." That fortune over the years has been gold, copper, lead, zinc, asbestos and natural gas. The Yukon is resource-rich.

The important point is who came out with the fortune. Where were the people who were there first, and what state has their land been left in? The land has never been ceded to the Crown. You will remember my point about reservations in the Yukon. First Nations leaders formed the Council for Yukon Indians to ensure that all Indian people could participate to negotiate a land claim settlement regardless of their status under the Indian Act. Elijah Smith was the first president of the Yukon Native Brotherhood and the first chairman of the Council for Yukon Indians. Elijah Smith worked alongside early leaders including Sam Johnston, a subsequent Speaker of the Yukon Legislative Assembly, and Judy Gingell, who served as the commissioner or lieutenant-governor of the Yukon. Elijah Smith and these individuals and others travelled to Ottawa. They journeyed to Ottawa in 1973 and presented, on the steps of Parliament Hill, just over there, a document entitled *Together Today for our Children Tomorrow*. The preface to the reprinted document states:

> It was the first time that a group of Canadian people of Native ancestry had prepared and presented such a document. Based on principles that all the Indians of the Yukon had the right to develop their lives fully in a society where their economic, cultural and social wishes and needs were capable of being met, the statement outlines aboriginal rights, defines what it means to be Indian and claims the traditional homeland.

It was February, Valentine's Day to be specific, of 1973, and prime minister Pierre Trudeau accepted that document and said that it would be taken seriously by the government. That was then and this is now.

It has been 48 years since one Prime Minister Trudeau accepted these basic principles in *Together Today for our Children Tomorrow*, and now another Prime Minister Trudeau's government is recognizing the social, cultural, land and economic needs of Indigenous people. And we have another guiding document before us, the Truth and Reconciliation Commission report and recommendations.

Honourable senators, I would be remiss if I did not recognize the tragedy occurring in Canada with the discovery of the burial of children at residential schools — a tragedy that has touched every Canadian with sorrow and with shame. I'm grateful for the leadership of Chief Doris Bill of the Kwanlin Dün First Nation in Whitehorse, who led Whitehorse residents, including the bishop of the Catholic Church, to express our collective grief and shame at a sacred fire. I am also grateful to Premier Sandy Silver, who has indicated that the Yukon will not wait for Ottawa to act to examine the residential school sites in the Yukon.

Last evening, Senator Tannas noted the Senate committee report *How Did We Get Here?* I read that document upon my arrival here in 2019. I wholeheartedly agree with Senator Tannas's references to it as a "brilliant" document. But the Yukon experience, unfortunately, is absent from that document. Senator Dyck assured me that we're not done yet; there is more story to tell. And I hope that in time perhaps we can complete that story.

The document should be required reading for every Canadian. Other highly recommended reading: *Together Today for our Children Tomorrow* and any one of the Yukon First Nations' land claim final agreements. I'd also like to recommend, from the Institute for Research on Public Policy, a paper entitled *Indigenous Self-Government in Yukon: Looking for Ways to Pass the Torch* by Gabrielle A. Slowey.

Allow me to quote from the paper:

> These agreements are enormously significant. . . . redefine the entire relationship between First Nations and non-First Nations people . . . they have fundamentally altered the underpinnings of Yukon society. . . .
>
> The Yukon agreements have far-reaching implications not only for all the territory's residents, but for Canada as a whole.

Honourable senators, this is why I felt it so important to share with you this Yukon story. These agreements have led the way not only in the Yukon; they have led in Canada. The preamble to Bill C-15 speaks to harmonious cooperative relations, dignity, well-being. In my non-scholarly, non-lawyerly approach, I ask: Does not the right, as Elijah Smith put it, ". . . to develop their lives fully in a society where their economic, cultural and social wishes and needs were capable of being met . . . ." mean the same thing in law as the preamble to Bill C-15? I think it does.

The settlement of land claims in a modern context is reflected in the essence of Bill C-15, and that is why I support it. Like Bill C-15, the path to final agreements and the path to have all Yukoners accept and understand the final land claim agreements has not been an easy one. Negotiating the agreements has been a long process. Giving life and meaning to the words in the agreements is a work-in-progress. Sometimes it has taken the courts to decide whether the governments have truly lived up to the intent of the agreements; for example, the Supreme Court ruling on the Peel Watershed.

Several speakers before me have questioned elements of Bill C-15 and the drafting of this law and how the laws of Canada will uphold the rights of First Nations. Questions have been asked about permitting and projects, and resource development. The Umbrella Final Agreement, or UFA, was concluded in 1993 by the Council for Yukon Indians, the Government of Canada and the Government of Yukon. This agreement is the guiding document under which all Yukon First Nations land claims are negotiated. The UFA provides, in chapter 12, for a development assessment process, or DAP.

At the time dubbed "a little DAP will do ya," the development assessment process provided for the development of legislation to review all proposed projects in the Yukon with the basic principles of recognition of the livelihood and relationship, knowledge and experience, of Yukon Indian persons to the land. Legislation was to be developed by 1997. Good work takes a little bit of time.

Honourable senators, in 2003, the Yukon Environmental and Socio-economic Assessment Act, or YESAA, as it is called, passed the Parliament of Canada. All projects, such as major mines and highway realignments, proposed in the Yukon proceed under the YESAA process. The act is referenced in Bill C-69, which was debated here in 2019.

The YESAA process has worked in the Yukon. It's important to our discussions today — respectful of First Nations with their full involvement. YESAA is not perfect, and it's not without its controversy. Nothing that legislators or humans do is. My point is that YESAA stands as an example where the laws of Canada and the laws of Yukon reflect the recognition of the relationship of Yukon First Nations to the land and our relationship with Yukon First Nations.

Honourable senators, Bill C-15 refers to consistency with ". . . the laws of Canada . . . ." The interpretation by the courts is especially important to the Yukon on this point. Unlike the arguments presented regarding the provinces, the Yukon was carved out of the Northwest Territories and established as a separate territory under the Yukon Territory Act, 1898. The Yukon is a "creature" of the Parliament of Canada.

• (1550)

If I may digress for a moment, in grade 11 I gave a speech in Quebec City as part of the Interchange On Canadian Studies. I doubt there is a record of the speech, and I certainly do not hav e it. I do recall standing in front of an audience of young *Québécois* saying, "you are fighting so hard to get out of Canada's Constitution and we are fighting so hard to get in."

Fast-forward to 2000 to 2002, when serving as the Premier of the Yukon, I signed the Ta'an Kwäch'än Land Claim as the "Government Leader" because I was advised by officials that it wasn't worth the fight with Ottawa to change the signature block to "Premier."

Honourable senators, during my time in office I spent every Friday afternoon with the land claim staff negotiating team working to conclude negotiations. Of the many political experiences I have appreciated, I treasure those moments the most. We concluded several negotiations, notably the Kluane First Nation Final Agreement. However, the vagaries of politics being as they are, I did not have the honour to sign the concluded agreements.

My signature is on the Devolution Transfer Agreement, which subsequently became Bill C-39. The devolution agreement was a significant development in the legislative evolution of the Yukon, however we remain an act of Parliament. My concern with Bill C-15 was how the bill, with its provision applying to all acts of Parliament, would affect the Yukon Act. Yukon is not constitutionally protected, as the provinces are.

I would like to express my thanks to my colleagues for their sage advice, my physically distanced seatmates, well versed in constitutional law, Senator Dalphond and Senator Cotter, for their advice in these discussions. Recognizing the elements of the Yukon Act and the Devolution Transfer Agreement that are similar to the provinces and the constitutional recognition of the Yukon land claim agreements under section 35 of the Constitution Act, 1982, I believe any future court would recognize that Bill C-15 does not confer upon Canada more authority over the Yukon than it has over the provinces.

All of this being said, colleagues, I must also recognize that as far as support of Bill C-15, a great deal of work is being done and is still to be done.

I want to thank the Na-Cho Nyäk Dun First Nation for their brief submitted to the committee in the other place, and the Champagne and Aishihik First Nations who appeared before our Aboriginal Peoples Committee.

In December 2020, honourable senators will recall the Yukon was the first province or territory to produce a strategy responding to the National Inquiry into Missing and Murdered Indigenous Women and Girls. I recently provided to all members copies of *Changing the Story to Upholding Dignity and Justice: Yukon's Missing and Murdered Indigenous Women, Girls and Two-spirit+ People Strategy*. To those online, the document is in your Ottawa office. I note that in that document there is also a commitment to UNDRIP.

In April 2021, the Yukon Mineral Development Strategy was also under way with the Yukon government, First Nations and industry.

Honourable senators, I hope that I have outlined, with our learned and lived experience, that the Yukon has worked toward, is working toward, is walking along the path outlined by the United Nations Declaration on the Rights of Indigenous Peoples, and we will continue to do so.

These reasons of the situation in the Yukon and the recognition of existing legislation are why I believe we should support Bill C-15. Thank you, honourable senators. *Mahsi'cho*, *gùnáłchîsh*.

Hon. Brent Cotter: Honourable senators, I rise to speak to Bill C-15. It is a bill I support. But I want to speak to three aspects of the bill or, more particularly, its implementation. Related to that is the contemplated action plan that I believe is critical to ensuring that respect for Indigenous people and their governments, the Government of Canada and all Canadians is maintained, so this central part of the hard work of reconciliation with Indigenous people can be achieved.

The three aspects I wish to speak to are the need for federal, provincial and territorial engagement; the importance to the process of clarity of voice of Indigenous people through their own governing bodies; and clarity regarding "free, prior and informed consent."

So, to the first: Many of the ways in which we achieve reconciliation and make it possible for Indigenous people and governments to achieve self-determination will implicate provincial jurisdiction. As others have wisely noted, there is an intersection of authority and responsibility as between federal and provincial and territorial governments when it comes to Indigenous people and their interests. Health, as Senator Boyer spoke to, education and social services are examples.

The importance of this intersection for Indigenous communities and governments can be seen in British Columbia. As the Minister of Indigenous Relations and Reconciliation for British Columbia, Murray Rankin, told the Aboriginal Peoples Committee, within the UNDRIP principles in British Columbia child welfare is a priority engagement for Indigenous people and governments. This is largely a matter of provincial jurisdiction. It should be pretty obvious, then, that the absence of provincial participation in this grand project of reconciliation would significantly moderate the achievement of Bill C-15's goals and grand expectations.

There's a critical need for our national government to engage with provinces and territories in achieving common approaches to the implementation of UNDRIP. Leading by example, as some federal ministers have stated, is good, but it is not enough. Ottawa has a critical role to play in building a national consensus so that constructive, meaningful governmental coalitions pull toward and not at cross purposes with these aspirations. Anything less would be unfair to Indigenous people and their governments and unfair to the millions of well-meaning Canadians who want to see this grand project succeed. In my opinion, Ottawa must do its part through the highest levels of our federal government to achieve the harmonization of laws and policies that will make these aspirations possible.

Second, it will be important for Indigenous governments to be clear in the ways in which, through their own processes, they identify the voices to speak authoritatively for their people. This is captured in UNDRIP. It is a matter of importance for Indigenous people themselves, but also to enable governments and others, such as proponents of development projects, to know with whom they are to work in building the partnerships aimed at what will be a fundamental restructuring and rebuilding of Canadian society.

Third, I'd like to speak to the meaning of "free, prior and informed consent." This is an important pillar in the grand commitment to reconciliation. The phrase FPIC, for short, appears four or five times in the UN declaration. Each of these is important, but I will focus on two aspects of FPIC. Article 19 relates to constraints on federal laws and policies that affect Indigenous people without free, prior and informed consent. The other article, Article 32.2, relates to the role of FPIC in the context of resource development affecting Indigenous title holders and rights holders' lands or traditional territories.

On this topic, as Senator Tannas noted, most of the conversation has been around whether FPIC is or is not a veto; what FPIC — and in particular the word "consent" in FPIC — does not mean. But there has not been much light shed on what it actually does mean or could mean, and here I want to make a series of observations.

First, some have argued that it is little more than an enriched version of an existing duty to consult. This is an incomplete interpretation of FPIC's interpretive language. At the other end of the spectrum, some have argued that it is close to a veto. This interpretation is problematic. Indeed, in its grandest version it would compromise Canadian sovereignty, something the UN declaration itself does not contemplate. Some have called for a definition before the bill should be adopted so that there will be certainty. This is hopeful but, with respect, unrealistic.

Let me start with the latter. Here we need to be honest about two things. The dream of certainty is wishful. Let's take the existing concept of "duty to consult." The suggestion by some that we have reached some kind of equilibrium of understanding on this concept is inaccurate. It has been extensively litigated a number of times in the Supreme Court of Canada, as Senator Dalphond and Senator Dupuis have recently referenced. The *Haida Nation* and *Marshall* cases are good examples. And its meaning has evolved, depending on the circumstances and initiatives to which it has been applied. This is the way the law evolves and will continue to evolve.

• (1600)

With respect to free, prior and informed consent, or FPIC, our goal needs to be to provide as much clarity of meaning as can be achieved, recognizing that from time to time such uncertainty — as exists with respect to such an important concept — will come to be addressed by our courts. So let's focus on clarity.

The phrase "free, prior and informed consent" is not easily definable for reasons I will try to articulate. First, we need to consider the words. Language in many of the provisions of the UN declaration link consultation, communication, cooperation with free, prior and informed consent. All but one of these words are process words. They are good words: communication, consultation, cooperation, informed. I'm hopeful, even confident, that this language, enriching and respectful as it is, will lead to good, fair laws and good, fair economic opportunities in partnerships between Indigenous communities and governments and business. This is what nearly all participants want, including, as Senator Tannas noted, the hope and expectation that Indigenous development will come to be led by Indigenous people and leaders.

On occasion, consent will not be achieved, either in relation to the laws and policies of governments or in relation to resource development. For this reason, though we all hope for success, more, I think, will be achieved with more positive outcomes. This is the heart of reconciliation, but here's where the honesty comes. There will be situations where Indigenous communities and their governments do not consent. This is meaningful because by every common understanding, consent is not a process word; it is an autonomy word. How do we deal with the meaning of consent or, more importantly into the debate, the implications of lack of consent in such contexts?

This leads me to my second observation on this point. I'd like to make the point in three ways, part of which explains why I believe it is possible to describe or set out a framework of understanding but not to define it.

In evidence before the Aboriginal Peoples Committee, Dr. Mary Ellen Turpel-Lafond described consent as contextual. I agree with this observation. The Supreme Court of Canada in its consideration of cases dealing with a duty to consult has provided some guidance on the subject of consent, notably in the *Haida* decision. What follows, admittedly, is a gross oversimplification and it is me speaking.

In some cases, a matter under consideration will be so integral to an Indigenous community — as Senator Dupuis recently spoke about — or to an Indigenous government that consent, if it is not granted in such a matter, such a development project or perhaps a piece of federal legislation or policy may not proceed. In other cases, the matter under consideration may be less integral, perhaps not going to a central value, in which case a larger public interest may prevail.

For example, imagine that a government wants to build a power line to deliver electricity to a remote northern or perhaps an Indigenous community. The best route for that power line takes it through or across Indigenous territory or land. If the power line were to go right through a First Nations reserve and through the homes of Indigenous residents or across sacred lands, you can see the compelling argument for respecting a denial of consent. If it were your home or the cemetery where your parents were buried, you would feel much the same.

But if the power line were to go through traditional territories occasionally used by Indigenous people to hunt and fish, this would be a serious concern, but perhaps not quite as compelling. The varying contexts might make a difference.

Let's build on that example. Some might have greater or lesser environmental consequences. A power plant or a mine on Indigenous land is something different from a power line. Some projects may compromise the integrity of Indigenous lands to a greater degree than others — context matters.

Another dimension to this example is the importance of the project to the public interest, including that of Indigenous people. A power line to a remote community is one thing; a golf course might be another — context matters.

There are ways of thinking about this question that honour both the spirit and intent of the UN declaration in this bill and that respect the obligations of a national government to govern in the public interest. The declaration itself acknowledges this aspect of national sovereignty, as Senator Dalphond pointed out, and the constraints on the autonomous exercise of consent in many cases already exists in law.

In other contexts, the Supreme Court of Canada has developed the concept of unreasonable withholding of consent where an overriding public interest is unfairly compromised. Aspects of the interpretation of constitutional rights in our own Charter of Rights are subject to limits in section 1. Analogous thinking applies to aspects of section 35 and is built into the UN declaration in article 46.2, which articulates the potential for limitations on a right that are strictly necessary to meet the just and most compelling interests of a democratic society.

What I'm suggesting is that the action plan be developed with this in mind. It cries out, not for a definition, but for a working framework — something that is not absolute but creates a context that reflects FPIC and the larger goals it represents. But also the Government of Canada, our government, has a responsibility, ideally developed through dialogue, to describe how it will address this important question, how it understands and will approach the hard questions, hopefully only occasionally, when consent is not granted.

In my opinion, this is necessary so that Indigenous people and governments will at least know how the government — after all, their government — will approach these questions on the development of federal laws and policies and on resource development on that path to reconciliation.

With respect to resource development, since it is often the private sector that is essentially delegated to conduct the process of consulting, cooperating and now seeking free, prior and informed consent to developments, such an articulation is owed to them so there will be clarity, if not certainty, in their work with Indigenous partners in pursuit of autonomy and prosperity.

Over a century ago, the great, historic Chief Poundmaker — a personal hero of mine and someone who was rightly pardoned recently — said the following reflecting on the profound changes facing his people as the prairies were "settled:"

> I grow sad when I think of the man sitting beside the trail. And the trail grew over, and he could not find his way again. We cannot go back. Nor can we sit beside the trail. We must go forward in the hope of finding a better future.

The sad fact is that the paths into that future for Indigenous people were crafted by others, in many cases based on ill-considered policies, often grounded in concepts of racial superiority and, to say the least, condescending, hurtful and destructive of Indigenous culture, values and ways of being.

But I think that 135 years after Poundmaker's death those words offer wisdom and guidance for us all. We cannot go back, we cannot undo the past, nor can we sit beside the trail. We have to go forward, but on a myriad of paths that we construct together in respectful and powerful ways that provide for the autonomy and respect for the rights of Indigenous people that have for so long been at the margins of our thought and actions.

Heeding this message offers the prospect that, however great a country you now think that Canada is — I think it's a pretty great country, though with flaws — it will become a greater and better one for all of us. Thank you. *Hiy hiy*.

Hon. Dennis Glen Patterson: Honourable senators, I rise today to speak to Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

This is my third time speaking on this important piece of legislation. I spoke at second reading and outlined the five areas of concern that I had. I quoted extensively from committee testimony and submissions to highlight the concerns of Indigenous leaders with regard to this bill and the questions that remain unanswered, even after extensive pre-study.

I rose again to speak in debate on Senator McCallum's proposed amendments and quoted in full letters submitted by the Grand Chiefs of the Assembly of Manitoba Chiefs and Treaty 6. I've asked questions during the committee and questions during debate. In the end, many of those questions remain unanswered or answered, in my respectful opinion, unsatisfactorily. I find those in this chamber and Canadian society who immediately dismiss my arguments do so based on counter-arguments or beliefs that fall into three broad categories.

The first is due to my role as the critic for this bill. Throughout my 16 years as a territorial minister and premier, and my 12 years as a federal legislator, I have developed deep respect for the roles of sponsor and critic, as I have played both roles. As the sponsor of bills, I was the main emissary of the government of the day, mandated with pushing through legislation that fulfilled election promises and furthered government policy objectives.

• (1610)

As the critic, contrary to what some may believe, I was not automatically opposed to this bill. It's important to remember that every bill has a sponsor and a critic. So even if a senator is in support of the bill, they are labelled a critic.

This was very much the case when I was critic for Bill C-61, the Anishinabek Nation Education Agreement Act; Bill C-70, the bill granting self-governance to the Crees of Eeyou Istchee, along with many other bills from the previous session of Parliament.

Sometimes as critic, I've agreed with the spirit and intent of a bill but work with the sponsor and/or other stakeholders to ensure that important observations are appended to the bill, like I did in the Forty-second Parliament with Bill C-17, changes to the Yukon Environmental and Socio-economic Assessment Act, and Bill C-88, which amended the Mackenzie Valley Resource Management Act.

Other times, I worked with stakeholders to propose amendments, such as to Bill C-55, which brought forward changes to the Oceans Act to respect the Inuvialuit land claim agreement. Those amendments were co-developed with the Inuvialuit Regional Corporation and passed in committee, only to be rejected by the majority government when it was returned to the other place.

Still other times, though few and far between, I find myself as critic of a bill that I find difficult to support, not because I am against the spirit and intent of the bill, but because of how the bill is written, and in some cases, because of who and what the bill leaves out. Bill C-15 is one such bill.

Throughout the debate of this bill, there has been a constant and consistent conflation of support for UNDRIP with the support for Bill C-15. Let me be clear: I support UNDRIP. I supported it when it was adopted by the Harper government in 2010, and I continue to support it today. However, I do not think that Bill C-15 accomplishes all it promises to, and I believe that it was born of a consultation process that was rife with missteps.

The second broad reason that I find many use to reject any criticisms I bring forward with regard to this bill is my political affiliation. I have read the tweets and anonymous blog comments following the various articles, and I've had to fend off accusations of delaying this bill because I chose to speak after I had time to consider the extensive testimony received in this pre-study. Even though I spoke in time to have the bill referred to committee on the agreed-to date, my office fielded calls from individuals who believed that adjourning debate was nothing but a delay tactic.

To these detractors I say, yes, I am a Conservative senator, and I have been a card-carrying Conservative for much of my life. I was a card-carrying Conservative when I campaigned on a platform of a new territory for Inuit. I met with Inuit leaders, listened to their arguments and was compelled to act on their

behalf. I defeated the incumbent MLA for Frobisher Bay — now Iqaluit — who then had a different platform because I believed in the dream that would later become Nunavut.

I helped dismantle all residential schools in N.W.T. during my tenure as education minister and worked to have Indigenous languages recognized as official languages in N.W.T. while I was a senior minister and premier. I fought for the inclusion of section 35 in the Constitution Act of 1982 alongside former senators Serge Joyal and Charlie Watt in this very building when it was still the Government Conference Centre. Because of that, I was deeply honoured to have had Senator Watt stand with me, arm in arm, during my swearing-in ceremony when I was named senator for Nunavut.

I hope this is not seen as me being boastful. This is me clearly demonstrating that you can believe in small government, balanced budgets and strong national defence while also standing up for Indigenous rights. The two are not mutually exclusive.

This brings me to the third broad category and perhaps the most personally distressing of the three. I see the vitriol that is broadly directed at all Conservatives sometimes as out-of-touch racists who don't respect Indigenous rights. Please, we must stop painting people with a broad brush. Every party is guilty of it, just as every party harbours people with more extreme or fringe views.

I ask you to judge me on my record and my words and not the words or actions of others. It is not fair to equate objections to this bill or questions about it with racism or intolerance. Almost every quote I have offered from our committee's deliberations were Indigenous voices raised in opposition to this bill.

I know that as a non-Indigenous person — *Qallunaaqualurama* — there are those who feel my voice has no place in this debate. To those people I say this: to become an Inuit beneficiary, you need only one parent that is a beneficiary. The Inuit have a way better situation than First Nations and Métis. I have four children and four grandchildren that are all Inuit beneficiaries. When I'm told that my concerns are less valid, I find myself wondering if behind that, from those who know my family, there's a suggestion that I'm something other than a loving father and grandfather. Of course I support Indigenous rights. My family has been personally hit hard by the residential school legacy — intergenerational trauma. Honourable senators, I tell you that I have been and am motivated by a deep desire to see my Inuit family and the Inuit of Nunavut thrive.

As a legislator, when I do my work reviewing legislation, and in this case having been privileged to be named critic for the official opposition, I always look at it from two perspectives: I consider how it affects my region of Nunavut and Nunavummiut, and then I look at it again and consider how it affects Canadians more broadly.

The Inuit of Nunavut have an exemplary situation. They own and control a huge chunk of land. They are guaranteed significant representation at co-management tables that manage land and resources in Nunavut, and they have a significant guaranteed share of resource royalties and preference in employment and business opportunities and government procurement. As Senator Duncan just said, there's lots Canada can learn from northern modern treaties and our success in reconciliation.

I also recognize the hope that Nunavut Tunngavik Incorporated President Aluki Kotierk expressed. She said:

> Bill C-15 will not be a solution for everything, yet it is an important tool as we continue to work on our evolving relationship between Canada and Inuit and the federal government.

While that agreement does lay out mechanisms that guarantee Inuit full involvement, there are implementation issues that cannot be denied. The federal government had to sign a $255.5 million settlement agreement for breaches of the Nunavut Land Claims Agreement that occurred between 1993 and 2015. The Indigenous Languages Act also failed to include language that would support the provision of basic government services in the first language of the majority Inuit population, denying basic rights to many Inuit elders and unilinguals throughout Nunavut.

I also recognize that all four duly elected presidents of the four Inuit land claim areas, informed by Pauktuutit Inuit Women of Canada, the National Inuit Youth Council and ICC Canada, gave clear direction to Inuit Tapiriit Kanatami President Natan Obed, through a resolution that was signed on March 29, 2021, to support the passage of Bill C-15 as well as the advancement of proposed amendments — namely the establishment of an Indigenous human rights council — as a way of bringing more accountability and stronger enforcement measures to the bill. As a representative for Nunavut and in light of the unanimous support of Inuit leaders for such an amendment, I brought it forward during committee. Sadly, it was defeated.

Secure in the knowledge that this would not hinder but help Nunavummiut, and that there was clear agreement from Inuit leadership to proceed with the bill, I then looked at the broader potential impact, and I asked: How did this bill affect other Indigenous peoples, and how did it affect potential areas of overlap between federal and provincial-territorial jurisdiction?

Colleagues, this is where the bill falls down for me. It is true that I had serious concerns about Bill C-262, the predecessor to this bill, although I know many of you wanted to push it through in the last Parliament. So I note that Minister Lametti, in his May 31, 2021, appearance before the committee, told us that he

felt he improved the bill when he drafted Bill C-15, and Dwight Newman, a constitutional law expert, told the committee that Bill C-15 addressed some of the concerns he had with Bill C-262. The acknowledgement that it was an imperfect bill echoes some of the concerns that I had put on the record in the previous Parliament.

The promise that comes with a government bill is that of resources. The Department of Justice is supposed to have the legal expertise to ensure the legislation is properly drafted, and the federal coffers ensure that the resources are put in place to ensure comprehensive and inclusive consultation. Yet, we've heard a lot of testimony that contradicts this basic presumption.

• (1620)

Indigenous Bar Association president Drew Lafond stated during his May 10 appearance:

> That being said, on the one hand, in the case of Bill C-15, statements by Minister Bennett, which unequivocally provided for the adoption and implementation of UNDRIP in Canadian law and the text currently before us today, where Parliament has not taken the steps that it has taken in the case of other international instruments and their implementation in domestic law, is very concerning to the Indigenous Bar Association.

We hear this concern echoed by Grand Chief Garrison Settee of Manitoba Keewatinowi Okimakanak, or MKO; Chief David Monias of Pimicikamak Okimawin; Ghislain Picard of the Assembly of First Nations Quebec-Labrador, or AFNQL; and Chief Ross Montour of the Mohawk Council of Kahnawà:ke.

The AFNQL and Kahnawà:ke presented amendments that they referred to as the minimum required to support this bill, while MKO and Chief Monias presented amendments they felt made UNDRIP more enforceable in Canada. These suggestions, along with the Indigenous Bar Association's suggested amendments, informed those brought forward by Senator McCallum last week and defeated in this chamber.

On the subject of consultation, I fear Senator Klyne misrepresented my concerns when he stated:

> Responding to arguments made by Senator Patterson and other opponents of this bill, I emphasize that Bill C-15 will take nothing away from nations preferring to deal directly with government as rights holders, such as at treaty tables, rather than through the action plan. Bill C-15 imposes no obligation on any nation to participate in the action plan, as it is voluntary.

My argument is that Bill C-15 has already taken away from nations whose treaties require direct consultation with the federal government. This erosion of treaty obligations to deal bilaterally with treaty holders began when the government decided to engage with the Assembly of First Nations in June of 2020, many months before the government purportedly reached out to treaty holders, such as Treaty 6, Treaty 8 and Alexander First Nation.

The issue of consultation comes directly from Grand Chief Joel Abram of the Association of Iroquois and Allied Indians; Grand Chief Arthur Noskey of Treaty 8; Chief Jim Badger of Sucker Creek First Nation; Russel Diabo, representing grassroots organizations; Chief Mel Grandjamb from Fort McKay First Nation; Grand Chief Okimaw Vernon Watchmaker, the current grand chief with the mandate to represent the Confederacy of Treaty Six First Nations; Chief Douglas Beaverbones of O'Chiese First Nation; and Chief George Arcand Jr. of Alexander First Nations.

I cannot speak to how this bill and the process leading up to it is perceived by those leaders. I can only quote and reiterate what we've been told. The chiefs and grand chiefs we heard from when they appeared before the committee said that this flawed consultation process undermined everything that flows from this bill.

It should be noted that, once again, the core complaint about the consultation surrounding this bill — specifically that it was developed in close consultation with the three national Indigenous organizations and not directly with treaty signatories and rights holders — is being repeated. We have it on the record from officials at both the Department of Justice and Crown-Indigenous Relations that preliminary discussions on how the action plan process will be structured have already started with these same national Indigenous organizations. The government has already begun a flawed top-down process in violation of the clear intent of FPIC and the government's illusory mantra, "Nothing about us without us."

When asked if they would participate in the action plan, the treaty rights holders did not commit either way. I don't take that as a win or a comfort. This action plan is what the government has said will guide the implementation of UNDRIP and further reconciliation initiatives. This should be the most inclusive and comprehensive consultative effort by the government because of Article 19 of the declaration, which declares the right of Indigenous peoples to be consulted on legislative and policy changes that affect Indigenous rights.

Additionally, Article 38 specifically calls on states to

> . . . in consultation and cooperation with indigenous peoples . . . take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

I have read over and over the testimony, answers, submissions and speeches made in regard to this bill. As such, I proposed extensive observations, which were supported only by Senator MacDonald and Senator Stewart Olsen. I had originally hoped that senators would look at the statements I was proposing we make, and agree we had common cause on at least some of the observations.

However, the majority of committee members could not agree to the extensive inclusion of quotes in the majority committee observation. I was, as one senator suggested, being selective in the quotes that I chose to include. To that I say, "You're absolutely right." I chose to include the voices over which I think we're running roughshod.

The committee and soon this chamber will vote to pass this bill. By doing so, we are ignoring the clear advice and repeated calls of elected Indigenous leaders that span huge swaths of territory in Canada. These are leaders who represent tens of thousands of rights holders and who took the time and energy to appear before us and give us their feedback.

Why did we do all this work if the end result doesn't reflect any of their input? They proposed amendments and rejected the consultation process, and thus, some of them have outright rejected this bill. That is not me co-opting testimony and using it out of context. Treaties 6, 7 and 8 even signed a resolution that clearly and expressly rejects Bill C-15 on March 17, 2021, the same day the government claims they "unofficially consulted and informally engaged with" — their words, not mine — the treaty nations, according to the written response received by the committee on June 7, 2021.

When debating Senator McCallum's motion last week, Senator Francis argued that ". . . courts will look to the actual wording of the statute to consider its purpose and intention." Our beloved colleague, former senator George Baker, was always keen to point out how often the courts look to our Senate observations and debates. That is why it was so important to me to provide the context to my proposed observations.

According to the Senate Procedural Note No. 5 on the legislative process:

> The purpose of observations is to draw attention to elements of the bill or related policy, or to put some views or opinions on the record.

Well, colleagues, allow me to put some points on the record as I restate my observations from my considered perspective.

On the issue of conflating support for UNDRIP with support for Bill C-15, it is disappointing to me that many have had to qualify their arguments against this bill and go out of their way to state their opposition is to this bill and not the declaration. Thus, I want to reaffirm that any objections raised over the course of the study should be taken, without prejudice, as being directed towards Bill C-15 as the government's proposed way forward on the implementation of, and not the spirit and intent of UNDRIP. This has been settled since the declaration was endorsed by a Conservative government.

Many have stated the consultation over this bill did not have to be so comprehensive because of the work done to consult on Bill C-262. I disagree. Why? I want to recognize and observe that the duty to consult and accommodate is the sole duty of the Crown and cannot be delegated away to a single parliamentarian or other entities. Bill C-262 should be seen as distinct from this government-sponsored bill.

In regard to consultation, I want to note that complaints around severe limitations in time and resources, as well as the presentation of a consultation draft, as included in the *What We Learned* report in Annex A, is not viewed as meaningful consultation or in accordance with obligations under numbered treaties and the duty to consult as required under section 35 of the Constitution.

I recognize that UNDRIP Article 19 is very clear in calling on states to:

> . . . consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Thus, I remain concerned that the government has not recognized and honoured traditional Indigenous governance structures as described and explained by various Indigenous leaders that appeared at the committee.

I recognize, affirm and respect the rights of Indigenous peoples to determine their own representative organizations in accordance with their own customs and traditions. I recognize and affirm the rights of all Indigenous rights holders to participate in the consultation on any legislation that affects their rights and privileges in accordance with those rights granted to all Canadians under the Charter of Rights and Freedoms and further enhanced in their interpretation by the declaration. I also observe that it is integral to identify which representatives and organizations must be at the table from the very beginning before engaging in any actions that could impede, infringe or otherwise affect the rights, titles and privileges of Indigenous peoples in Canada. There were many divergent expectations on what this bill may or may not achieve. While many witnesses and submissions have stated their support for this bill, it should be noted that many other witnesses felt that the bill required extensive amendments. Still others called for the rejection of the bill and the restart of a truly co-developed bill that respected the consultation obligations of the Crown and incorporated the input of rights holders.

• (1630)

While I observe that preambular clauses do not have operative force in law, Minister Lametti explained that the declaration itself, as well as the rights contained in the preamble, have interpretive force in Canadian law. This, in conjunction with the promised action plan, has been used to rebut concerns raised about the extent to which the principles of UNDRIP are enshrined in Canadian law.

I would observe there were different — divergent — perspectives on the effects that Bill C-15 would have on economic reconciliation. Several witnesses, including Dawn Madahbee Leach, adhered to a view that Bill C-15 will result in increased certainty within the natural resource sector. I observe and recognize the importance of economic conclusion in ongoing reconciliation efforts with Indigenous peoples. The committee further notes that engagement by the Government of Canada with rights holders and other partners in a manner that supports and builds certainty, and makes the sustainable economic development of Indigenous communities the overarching priority, is a common theme we heard amongst witnesses' and officials' submissions. As Senator Tannas pointed out yesterday in this debate, "Investment in Canada has dried up." Investors are fleeing Canada, and the country has been negatively impacted by Indigenous-led blockades, even in Nunavut. We must find a new way forward.

I acknowledge the historical and ongoing hurt and harm caused by racist and paternalistic approaches, and further acknowledge how that contributes to the mistrust and skepticism heard in testimony. I respect the right of any individual or entity to cite their grievances and opinions with regard to legislation before Parliament and acknowledge that right as fundamental to the principles of democracy and the rule of law.

I was not given that right by the Standing Senate Committee on Aboriginal Peoples in the last Parliament. They invoked time allocation on clause-by-clause consideration of the bill, and rushed and stifled debate. With regard to the proposed action plan, I observe that Bill C-15 creates an obligation and a very ambitious expectation that a fully co-developed action plan will indeed be tabled within the two-year time frame. It should be noted, however, that there's no time frame for implementing the plan or fully implementing the declaration. I also wish to observe that the requirement to adequately consult Indigenous peoples in implementing legislation and planning is not only guaranteed by the wording in Bill C-15 but by Article 38 of the declaration, which makes clear that:

> States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

I observe that any action plan resulting from Bill C-15 must not be predicated on a belief that the proper consultation was used in the development and subsequent passage of Bill C-15. I further observe that several witnesses have explicitly rejected this bill and call for a restart to the process that respects Indigenous sovereignty and the treaties. I further observe that by initiating preliminary conversations with the national Inuit organizations, the Government of Canada continues to ignore legitimate and consistent concerns that the consultation process ignores the concerns of Indigenous peoples, particularly treaty holders whose expectation of a bilateral relationship with Canada is rooted in historical treaties further affirmed by consultation processes solemnly established in 1995.

I observe the recommendations brought forward by Inuit leaders pointing to a desire for concrete enforcement and accountability measures. These desires are legitimate and should be given due consideration.

On the issue of potential infringement of provincial and territorial jurisdiction, I observe that there continues to be concern and confusion about potential impacts of this legislation on areas of provincial and territorial jurisdiction and areas of overlapping jurisdiction as outlined in the Constitution. I gave concrete examples of the confusion. Federal encroachment on the statutory and constitutionally protected jurisdiction of the Government of Nunavut is being systematically and inexplicably eroded against a territorial government led and run by an all-Inuit cabinet.

On the topic of continued confusion with regard to this bill, I observe the ongoing call for clarity in defining the principle of FPIC. I further observe that there's an ongoing debate as to whether FPIC is a process or a precondition of approval. I'd like to thank Senator Cotter for his helpful advice about how these hard questions should be addressed in the action plan.

I noted that conflicting testimony was received in response to the question of whether Canadian jurisprudence would continue to prevail. I want to note my disappointment that more attention could not be given to resolving the issues brought before the committee and this chamber due to the manufactured deadline created by this government's inability to manage its legislative agenda.

Finally, on the issue of the pressure to abandon the Senate's privileges to amend bills as required, I observe that it remains the constitutional duty and privilege of senators to amend bills as they see fit, and in response to serious and legitimate concerns raised by witness testimony and submissions. It is an integral function of the chamber of sober second thought. These observations are now listed as minority observations supported by three members of the committee.

Honourable senators, I want to thank Senator Christmas for setting what I hope is a precedent by allowing and facilitating the respectful balanced consideration of this bill. However, I respectfully disagree with Senator Christmas that there is a binary choice when voting on this bill. I know she wouldn't mind me quoting her when I reference Senator Coyle, who described this bill in committee as "about faith and hope." I respect her sincerity and passion and all of those who share it. Last week, Senator LaBoucane-Benson also spoke of her hope that the government would meet their two-year deadline.

Colleagues, I have hope too. We are embarking on a new path forward, but we need to acknowledge that we can and must do better. I have hope that what we've learned from the flaws and unanswered questions relating to this bill can be the basis for consulting and collaborating better with the rights holders directly. I have hope that on something so important we take the time, make the effort and spend the resources required to get it right and not leave out important voices. I have to hope and have faith, because the bill's operative clauses do not provide me the comfort that I and the Indigenous leaders that appeared before the committee — many of them — have been seeking.

As a father and grandfather to Indigenous children, and as a representative of Inuit in Nunavut, I believe in what UNDRIP seeks to achieve. I recognize this is a bill Inuit want and support, and it will pass in this chamber today. Based on that, I cannot vote against this bill. As a federal parliamentarian, however, I cannot ignore the voices of the leaders that I've named today. Combined, they represent over 90,000 rights holders, which is more than the entire population of Inuit Nunangat. Despite their pleas and interventions, I know this bill will pass, and it will pass unamended. Out of respect for them and their struggle, I cannot vote for the bill. I will hold my vote and abstain, neither voting against something that I know that Inuit clearly want, nor voting for something that from its very inception has eroded the bilateral relationship between Canada and the treaty nations and flouted the government's solemn constitutional duty to consult while still leaving important and hard questions unanswered.

Thank you. *Qujannamik. Taima*.

The Hon. the Speaker: It was moved by the Honourable Senator LaBoucane-Benson, seconded by the Honourable Senator Gold, that the bill be read a third time. If you are opposed to the motion, please say no.

Some Hon. Senators: No.

• (1640)

The Hon. the Speaker: I hear a no. Those in favour of the motion who are in the Senate Chamber will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed 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: Do we have agreement on a bell?

Senator LaBoucane-Benson: Fifteen minutes.

The Hon. the Speaker: Any senator in the chamber who is opposed to 15 minutes, please say "no." The vote will take place at 4:55. Call in the senators.

• (1650)

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Anderson
Bellemare
Bernard
Black (*Ontario*)
Boehm
Boniface
Bovey
Boyer
Brazeau
Busson
Campbell
Christmas
Cordy
Cormier
Cotter
Coyle
Dalphond
Dasko
Dawson
Deacon (*Nova Scotia*)
Deacon (*Ontario*)
Dean
Downe
Duncan
Dupuis
Forest
Forest-Niesing
Francis
Furey
Gagné
Galvez
Gold
Griffin
Harder
Hartling
Jaffer
Kutcher
LaBoucane-Benson
Loffreda
Lovelace Nicholas
Marwah
Massicotte
McPhedran
Mégie
Mercer
Miville-Dechêne
Moncion
Moodie
Pate
Petitclerc
Ravalia
Ringuette
Saint-Germain
Simons
Smith
Tannas
Verner
Wallin
Wetston
White
Woo—61

NAYS
THE HONOURABLE SENATORS

Batters
Boisvenu
Carignan
Dagenais
Housakos
MacDonald
Martin
McCallum
Plett
Richards—10

ABSTENTIONS
THE HONOURABLE SENATORS

Ataullahjan
Black (*Alberta*)
Manning
Marshall
Mockler
Ngo
Patterson
Seidman
Stewart Olsen—9

• (1700)

JUDGES ACT

BILL TO AMEND—DECLARATION OF PRIVATE INTEREST

The Hon. the Speaker: Honourable senators, I wish to draw to your attention that the Honourable Senator Cotter has made a written declaration of private interest regarding Bill S-5, An Act to Amend the Judges Act and in accordance with rule 15-7, the declaration shall be recorded in the *Journals of the Senate*.

(*At 5:10 p.m., pursuant to the order adopted by the Senate earlier this day, the Senate adjourned until 2 p.m., tomorrow*.)

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