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(HANSARD)

Wednesday, January 27, 2016

The Honourable GEORGE J. FUREY
Speaker

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THE SENATE

Wednesday, January 27, 2016

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

HONOURABLE JANIS JOHNSON

CONGRATULATIONS ON TWENTY-FIFTH ANNIVERSARY AS SENATOR

Hon. Claude Carignan (Leader of the Opposition): Honourable senators, September 27, 2015, was a very special anniversary. The Senate was not sitting that day, so it was not possible to acknowledge that anniversary in this chamber. That is why I am rising today to say a few words about it.

On September 27, 1990, our colleague and friend, the Honourable Senator Janis Johnson, was appointed to the Senate of Canada by the Right Honourable Brian Mulroney. Senator Johnson was just 45 at the time and had an impressive record that more than justified her appointment to the Senate.

Senator Johnson is a modern businesswoman who is active and very involved in her community. She has made a remarkable contribution in the areas of women's rights, child health, advocacy for persons with disabilities and the rights of First Nations. She brought her boundless energy to the Senate 25 years ago and has served on a number of Senate committees since.

[*English*]

Over the past 25 years, she has served on or chaired six Senate committees, including Fisheries and Oceans, Transport and Communications, Aboriginal Peoples, Human Rights, and the Committee on Internal Economy. She currently serves on the Standing Senate Committee on Foreign Affairs and International Trade and the Standing Senate Committee on Energy, the Environment and Natural Resources.

[*Translation*]

Honourable senators, you will agree that Senator Johnson stands out in the Senate for her confidence, determination, diligence, classiness and distinction.

Senator Johnson is cheerful and easygoing and always ready to lend an ear to colleagues seeking her advice and suggestions. She is well liked by all her colleagues and has left her mark on the Senate since first arriving here.

My dear Janis, it is a bit late, but on behalf of all my colleagues, I wish you a wonderful twenty-fifth anniversary in the Senate of Canada. I wish you in this, your final chapter in this institution that you hold so dear.

Thank you for your unequalled presence, Janis.

[*English*]

ABIDING DEDICATION OF WOMEN

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Colleagues, I rise to draw to your attention news of an event of some interest in the Senate of the United States of America, in Washington. I owe this intelligence to CNN.

We are all aware of the snowstorm that hit the eastern United States over the weekend, notably in Washington, which got, as I understand, something like two feet of snow. This morning, CNN reported:

Senator Lisa Murkowski looked around the Senate floor and noticed something was a little . . . off.

"Something is genuinely different," she told the few assembled lawmakers during Tuesday's short morning session.

— short because of the snowstorm —

Back at work after last weekend's snowstorm shuttered the federal government, the Republican senator from Alaska noted that she shared something in common with every single person in the room.

No, Republicans and Democrats didn't magically come together during the weather break and agree on something. Every single person in the room was a woman.

Every. Single. One.

"As we convene this morning, you look around the chamber, the presiding officer is female. All of our parliamentarians are female. Our floor managers are female. All of our pages are female," she told the floor.

Perhaps living up to the unofficial motto for the U.S. Postal Service, Murkowski praised her female colleagues for braving the conditions and showing up to work.

I particularly draw this intelligence to the attention of our male colleagues, who sometimes have been known to refer to us as the "weaker sex." I trust you will now see the error of your ways.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable Daryl Reid, Speaker of the Manitoba Legislative Assembly, and his wife, Ms. Sheila Reid.

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

Hon. Senators: Hear, hear.

The Hon. the Speaker: Honourable senators, I also wish to draw your attention to the presence in the gallery of the Honourable David Laxton, Speaker of the Yukon Legislative Assembly.

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

Hon. Senators: Hear, hear.

ENERGY EAST PIPELINE

Hon. Percy Mockler: Honourable senators, I was troubled by the recent comments by Montreal-area mayors, led by Mr. Denis Coderre, who have come out opposed to a nation-building project, the Energy East Pipeline.

There is no doubt in my mind that their concerns about environmental protection can be addressed in a robust, fulsome review by regulatory authorities. It would be irresponsible to do otherwise. I believe governments must always base decisions on evidence and analysis rather than on speculation and hearsay. To deny the project altogether is unreasonable and unacceptable, especially when our country is faced with a struggling and melting economy.

Honourable senators, in recent decades, many Canadian refiners have closed. These include facilities in Montreal and, most recently, in Dartmouth, Nova Scotia. It is a reality that most of these facilities were disadvantaged without pipeline access to crude sources.

Honourable senators, today the Irving Oil facility is the sole remaining refinery in the Maritimes and New England, where it provides thousands of good-paying, long-term jobs to New Brunswickers and Atlantic Canadians.

It is indisputable: Irving Oil has been safely operating marine terminals along the eastern seaboard since 1960. Over this time, more than 4 billion barrels of crude and petroleum products have been shipped through the Port of Saint John in our province.

• (1410)

Honourable senators, Canadians depend, to some degree, on the services that are delivered by the products of oil: for example, personal mobility by bus, automobile, train and airplane; materials that are made from oil, such as plastics for containers, furniture, toys and so on; transportation of food and other items in our stores.

Transporting oil by rail is much more risky than moving it by pipeline. Those who refuse to use the safest way of moving oil — by pipeline — are party to the higher risks of moving it by rail or road and the greater environmental impact that could occur.

In the interests of the natural environment of New Brunswick and other provinces through which oil is transported, I stand firmly in favour of using the safest mode of transportation — the pipeline.

The Energy East Pipeline project is a must for our nation-building. It is a fact that Canadian crude will support the long-term competitive position of Eastern Canadian refineries and creating more jobs.

Honourable senators, I ask the 10 Liberal MPs in the other house from my province stand up for New Brunswick and demonstrate that they are a force. Time is of the essence, and with this present government, we cannot put at risk the Energy East Pipeline. They must provide leadership for all Canadians from coast to coast to coast.

Some Hon. Senators: Hear, hear!

BELL LET'S TALK DAY

Hon. Denise Batters: Honourable senators, I rise today to celebrate Bell Let's Talk Day, a national initiative to support mental health in Canada. This is the day when Bell Canada donates 5 cents for every text, tweet, Facebook share and mobile or long-distance phone call made on its network. Bell has committed over \$100 million to fund a variety of mental health initiatives across Canada.

Millions of Canadians struggle with mental illness and even more are caregivers for their spouses, family members and friends who suffer with mental health issues.

As you know, I unfortunately have firsthand experience with this. My husband, former Member of Parliament Dave Batters, struggled with anxiety and depression. At that time, in 2008, the stigma around mental illness and suicide was even more pronounced than it is now. Despite this, Dave courageously decided to make his struggle public in order to raise awareness about mental health issues.

Tragically, Dave died by suicide in 2009. In the wake of that grief and sadness, I committed that I would carry on Dave's cause and make it count for other families struggling with these same issues.

Together with some of Dave's closest friends, I have held an annual golf tournament in Regina in memory of Dave. Our five Dave Batters Memorial Golf Tournaments have raised \$159,000 to date. We are looking forward to raising even more at the next one to be held on September 12 this year. You're all invited.

All proceeds from these tournaments have funded a 30-second commercial which airs every year on Bell's CTV station throughout southern Saskatchewan. You can find this ad on YouTube; just search "Dave Batters." I encourage all of you to share the link to the ad on your Facebook and Twitter pages.

I am proud to announce that we are launching this year's ad campaign again today in honour of Bell Let's Talk Day. The commercial ends with this message: "You are not alone. There is help. Please reach out." This message is also conveyed through the Bell campaign.

It is so important to reach out, whether you are someone struggling with mental illness or whether you see someone you care about suffering. It can be as simple as a sincere, "Are you okay?" or letting a friend know you are thinking of them and available to them if they want to talk. Sometimes it might mean having to ask someone you are worried about whether they might be considering harming themselves or ending their own life. Make that appeal to someone. It can seem so difficult and awkward, but believe me when I tell you, you're not asking them about something they haven't thought about before, and it just might save that person's life.

It is fitting that one of the largest mental health initiatives in this country is sponsored by Bell, because communication and connection to other people is at the heart of healing mental illness and dispelling stigma. I encourage all of you to use Bell Let's Talk Day not only to raise awareness and money for the crucial cause of mental health but as a means of true connection and healing.

[Translation]

THE LATE RENÉ ANGÉLIL, C.M., O.Q.

Hon. Jean-Guy Dagenais: Mr. Speaker, honourable senators, René Angélil's death a few days ago touched virtually all Canadians and many, many people around the world.

Therefore, I think it's appropriate for this chamber to pay tribute to him today for who he was, for what he achieved as an artist, impresario and businessman, and for the legacy he left us.

Canada lost a great Canadian, Quebec lost a true Quebecer and the arts world lost a genius who opened the door to our creative and artistic abilities on the international stage.

He discovered a gem in Céline Dion. She is one of the greatest singers ever, but everyone knows that she owes her success entirely to the genius of her husband and manager.

Over the past week, how many famous artists have said that they would probably not be where they are now had they not encountered René Angélil at some point?

Believe it or not, as a musician in a band in the 1960s and 1970s, I had the pleasure of playing the intermissions at his show. I can tell you that even back then, René Angélil was success incarnate to us. He founded *Les Baronets*, a group of three singers who drove the crowds wild with their hit recordings. That was over 50 years ago.

One of the best things about René Angélil was his belief that anything is possible even if you're just the little francophone neighbour of the United States with its vast roster of huge international stars.

His determination should serve as an example, not just for the arts community, but also for the business world.

He built an enviable financial empire around Céline Dion. He did so patiently and wisely by employing homegrown talent as much as possible, not just artistic talent, but our business talent, which is now indispensable in show business around the world.

How many of our artists followed in René Angélil's footsteps and are appearing in Las Vegas as headliners? How many of our businesses are now responsible for stages and spectacular visual and sound effects for the shows by the biggest stars because René Angélil showed the whole world that we do quality work?

Football fans will see a good example at Super Bowl 50, which will be held in Miami in about 10 days.

We can proudly declare that René Angélil had a hand in all our success stories. In my opinion, our success originated with him.

As we like to say in politics, he was the "economic model" that we should all be proud of.

There is something else I would like to mention from all that I saw and heard about René Angélil. Despite the fact that his profession required that he personally look after all of the details of Céline's shows, his family and friends were most important to him. When you became his friend, it was for life. That was evident at his funeral. His generosity and availability to everyone were what made him an exceptional person.

As a final point, I believe it is important to point out that René Angélil was the son of Lebanese immigrants and a model of integration. He never hid his love for Quebec and Quebecers.

The tribute we are paying to him here today may be generous, but such a great man deserves no less.

Hon. Senators: Hear, hear!

Interparliamentary Association respecting its participation at the 43rd annual meeting, held in Paris and Nord-Pas-De-Calais, France, from May 18 to 22, 2015.

ROUTINE PROCEEDINGS

AGRICULTURE AND FORESTRY

REPORT PURSUANT TO RULE 12-26(2) TABLED

Hon. Ghislain Maltais: Honourable senators, pursuant to rule 12-26(2) of the *Rules of the Senate*, I have the honour to table, in both official languages, the first report of the Standing Senate Committee on Agriculture and Forestry, which deals with the expenses incurred by the committee during the Second Session of the Forty-first Parliament.

(For text of report, see today's Journals of the Senate, p. 83)

[English]

• (1420)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

REPORT PURSUANT TO RULE 12-26(2) TABLED

Hon. Richard Neufeld: Honourable senators, pursuant to rule 12-26(2) of the *Rules of the Senate*, I have the honour to table, in both official languages, the first report of the Standing Senate Committee on Energy, the Environment and Natural Resources, which deals with the expenses incurred by the committee during the Second Session of the Forty-first Parliament.

(For text of report, see today's Journals of the Senate, p. 85.)

[Translation]

CANADA-FRANCE INTERPARLIAMENTARY ASSOCIATION

FIFTIETH ANNIVERSARY CELEBRATIONS, JULY 1, 2015—REPORT TABLED

Hon. Claudette Tardif: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-France Interparliamentary Association respecting its participation at the 50th anniversary celebrations of the Association, held in Paris, France, on July 1, 2015.

ANNUAL MEETING, MAY 18-22, 2015—REPORT TABLED

Hon. Claudette Tardif: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-France

AGRICULTURE AND FORESTRY

STUDY ON THE IMPORTANCE OF BEES AND BEE HEALTH IN THE PRODUCTION OF HONEY, FOOD AND SEED—NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO REQUEST A GOVERNMENT RESPONSE TO THE NINTH REPORT OF THE COMMITTEE TABLED DURING THE SECOND SESSION OF THE FORTY-FIRST PARLIAMENT

Hon. Ghislain Maltais: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the Government to the Ninth Report of the Standing Senate Committee on Agriculture and Forestry, entitled: *The Importance of Bee Health to Sustainable Food Production in Canada*, tabled in the Senate on May 27, 2015 and adopted on May 28, 2015, during the Second Session of the Forty-first Parliament, with the Minister of Agriculture and Agri-Food being identified as minister responsible, in consultation with the Ministers of Health and Finance, for responding to the report.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY INTERNATIONAL MARKET ACCESS PRIORITIES FOR THE CANADIAN AGRICULTURAL AND AGRI-FOOD SECTOR AND REFER PAPERS AND EVIDENCE FROM THE SECOND SESSION OF THE FORTY-FIRST PARLIAMENT TO CURRENT SESSION

Hon. Ghislain Maltais: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Agriculture and Forestry be authorized to examine and report on international market access priorities for the Canadian agricultural and agri-food sector. The study will focus on:

- (a) the expectations and concerns of stakeholders from the Canadian agriculture and agri-food sector;
- (b) sustainable improvements to the production capabilities of the supply chain;

[Senator Dagenais]

- (c) diversity, food security and traceability; and
- (d) the competitiveness and profitability of Canada's agriculture and agri-food sector (including producers and processors).

That the papers and evidence received and taken and work accomplished by the committee on this subject during the Second session of the Forty-first Parliament be referred to the Committee; and

That the Committee submit its final report to the Senate no later than March 31, 2017, and that the Committee retain until June 30, 2017, all powers necessary to publicize its findings.

[English]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY EMERGING ISSUES RELATED TO ITS MANDATE

Hon. Richard Neufeld: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources be authorized to examine and report on emerging issues related to its mandate:

- (a) The current state and future direction of production, distribution, consumption, trade, security and sustainability of Canada's energy resources;
- (b) Environmental challenges facing Canada including responses to global climate change, air pollution, biodiversity and ecological integrity;
- (c) Sustainable development and management of renewable and non-renewable natural resources including but not limited to water, minerals, soils, flora and fauna; and
- (d) Canada's international treaty obligations affecting energy, the environment and natural resources and their influence on Canada's economic and social development.

That the committee submit its final report no later than December 31, 2016 and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE POLICIES, PRACTICES AND COLLABORATIVE EFFORTS OF THE CANADA BORDER SERVICES AGENCY IN DETERMINING ADMISSIBILITY TO CANADA AND REMOVAL OF INADMISSIBLE INDIVIDUALS AND REFER PAPERS AND EVIDENCE FROM THE SECOND SESSION OF THE FORTY-FIRST PARLIAMENT TO CURRENT SESSION

Hon. Daniel Lang: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on National Security and Defence be authorized to examine and report on the policies, practices, and collaborative efforts of the Canada Border Services Agency in determining admissibility to Canada and removal of inadmissible individuals;

That the papers and evidence received and taken and the work accomplished by the committee on this subject during the Second Session of the Forty-first Parliament be referred to the committee; and

That the committee report to the Senate no later than June 30, 2016, and that it retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE MEDICAL, SOCIAL, AND OPERATIONAL IMPACTS OF MENTAL HEALTH ISSUES AFFECTING SERVING AND RETIRED MEMBERS OF THE CANADIAN ARMED FORCES AND THE ROYAL CANADIAN MOUNTED POLICE AND REFER PAPERS AND EVIDENCE FROM THE SECOND SESSION OF THE FORTY-FIRST PARLIAMENT TO CURRENT SESSION

Hon. Daniel Lang: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on National Security and Defence be authorized to examine and report on:

- (a) the medical, social, and operational impacts of mental health issues affecting serving members and veterans of the Canadian Armed Forces and serving members and veterans of the Royal Canadian Mounted Police, including operational stress injuries (OSIs) such as post-traumatic stress disorder (PTSD);
- (b) the services and benefits provided to serving members and veterans of the Canadian Armed Forces and serving members and veterans of the Royal Canadian Mounted Police affected by OSIs, and to their families;

(c) new and emerging technologies, treatments and solutions to aid mental health conditions such as PTSD for serving members and veterans of the Canadian Armed Forces and serving members and veterans of the Royal Canadian Mounted Police;

(d) how those emerging technologies, treatments and solutions can be integrated into the benefit and services already provided by medical professionals working for National Defence and Veterans Affairs Canada;

That the papers and evidence received and taken and the work accomplished by the committee on this subject during the Second Session of the Forty-first Parliament be referred to the committee; and

That the committee report to the Senate no later than December 31, 2017, and that it retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

[*Translation*]

THE SENATE

NOTICE OF MOTION TO ENCOURAGE THE GOVERNMENT TO MAKE PROVISION IN THE BUDGET FOR THE CREATION OF THE CANADIAN INFRASTRUCTURE OVERSIGHT AND BEST PRACTICES COUNCIL

Hon. Diane Bellemare: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Senate — in order to ensure transparency in the awarding of public funds and foster efficiency in infrastructure projects in the larger context of economic diversification and movement toward a greener economy, all while avoiding undue intervention in the federal-provincial division of powers — encourage the government to make provision in the budget for the creation of the Canadian Infrastructure Oversight and Best Practices Council, made up of experts in infrastructure projects from the provinces and territories, whose principal roles would be to:

1. collect information on federally funded infrastructure projects;
2. study the costs and benefits of federally funded infrastructure projects;
3. identify procurements best practices and of risk sharing;
4. promote these best practices among governments; and

[Senator Lang]

5. promote project managers skills development; and

That a message be sent to the House of Commons to acquaint that House with the above.

• (1430)

[*English*]

ORDERS OF THE DAY

GENETIC NON-DISCRIMINATION BILL

SECOND READING

Hon. James S. Cowan (Leader of the Senate Liberals) moved second reading of Bill S-201, An Act to prohibit and prevent genetic discrimination.

He said: Honourable senators, I rise to once again speak about the issue of genetic discrimination in this country and about the bill that I propose to address it. This is the third time I have tabled legislation to combat genetic discrimination. Last time the bill advanced quite far along the legislative path, and we had a number of very constructive hearings before the Standing Senate Committee on Human Rights. Unfortunately problems then developed, and I have elaborated on those before and don't propose to go into them today, but in the end the bill died on the Order Paper when the election was called.

The bill that is now before the chamber is not identical to the last one. I've made several changes to respond to issues and concerns that were raised in the committee hearings and in debate in the Senate. I am hopeful that with these changes we will be able to proceed expeditiously to finally pass Bill S-201 so that it may be considered by members of the other place.

Colleagues, the need for this legislation has become only more urgent with the passage of time. Let me take a few minutes to remind honourable senators of the issue addressed by the bill and also to update the chamber on what has happened in the months since we last debated it.

The problem can be stated quite simply: There is a gap in our laws, and that gap is preventing many Canadians from accessing the extraordinary advances taking place in medical science. My bill is designed to fill that gap.

Scientists, including scientists here in Canada, are unlocking the keys to our DNA, and the results are revolutionizing medicine. A simple genetic test — which may be a blood test or even a cheek swab — can reveal if someone has a genetic mutation that may make them more vulnerable to developing a particular disease or condition at some point in their life.

It is important to note that, in most cases, having a genetic mutation does not mean that you will necessarily develop the condition — only that you might. But knowledge in this case is power. Knowing that one has a particular genetic mutation can open up the possibility of taking preventive measures to reduce, often significantly, the chance that in fact the disease or condition ever develops. These steps can be as simple as lifestyle changes, diet, exercise or taking certain prescription drugs, and in some more serious cases surgery may be called for.

Angelina Jolie is perhaps the most famous example of the benefits of genetic testing. Three years ago she went public with her discovery that she carries one of the genes associated with breast cancer, known as the BRCA1 gene. She had watched her mother battle breast cancer for close to a decade before succumbing to the disease at the age of 56. When Ms. Jolie discovered that she carried the gene, she opted — in consultation with her doctor — to have preventive surgery. Colleagues, she reduced the chances of her developing breast cancer from 87 per cent to less than 5 per cent. She wrote in *The New York Times*:

I can tell my children that they don't need to fear they will lose me to breast cancer.

Senator Wells spoke eloquently here in this chamber last year, on February 19, about his own experience with genetic testing. He discovered that he has the genetic condition of hemochromatosis, a genetic disorder that makes a person unable to properly metabolize iron from food. The result is a potentially toxic accumulation of iron in the body, affecting the joints and vital organs, including the heart and brain. As he told this chamber, if left undiagnosed and unrecognized, the consequences can be “prolonged, severe and fatal.” However, the condition is easily diagnosed with simple genetic testing, after which treatment can reduce and even eliminate most of the severe complications. The treatment for hemochromatosis, he told us, is simple, straightforward and easily administered: having some blood drawn periodically.

Hemochromatosis is not a rare condition. It affects 1 in 300 people of Northern European descent. But, as Senator Wells told us, it's believed that only 20 per cent of those with hemochromatosis know that they have it. Think of that: 80 per cent don't know and, therefore, are not able to take the very easy, readily available steps to avoid the potentially fatal consequences. All they would need to acquire that knowledge is a simple genetic test.

These are two examples of the potential benefits of genetic testing, but there are so many others. The science of medical genetics is developing at a truly astonishing speed. When I first spoke to my bill on April 23, 2013, I described how a decade earlier there were some 100 genetic tests available for genes identified for particular diseases. I noted that this had grown by that time — that's April 23, 2013 — to 2,000 tests, which I thought was pretty impressive. Colleagues, today, less than three years later, there are over 32,600 genetic tests registered with the United States National Institutes of Health's Genetic Testing Registry.

This is a staggering pace. There are tests for genes associated with various heart diseases, prostate cancer, colon cancer, kidney disease, ALS, cystic fibrosis, and early-onset Alzheimer's. There are rare diseases and there are very common ones. These are just a few examples, and the list keeps growing.

The problem, colleagues, is that the law in Canada has not kept pace with the science. In particular, in Canada, unlike in most other Western nations, if one has genetic testing and discovers that one carries a gene associated with a particular condition or disease, there is no law at either the federal or provincial level that provides protection against what is called “genetic discrimination.” That is the problem that Bill S-201 is designed to address.

Right now in Canada, a third party such as an insurance company, an employer or someone else can demand access to your genetic test results and then use that information against you. There is no law in place to protect against that.

Hemochromatosis, the genetic disorder described by Senator Wells, is a good example. Clare Gibbons is a genetic counsellor at North York General Hospital in Toronto. She testified before our Human Rights Committee in support of my bill last time. Coincidentally, she mentioned hemochromatosis. That was several months before Senator Wells drew the attention of this chamber to the condition. She told our committee that the condition is considered to be one of the most preventable genetic conditions, and yet she has heard a number of reports of people across Canada who were denied life insurance and, indeed, in one case, travel medical insurance because of their genetic testing for hemochromatosis.

• (1440)

I've been told of a young man, 24 years old, who has family members who have tested positive for the Huntington's gene. Huntington's is a terrible disease, colleagues, one of the rare genetic diseases where if you have the gene, you will develop the disease. However, the disease usually does not begin to develop until middle age or later. Indeed, some people with the gene die of other causes before ever developing the disease at all.

This young man took the agonizing decision to get himself tested. He shared with his employer that he was going to get tested. On a Friday, he found out that he had tested positive; he had the gene. His employer asked what the results were, and the young man answered honestly. On Monday, he went into work and was fired. He was a video editor. The employer said that he was afraid for his equipment.

Colleagues, this young man does not have the disease now, and will likely not develop it or even show any symptoms for at least another 20 years. There is research, and there are in fact clinical trials of treatments ongoing right now that may be able to delay the onset even longer. But he is being discriminated against now because of his genes.

This happened eight months ago, and it's wrong. This should not happen, not anywhere, but certainly not in Canada.

Dr. Yvonne Bombard is a scientist at St. Michael's Hospital and the University of Toronto. Her research focuses on genetic discrimination. She testified before our committee, telling us of problems she has documented that Canadians have experienced in a number of contexts after and because of genetic test results. She described people who were refused life insurance, or whose premiums were increased, or who were asked by insurance agents to undergo genetic testing in order to qualify for insurance policies.

On this, colleagues, the insurance industry takes the position that insurers are not supposed to require anyone to undergo genetic testing to qualify for insurance. I accept that this is the industry position, but I have heard story after story from Canadians who were in fact required to take a genetic test before they could qualify for insurance. Clearly, it is happening.

Dr. Bombard told our committee of employees who found themselves under increased surveillance at work because they either told their supervisor or their supervisor found out about their genetic test results. She spoke of individuals who were denied promotions or were being pushed to take early retirement because of the disclosure of genetic test results.

And she emphasized that these problems were not limited to insurance or employment. For example, she told us of instances where people were disallowed from adopting children and even had difficulty obtaining custody and access to children.

Colleagues, let me repeat: These are people who do not have any disease or condition and who are not showing any symptoms of any disease or condition. In most cases, genetic predispositions are just that — indications of a heightened possibility that one might develop a condition or disease at some point in the future. But the danger of genetic discrimination for more and more Canadians is that it takes a disease and magnifies its power, so that not only is its terrible impact felt when the disease is full-blown, but the disease is allowed to cast its shadow, or worse, over the years when one is healthy and disease-free.

And colleagues, the ripple effect of these instances of actual discrimination is very significant. Fear of genetic discrimination is causing many Canadians, far too many Canadians, to choose not to have genetic testing that their doctors believe would help them.

Increasingly, genetic testing is a critical tool for diagnosis and treatment. Dr. Ronald Cohn testified before our Human Rights Committee. He is Chief of Clinical and Metabolic Genetics at SickKids Hospital in Toronto, as well as the co-director of the hospital's Centre for Genetic Medicine. He gave us several examples of very sick young children whose care is immediately and very seriously impacted by the lack of legislation to protect against genetic discrimination.

He told us of a 12-year-old girl whose symptoms are consistent with two syndromes. Both syndromes are life-threatening; each is treated very differently from the other. But diagnosis requires genetic testing of the girl and of her parents. The parents feel that they cannot undergo the testing, for fear of the impact the results could have on their insurability. Dr. Cohn told us that without

the testing he cannot properly care for this young girl. But without legislative protection from genetic discrimination, the parents feel they cannot consent to the testing.

What a terrible dilemma for these parents — a dilemma they would not face in virtually any other Western country.

And this is only one story out of many. Dr. Cohn was recruited in September of 2012 to move to Toronto from Johns Hopkins University in Baltimore, brought to Canada specifically to head the clinical genetics division at SickKids Hospital. He has extensive experience outside Canada, and he told us he never witnessed anywhere the impact of genetic discrimination as he has here in Canada.

He told us of a study that his centre is conducting, where they're offering whole genome sequencing to children at the hospital. As he told us, these are very sick children with numerous medical problems. The idea is that with whole genome sequencing the doctors may be able to identify the sources of the problems — if not now then as the research advances, which as I've said is happening at a truly extraordinary speed.

Colleagues, over a third of the families — 35 per cent — have declined to participate in the study because they're afraid of genetic discrimination. As Dr. Cohn told us, these are families who have been trying desperately, sometimes for years, to find treatments for their children. Dr. Cohn is offering them something that he said likely will give them the answer, and they have to decline because of their fear of genetic discrimination.

Colleagues, these stories tear at your heart. Parents in Canada should never have to face such a terrible choice.

I met with Dr. Cohn and other geneticists a few months ago, and I asked if he was seeing this as an escalating, increasing problem. His answer was 100 per cent yes. It's a huge issue, and it's getting worse.

That's why I began my remarks today by stating that with the passage of time the need for remedial legislation has only grown more urgent. It's unconscionable that our failure to act as parliamentarians is placing more and more families in such terrible predicaments. I really can think of no other word to describe what we have failed to do.

Colleagues, doctors describe genetics as "the" major technological change that will transform the way medicine is practised. I have been told it's bringing about a complete cultural change in the field of medicine.

With genetic testing, doctors at SickKids are finding secondary conditions in patients that completely change the way the patients need to be treated. They've described how the discoveries "ultimately lead to improvement of the patients' quality of life, and at times can have a critical impact on survival."

Personalized or individualized medicine is now being actively explored. Some say it is the future of medicine. The idea is to treat the actual disease or condition of the actual person at issue, specially designing medicines targeted for the unique genetic makeup and lifestyle of the individual patient, and the specific genetic makeup of the actual disease or condition. This is a revolution in health care, colleagues. Traditionally, doctors have been able to prescribe only the treatment that has been found successful in the average case. Individualized medicine changes that.

• (1450)

The potential is tremendously exciting, something that is being recognized by governments and researchers. For example, in the State of the Union address a year ago, President Obama announced the Precision Medicine Initiative, focused precisely on this research. Canadian scientists tell me that this announcement was a game-changer for international research and investment in that research.

But, colleagues, all of this starts with genetic testing, and without legal protection such as I have proposed in Bill S-201, Canadians will not be able to take advantage of any of these medical advances.

I mentioned the example of Angelina Jolie and how she has been able to reduce her likelihood of developing breast cancer from 87 per cent to under 5 per cent. The potential benefits to a woman's health from knowing whether she carries one of the BRCA genes are so striking that the scientist who discovered the first one, Dr. Mary-Claire King, is calling for universal screening in the United States of all women over 30 for the gene.

She is not alone. In Israel, there is an active debate on whether or not to provide universal screening for the BRCA genes.

Here in Canada, we cannot even begin to have that debate because encouraging women to have genetic testing without first fixing our laws would expose them to genetic discrimination, and as policy-makers we cannot responsibly do that.

Colleagues, that is a brief outline of some of what prompted me to introduce a bill to prohibit genetic discrimination back in April of 2013 and why I have done so again in this new Parliament.

Let me now briefly describe the bill and what it would do, with particular emphasis on changes that I have made from the version that was before us in the last Parliament.

Bill S-201 is now in five parts. It would enact a new statute, called the "Genetic Non-Discrimination Act"; it would make changes to the Canada Labour Code; it would amend the Canadian Human Rights Act; and — these are new from the previous version of the bill — it would amend the Privacy Act and the Personal Information Protection and Electronic Documents Act, or PIPEDA.

The proposed genetic non-discrimination act would prohibit anyone from requiring someone to take a genetic test or to disclose the results of a genetic test, and — this is new — it would

prohibit anyone from collecting or using the results of someone's genetic test without that person's written consent as a condition of providing goods or services to that person, entering into or continuing a contract with that person, or offering or continuing particular terms or conditions in a contract with that person.

The new prohibition against collecting or using someone's genetic test results without written permission arose out of discussions I had with Canadians over the last couple of months. This will prevent, for example, someone from trolling through social media to find out if a person has undergone genetic testing and then using that information against him or her.

The bill sets out two exemptions to those prohibitions. First, it exempts physicians, pharmacists or other health care practitioners in respect of an individual to whom they are providing health services. Second, it exempts persons who are conducting medical, pharmaceutical or other scientific research in respect of an individual who is a participant in that research.

A change from the previous bill is the express inclusion of pharmacists and pharmaceutical research. Individualized medicine involves pharmacists as integral members of a patient's health care team. A central part of individualized medicine is that prescription medicines are individually designed for a particular person's genetic makeup. Accordingly, it was thought helpful to expressly include pharmacists in the exemptions.

The penalties are unchanged from the previous version of the bill. Contravention of the act would be a criminal offence, punishable on indictment by a fine of up to \$1 million, imprisonment for up to five years, or both; and on summary conviction by a fine of up to \$300,000, imprisonment for up to 12 months, or both.

A major issue last time for some senators was the concern that the bill was targeting the insurance industry and, therefore, would be unconstitutional as regulation of the insurance industry is a matter that falls under provincial and not federal jurisdiction.

Colleagues, I take issues of constitutionality very seriously. My purpose was never to target any particular industry, but rather to target and prohibit particular conduct, whoever it is that engages in that conduct. In fact, as I have explained, genetic discrimination arises in a number of contexts, not only insurance. I never relied on any purported federal power to regulate the insurance industry, or any industry, for that matter. To the contrary, as is clear from the prohibitions and penalties for their contravention, the bill relies on the federal criminal law power, which is clearly recognized to be an appropriate use of federal jurisdiction.

There was one provision in the previous bill that referenced the insurance industry. That was actually an exemption from the prohibitions for high-end policies that I had included to try to alleviate the concerns of the insurance industry concerning large policies. It became clear last time that the inclusion of that provision, which was intended to protect the insurance industry, was taken as being, in essence, that the bill was somehow, in pith and substance, about the insurance industry. That was never my

intention, as I've said. To be very clear that the bill is not about the insurance industry or any industry, for that matter, I have removed that provision. Now the word "insurance" does not appear anywhere in the bill.

I trust this will make it clear that the bill is general in application to anyone who would engage in that prohibited conduct. It relies, as I have said, on the criminal law power, which is accepted to be a valid exercise of federal legislative jurisdiction.

That, colleagues, is a description of the first part of the bill, the new genetic non-discrimination act.

The bill also amends the Canada Labour Code. This part of the previous bill was not controversial last time. It prohibits federal employers from taking disciplinary action against an employee because the employee refused a request by the employer to take a genetic test, or to disclose the results of a genetic test, or on the basis of the results of a genetic test.

The bill amends the Canadian Human Rights Act to add "genetic characteristics" as a prohibited ground of discrimination.

Last time, concern was raised that there was no definition of the term "genetic characteristics." Questions were raised that the term could be interpreted over-broadly, since so many traits could be considered to be genetically based. To address these concerns, I have included a subsection clarifying that discrimination on the basis of genetic characteristics is discrimination based on the results of a genetic test, or the refusal of a request to undergo a genetic test or to disclose the results of a genetic test.

Finally, I have included new amendments to the Privacy Act and to PIPEDA to clarify that personal information under those acts includes information derived from genetic testing.

Colleagues will be aware that last June, a few weeks before Parliament rose for the summer, the previous government tabled a bill to address the issue of genetic discrimination. These same amendments to the Privacy Act and PIPEDA were in that bill. Frankly, I am not convinced that they add very much to the protection that Canadians need and expect from genetic discrimination, but the previous government believed that they would help. I am content to accept that, and for that reason I've included them in my bill.

A final point I want to make about the provisions of Bill S-201 is that nothing in it requires anyone to take a genetic test. Indeed, one of the fundamental points is to protect against that. The decision whether or not to take a genetic test is a deeply personal one. There are many factors that a person weighs in making the decision. There are some illnesses for which, at present, there is no treatment or cure. One, understandably, may prefer not to know. There may be concerns for the impact on one's family members, who may be worried about their own genetic makeup. There are many very serious issues to be considered. But, colleagues, genetic discrimination should not be such an issue. That kind of worry should simply not enter into the discussion.

[Senator Cowan]

• (1500)

So, colleagues, that's the bill before you. I've tried to draft it in a way that will address the issues of concern to Canadians. And, as I've explained, I've incorporated a number of changes that were brought to our attention during our hearings and here in the chamber by colleagues.

I've received very positive feedback from individuals and organizations who have reviewed the bill. But of course, as always, I'm very open to suggestions for improvement, and I'd welcome your constructive comments and proposals.

Let me emphasize: This is not a partisan issue. It's not about politics. It's about the health and welfare of Canadians. I know that each of the three main political parties in the other place has, at one time or another in recent years, stated its commitment to addressing genetic discrimination. The issue is not whether to address genetic discrimination, but how best to do so.

My proposal has been before us, in more or less the same form, since April of 2013. We studied the previous version in a number of very thoughtful hearings before our Human Rights Committee. I hope, given the work that we've already done on the bill, that we can move expeditiously with its consideration through the various stages this time and send it to the other place so that the elected members of the House of Commons can consider it.

I'll conclude with two stories that I've heard very recently. The first came to me in an email. To protect her and her family from possible genetic discrimination, I won't disclose her name, but here's what she wrote to me:

I am the very fortunate recipient of a transplanted heart. Upon being first diagnosed with heart disease in my forties, I learned that I had inherited it from my mother. By this time, I had had a daughter of my own. And, as you may have guessed, she has inherited the mutated gene from me. My mother died from heart disease, and because of advances in medical procedures and medications, I didn't have to. Instead, I am leading a normal, productive and very fulfilled life. I can only hope that, as my journey looked very different from my mother's, my daughter's journey will look very different from mine.

So medically I am not afraid for her. But financially I am. I am fortunate in that I have very good medical benefits. My daughter is not even working yet as she is just 17 years old. And carrying the gene does not necessarily mean it will express itself down the road, but I do worry that when she tries to get insurance apart from mine, she will be declined.

She concluded by saying that Bill S-201 has given her hope.

The final story I will share is about a young woman who came to meet with me in the fall. She's a first-year law student and came across my bill in the course of her studies. Her grandmother, mother and aunt all have the BRCA breast cancer gene. Her grandmother developed breast cancer, first when she was 25 and

then again in her thirties. Her mother and aunt, now in their forties, have never developed it. She wanted to get tested to see if she too carries the gene. Her family advised against it, warning that she would not then be able to buy insurance. Alternatively, they said, she should go out, buy insurance now and then get tested. But this is a young woman in her twenties — insurance is not going to be an issue for her for some years. She didn't want to "game the system," buying insurance and then getting tested. Meanwhile, she wanted to know — she wanted to be able to take control of her health, as much as possible. So she was tested. Her sister, on the other hand, chose not to take the test. The young woman discovered that indeed she has the BRCA gene.

She is a very impressive young woman. This information has empowered her. She changed her lifestyle, adopted a healthy diet and makes sure to exercise regularly. And she gets regular breast screening — something that would normally not be provided to a young woman in her twenties.

She is confident that if anything develops, it will be caught early and quickly addressed. But she is watching the progress of Bill S-201 closely. She saw the problems that members of her family experienced, especially with insurance. As a lawyer, she will undoubtedly need insurance if she chooses to open a law practice. Putting the right legal protections in place isn't an academic legal question for her — it is very serious and deeply personal.

Those are two stories. I could tell you more. I have been overwhelmed by the stories that have come in to me since I first tabled this bill in 2013.

Colleagues, none of us has "perfect genes." That is simply a fact. No one should be punished for having so-called "bad genes."

It isn't often that an issue arises where a simple bill — and Bill S-201 is very short — can address a problem and clear the way for many Canadians to live healthier lives. Scientists are doing their part, advancing the knowledge of genetic medicine — doctors are ready and eager to be able to offer these technologies to Canadians — and Canadians are very eager to take advantage of these medical advances. Now, it's up to us to do our part, to clear away this legal hurdle that is causing real harm to so many of our fellow Canadians.

[*Translation*]

Hon. Claude Carignan (Leader of the Opposition): Would Senator Cowan agree to take a question?

I read the bill. As we already discussed, I have strong feelings about this bill, but there are a couple of points I would like to take a closer look at.

In the first clauses of the bill, clause 3 in particular, it says:

3.(1) It is prohibited for any person to require an individual to undergo a genetic test as a condition of

Then it lists three activities, including:

- (a) providing goods or services to that individual;
- (b) entering into or continuing a contract or agreement with that individual;

In your speech, you mentioned that questions had been raised about the constitutionality of the bill because of the mention of insurance. However, in this case, aren't you concerned about the constitutionality of this part of the bill, which could fall directly under property and civil rights, an area of provincial jurisdiction?

[*English*]

Senator Cowan: Thank you for your question, Senator Carignan. Perhaps it was the translation that was a little unclear. I'm satisfied that those provisions are constitutional and that they are a valid exercise of the federal criminal power. This is not targeting any particular industry or any particular transaction, but it is intended to target behaviour that is prohibited. The legal constitutional scholars I've spoken to believe that as long as the prohibition is general in nature, is not targeting any particular industry or person and is of application to anyone who carries out a prohibited activity, it is a legitimate use of the federal power to legislate for criminal law.

An example would be legislation that we've passed to outlaw or to prohibit spam email. As long as it's not targeting anyone in particular — it's targeting a general behaviour and sanctioning that under the criminal power — then it is a legitimate exercise of the federal legislative power.

I believe, based upon the advice that I've received, that this is entirely appropriate. However, I think that that will undoubtedly be tested when we hopefully get it to committee soon. I look forward to that. I expect that point will be raised again, and I think it's entirely appropriate that it be explored again. I am satisfied, based upon the advice that I've received, that it is within our power to legislate in this way.

• (1510)

[*Translation*]

Senator Carignan: As for the section that has to do with the Canada Labour Code, we understand that you want to involve the federal jurisdiction pertaining to labour relations, particularly when an individual is an employee and is asked to undergo genetic testing. You want to prohibit the use of those tests.

Once again, I agree with that principle, but it seems to me that something is missing from the bill. Often, in the case of labour relations, the medical exam that is most important and most frequent is the one conducted prior to employment. The kind of protection you are talking about is protection for people who are already employed, rather than prior to employment. Did you think about adding, as part of your coverage, a prohibition on refusing to hire someone because of genetic discrimination?

[English]

Senator Cowan: That is a very useful suggestion. We should look at it in committee, and if it stands up I'd be quite happy to amend the bill in that way, if that is a gap. If your suggestion would prevent that, I'm all in favour. It's an appropriate topic for the committee to look at. Thank you.

Hon. A. Raynell Andreychuk: Senator Cowan, the bill has been studied before, as you've pointed out. I don't think anyone disagreed with the aim and the objectives of your bill. The question was whether it was constitutional or not.

I'm very pleased that you've broadened it, and I think the privacy sections are important, even as a signal. There are many improvements.

The only question before was its constitutionality: Did it infringe on provincial rights? Would you suggest that the bill go to the Standing Senate Committee on Legal and Constitutional Affairs? That is the only issue that is important. The objective and the aim are worthy of our support.

Senator Cowan: I believe the intention is to have this referred again to the Human Rights Committee, which is where it was before. You may remember, in the previous Parliament it was referred to the Standing Senate Committee on Legal and Constitutional Affairs and sat there for a period of time. It was re-referred, if that's not an incorrect word, to the Human Rights Committee.

I support sending it back to Human Rights because that committee has a base of knowledge that would be useful. I'm sure that colleagues from the Standing Senate Committee on Legal and Constitutional Affairs who have a particular interest in that aspect would be welcome at the meetings of Human Rights.

Our whips could help us, but I don't believe the meeting times of the two committees conflict. I'm sure that colleagues on Human Rights would welcome their colleagues from the Standing Senate Committee on Legal and Constitutional Affairs who wanted to weigh in on that aspect.

As you'll recall, we did explore that quite extensively at Human Rights, and should it come to that, I would move that it go to the Human Rights Committee.

Senator Andreychuk: Senator Cowan, I would ask you to reconsider that. Having sat on the Standing Senate Committee on Legal and Constitutional Affairs, I know there is a body of expertise in that committee on these issues, and they can handle it expeditiously. We're into a new session, and I would hope they can move quickly.

Human Rights was looking at the impact on people's lives, and those witnesses were valid, and the Human Rights Committee was well equipped to handle that. They made their determination on that. I continue to be on that committee.

We are not the committee that can look at the constitutionality of the issue in the same way that the Standing Senate Committee on Legal and Constitutional Affairs could. I hope that turning it

over to them at this time, with the agenda that they have before them — there doesn't seem to be a rush from the other side yet — it can be handled with respect to the only troubling point, and that was the constitutionality.

I hope the amendments you've made have gone a long way to assure us that it is constitutional, and I think that would be the way to resolve it. I would ask you to consider that approach rather than Human Rights, because we would have to start with understanding a lot about criminal law, federal-provincial jurisdiction, which really wasn't the intent of setting up the Human Rights Committee in the first place. That is really the domain of the Standing Senate Committee on Legal and Constitutional Affairs.

Senator Cowan: May I suggest you have a chat with your colleagues along your bench.

[Translation]

Hon. Diane Bellemare: The next question will be more specific, Senator Cowan. I had a chance to watch an interview with Dr. Cohn on television in which he talked about your bill. He is very much looking forward to its passing, since it will help him in his research.

I am intrigued by clause 7, which sets out the penalties for offences in this bill, and I quote:

(a) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding five years or to both;

I am curious to know what point of comparison was used to come up with those specific penalties.

[English]

Senator Cowan: The numbers and penalties were settled to demonstrate the seriousness of the offence, in my judgment. It has been some time since I actually did that, but my recollection is we looked at, for instance, the penalties for spam emails and things that were comparable. We thought if that's the penalty for sending unwanted emails, surely this is at least as serious.

I'd be happy to reflect further and go back in my records and see the comparisons used and let you know. Frankly, I just don't remember at this time. Thank you.

Hon. Linda Frum: Honourable senators, I rise today to speak about Bill S-201, An Act to prohibit and prevent genetic discrimination, introduced by Senator Cowan at second reading just now.

This bill, like a similar one in the last Parliament, is timely and addresses an important matter, as Senator Cowan has described very well. I can be brief.

We have witnessed an explosion of knowledge about the human genome in a few short years. Consequently, we are challenged by a great many questions about the use that can or should be made of this fairly new and highly personal form of information.

Many people want to know if they carry genes that might indicate the possibility of inherited or heritable health problems. Others are advised by physicians or other health professionals to be tested to determine whether or not they have genetic markers for certain conditions, disorders or diseases. Some would like to be tested for research purposes as studies are carried out on genetic markers for various attributes.

But the results of these tests can reveal a host of personal health secrets, and the type and variety of this testing is growing all the time. Who other than ourselves should have access to this information and for what purposes? What should be considered right and wrong when it comes to others having access to and making use of this information?

The answers are not clear. It is no wonder people hesitate when it comes to genetic testing. It is no wonder many simply say no, even when testing would benefit them or their family members.

Senator Cowan has devoted a great deal of serious thought to this issue, and he has pursued it with determination.

He, and we, are right to be concerned for those who discover through genetic testing that they carry genes for various health problems, and then have to worry that others might make discriminatory use of this information.

• (1520)

After first reading of this bill last month, Senator Cowan contacted me to explain the several differences between it and the one we studied in the last Parliament. The changes he has made, reflected in this bill, show he has responded to concerns and issues raised in debate and during committee hearings. I hope he will agree with me that the process was useful.

For instance, Senator Cowan has addressed our contention that in the former bill he was targeting Canada's insurance industry and, under the Constitution, regulation of the insurance industry is a provincial matter. There is no mention of insurance in this bill.

We were concerned that in his previous bill, in proposing to amend the Canadian Human Rights Act, his definition of "genetic characteristics" was imprecise. With Bill S-201, Senator Cowan has clarified this by stating what discrimination on the basis of genetic characteristics would mean.

This time — and I appreciate this — he has also proposed amendments to the Privacy Act and to PIPEDA, the Personal Information Protection and Electronic Documents Act. These come directly from a bill introduced by the Harper government in the other place and would clarify that genetic testing is "personal information" under those acts.

I thank Senator Cowan for responding to concerns raised by our colleagues on the Human Rights Committee and for including provisions to amend the Privacy Act and PIPEDA.

I hope that with this bill, those issues have been resolved, although we see from the exchanges just now between you, Senator Carignan and Senator Andreychuk that they need to be explored again, as you say. I look forward to working with Senator Cowan at committee — whichever committee that may be — when we study Bill S-201 in detail.

Canada should have rules governing the use of genetic information, the most personal form of information one can imagine. I applaud Senator Cowan for keeping this matter in front of us.

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

Hon. Senators: Question.

The Hon. the Speaker *pro tempore*:

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Cowan, bill referred to the Standing Senate Committee on Human Rights.)

ENDING THE CAPTIVITY OF WHALES AND DOLPHINS BILL

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Wilfred P. Moore moved second reading of Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins).

He said: Honourable senators, I rise today to speak to a bill that I am pleased to have reintroduced: An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), now known as Bill S-203. I first tabled this legislation in June of last year and have reintroduced it as promised.

The purpose of this bill is to phase out the keeping of whales, dolphins and porpoises in captivity in Canada, with an exception for rescues and rehabilitation. The evidence shows that keeping these incredible creatures confined in swimming pools is unjustifiably cruel. That is why I hope all new and returning parliamentarians will support the ending of the captivity of whales and dolphins act. This is not a political issue for any party to own; it is a moral issue and a question of conscience.

Colleagues — and I say this equally to Conservative senators, Senate Liberals and independent senators — when it comes to phasing out the captivity of whales and dolphins, let us come together as a chamber. Let's look at the facts and do the right thing.

Many Canadians are coming together on this issue already; it really touches a nerve. Since the bill's introduction in June with its former numbering, my office has received an incredible outpouring of public support for this proposal. Yesterday, I tabled in the Senate a petition containing the names of 2,000 residents of British Columbia who support this bill. This bill has also received the endorsements of Phil Demers, formerly the head trainer at Marineland in Niagara Falls, Ontario; Dr. Marc Bekoff of the Jane Goodall Institute; Gabriela Cowperthwaite, Director of the CNN-distributed documentary *Blackfish*; the Canadian Federation of Humane Societies; the British Columbia Society for the Prevention of Cruelty to Animals; three ex-trainers from SeaWorld in the United States; and Zoocheck Canada.

In Parliament, I'm pleased that Senators Johnson, Mockler, MacDonald and Stewart Olsen across the aisle in this chamber are sensitive to this matter and support this bill, as well as Ms. Elizabeth May, Leader of the Green Party in the other place. I will share some encouraging words from other supporters later on in my remarks.

First, let's view the facts. Whales, dolphins and porpoises, which together are known as cetaceans, are highly intelligent, emotional and social mammals that roam vast distances in the oceans. In the wild, many species of whales and dolphins live in large family groups, or pods, that can grow to over 100 members. Distinct populations communicate using complex vocalizations that resemble languages. Orcas have been known to travel 150 kilometres in a day, reaching speeds of 45 kilometres per hour and dive to depths greater than 200 metres. I was shocked to learn that a captive orca's range is only 1/10,000th of 1 per cent the size of its natural home range. Just think about that: 1/10,000th of 1 per cent of its natural home range.

Captive cetaceans live in swimming pools. These conditions are socially isolating, stressful and physically restrictive. Orcas experience dorsal fin collapse, broken teeth, damaged skin, significantly reduced lifespans and stress-induced aggression. Dr. Lori Marino, a leading cetacean scientist at Emory University in Atlanta, Georgia, United States of America, believes that captive cetaceans have attempted suicide by beating their heads against the walls of pools and leaping from their tanks. If anyone questions the suffering of captive cetaceans, I would invite them to watch the film *Blackfish*. It is a heartbreaking film, and it's available on Netflix.

Two Canadian facilities currently hold whales, dolphins and porpoises in captivity. Marineland in Niagara Falls, Ontario, a privately owned theme park, holds in captivity one orca, five bottlenose dolphins and approximately 45 beluga whales. Phil Demers, the former Marineland trainer with whom we consulted on this bill, told us that since the United States generally won't allow the import of whales caught in the wild, Marineland purchases wild caught whales from Russia, breeds

them in Canada and provides them to American aquariums. I have also learned that at Marineland, beluga whales and dolphins are trained to perform tricks through starvation and are fed Valium.

Just yesterday, an organization released undercover footage from Marineland that appeared to show widespread health problems among the belugas, including infections, skin damage, open wounds, behavioural abnormalities and, most shockingly, an emaciated beluga calf in isolation.

Honourable senators, I think we can all agree that the status quo is not something Canadians can or should be proud of.

The Vancouver Aquarium, a public facility, holds in captivity a Pacific white-sided dolphin, two harbour porpoises, a false killer whale and two beluga whales. In a two-minute video I've seen that was filmed at the Vancouver Aquarium, a beluga whale swims end to end in its pool seven times. At that rate, these belugas would be doing thousands of laps each day, and this goes on week after week, month after month, year after year. Honourable senators, who wouldn't say that's not cruel?

The Vancouver Aquarium has six additional belugas on loan to U.S. aquariums, including SeaWorld theme parks. Not too long ago, that number of belugas was seven. However, in February, one beluga died a violent death from a broken jaw in a SeaWorld facility in Orlando, Florida.

• (1530)

You might ask, what are Vancouver Aquarium whales doing at for-profit American theme parks? The answer is that the Vancouver Aquarium maintains a captive breeding program with U.S. entertainment facilities.

I was saddened to learn that captive breeding has a very high mortality rate. For example, at the Vancouver Aquarium, there have been 10 orca, dolphin and beluga births over the years. Of those 10 calves, only one survived past the age of three. That's right; just one of 10.

Jane Goodall has condemned the Vancouver Aquarium's breeding program as lacking scientific value, and rightly so. This year alone, two calves fathered by a Vancouver beluga died at a SeaWorld facility in San Antonio, Texas.

So what will this bill do about this situation?

Bill S-203 will phase out the keeping of whales, dolphins and porpoises in captivity by prohibiting captive breeding, imports, exports and live captures in Canada. To be clear, the bill allows for the rescue and rehabilitation of injured individuals, which can be used in research if they cannot be returned to the wild. This is a very important point, since the Vancouver Aquarium typically

alludes to rescues and research to justify its entire operation. This bill will not interfere with rescues, and it will permit research on rescued individuals.

As to currently captive cetaceans, Bill S-203 allows the owners to retain those individuals, including for research, though not for breeding purposes. To put it bluntly, this bill shuts down Canada's whale farms. I'm also happy to say that this bill builds on an Ontario law passed in May 2015, which phases out keeping orcas in captivity in that province. I would again commend the Honourable Yasir Naqvi and the Ontario government for taking that step forward.

Ontario's legislation brings me to an important point. Legally, captive whales, dolphins and porpoises are private property falling under provincial jurisdiction. However, animals are a special kind of private property. In addition to the general prohibition on cruelty against animals, the federal Criminal Code also contains several specific prohibitions, for example, fighting or baiting animals or birds. This bill would add to those specific criminal prohibitions by banning the keeping of cetaceans in captivity, as well as captive breeding. In addition, performances and entertainment by currently captive cetaceans will require a licence from a province's lieutenant governor in council.

Bill S-203 makes some other significant changes. The capture of wild cetaceans currently requires a licence from Canada's Minister of Fisheries and Oceans. By amending the Fisheries Act, this bill would prohibit live captures, except for injured animals in need of assistance. In addition, the export and captive breeding of cetaceans is currently unregulated in Canada. This bill would prohibit imports and exports, including of cetaceans' reproductive materials, by amending the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.

These are important changes. I was surprised to learn that Canada is behind other jurisdictions on this issue. Chile and Costa Rica have banned the keeping of whales and dolphins in captivity, and India has done so for the purposes of public entertainment. The United Kingdom has implemented restrictions so stringent that no cetacean is currently held in captivity, and Italy has banned swim-with-the-dolphins attractions. New Zealand requires ministerial approval for holding cetaceans, and many countries have banned live imports, including Cyprus, Hungary and Mexico.

In November of last year, California congressman Adam Schiff announced his plans to introduce federal legislation in the United States House of Representatives to phase out the display of orcas for entertainment. As Mr. Schiff said:

The evidence is very strong that the psychological and physical harm done to these magnificent animals far outweighs any benefits reaped from their display.

Also in November of last year, a SeaWorld theme park in San Diego, California, announced its plan to rebrand its orca show to be conservation themed. The move is a public relations response to the company's financial struggles, but it's also a tacit

admission that it is morally objectionable to keep whales in captivity for the purpose of entertainment.

Honourable senators, I want to share with the chamber some words from supporters of this bill. Phil Demers, a former head trainer at Marineland, said the following:

As a former Marine Mammal Trainer, I believe the bill to ban cetacean captivity and breeding in Canada is imperative and long-overdue. I have witnessed the psychological and emotional consequences captivity imposes on these magnificent beings, and those who care for them. No living being should be forced to endure what I've witnessed, and it's my hope that this bill will finally put an end to these cruel practices.

Gabriela Cowperthwaite, director of the CNN-distributed documentary *Blackfish*, had this to say:

I made *Blackfish* because I wanted to understand why a trainer came to be killed by a killer whale. I did not come from animal activism and had even taken my kids to SeaWorld. I simply had a question. I soon learned the heartbreaking story of orcas in captivity. All whales and dolphins suffer in marine parks, and seeing these incredible creatures reduced to performing tricks has no social, educational, or conservation value. It is time for us to evolve. I hope Canadians get behind Senator Moore's bill and end this practice.

Dr. Marc Bekoff, who sits on the ethics committee of the Jane Goodall Institute, said this:

Science has clearly established that whales and dolphins suffer deep and enduring psychological and physical harms in captivity. The practice is ethically indefensible, and Senator Moore's proposed ban would be a timely and important change in Canadian law. These highly intelligent, emotional, and social species deserve to live free in the wild, where they belong.

Marineland and the Vancouver Aquarium have attacked this proposal. I hope they will both have the opportunity to make their cases at committee. However, I do not predict that their arguments will be persuasive. Marineland's response to this bill was particularly surreal, calling it "... a bicoastal job creation and tourism bill at the expense of Ontario ..." that will rob "... the average people of Ontario from a fair opportunity to see our marine mammals."

As I said in June of last year, this is the height of human ignorance to say it is unfair that whales and dolphins only live in oceans. To my knowledge, no philosopher or religious leader has ever proposed a moral right to inland dolphin access. The reason, presumably, is that it is indeed ridiculous.

As far as the tourism argument goes, I can guarantee this chamber that in the genesis of this bill, there was not one mention of creating tourism in another part of the country. There is no

desire to see Marineland's full operations shut down; there is no desire to see any jobs lost. What is intended by this bill is to end the captivity of cetaceans, because it is time to do so. Niagara Falls mayor Jim Diodati looks for Marineland to evolve:

. . . 53 years ago we weren't recycling, we weren't wearing seat belts, we weren't worried about drinking and driving or performing marine mammals. In 53 years, a lot has changed. Society's perspective has changed. Marineland needs a graduated opportunity to re-invent itself.

As to the Vancouver Aquarium, their spokesperson's response to this bill was that aquariums have scientific importance and that captive cetaceans help us to better understand those in the wild. The spokesman cited the example of a young false killer whale rescued in 2014, and how it provides researchers with an opportunity to learn more about the species, including vocal communications.

First of all, I would note that Bill S-203 allows the rescue and rehabilitation of cetaceans, such as that individual, which can be used in research. So let me be crystal clear: This bill will not interfere with rescues and rehabilitation, and research can continue on rescued individuals.

• (1540)

What this bill will end is the captive breeding programs at Marineland and the Vancouver Aquarium. Dr. Jane Goodall had this to say about the Vancouver Aquarium's practice:

. . . the current permission of Vancouver Aquarium cetacean breeding programs on-site, and at SeaWorld with belugas on loan, is no longer defensible by science. This is demonstrated by the high mortality rates evident in these breeding programs and by the ongoing use of these animals in interactive shows as entertainment. . . . The phasing out of such cetacean programs is the natural progression of human-kind's evolving view of our non-human animal kin.

Honourable senators, Jane Goodall is correct. Furthermore, I have yet to hear of that aquarium doing any research that has saved a single whale, nor an explanation of why research cannot be satisfactorily accomplished with rescued and currently captive cetaceans. What I have heard about are the concrete, moral harms of captive breeding, the individual suffering and the deaths. On an empathetic level, the practice is quite plainly cruel.

To conclude, honourable senators, whether we should keep whales, dolphins and porpoises in captivity is a moral issue. It's also an issue where our moral intuition agrees with science: these incredible creatures truly suffer in captivity. At its heart, this bill is about preventing cruelty to sensitive beings that share our planet. Canada's federal laws should recognize that whales and dolphins don't belong in swimming pools. They belong in the sea. I hope our chamber will lead the way on this issue by passing this bill. As the late Mahatma Gandhi said, "The greatness of a nation and its moral progress can be judged by the way its animals are treated."

Honourable colleagues, thank you for your attention and let us do the right thing and pass this bill.

[Senator Moore]

The Hon. the Speaker *pro tempore*: Senator Moore, will you take a question?

Senator Moore: Yes.

Hon. Donald Neil Plett: Thank you, Senator Moore. I won't go into the issues that you raised about taking jobs away from the fine folks in Vancouver and so forth. I'm sure in due course they will defend their position at committee, or maybe some of the B.C. senators will here.

I have a question. In Manitoba we don't have any whales in our zoos, but we have polar bears. Polar bears are also used to roaming the wild and going for thousands of miles across ice floes and so forth, and now they're in captivity in a small zoo in Winnipeg, or indeed other zoos across the country. They are also reasonably intelligent animals.

Is the long-term objective to close all aquariums and zoos and take all animals out of captivity, or is there a reason why you're focusing specifically on these?

Senator Moore: Thank you, senator, for the question. You started off saying that I'm aiming at taking away jobs. That's not true. That's not the focus of the bill.

With regard to other species and their roaming or so on, others will have to take that up. My purpose here is to deal with cetaceans. The evidence is clear as to what's been happening to these creatures and what we should be doing to let them have a proper, natural life in their roaming ways. If you've ever been out on the ocean and encountered these whales, you'll know what I'm talking about.

I'm sure on the coast of Manitoba and in the North, you would have seen that. I'm not dealing with other species. I'm not looking to close down aquariums like you were alluding to. I'm sticking to the issue with regard to cetaceans, whales and dolphins, and let them be free of captivity and live a natural life.

Hon. Yonah Martin (Deputy Leader of the Opposition): Senator Moore, I could not help but listen to some of your comments regarding the Vancouver Aquarium as a Vancouverite, as a teacher who has been on field trips to the aquarium and as a parent with annual memberships to the aquarium with my daughter and my nieces and my friends' children. I just wanted to raise that point regarding the fine establishment — it is a very iconic place. Even as a child I went and experienced aspects of nature which I may not have otherwise.

For children — and for me — to go see the whales in their natural environment, to go to Tofino on a ferry ride and many hours' drive away. It's not accessible to everyone. I just simply rise to talk about the Vancouver Aquarium as a really fine establishment and maybe question some of the comments you have made about it specifically.

However, on the points that you raise on the moral dilemma or the challenge before us to deal with this issue is real, I absolutely appreciate what you've said.

The question to end my comment would be: Have you been to the Vancouver Aquarium, met with the researchers and the people who manage the aquarium and how successful it's been, some of the work they have done, especially when it comes to education and research? Have you been there yourself, senator?

Senator Moore: Thank you for the question, senator. Yes, I have been to the Vancouver Aquarium a couple of times. I've watched the whales go up and down the pool, the length of this chamber, repeatedly. That is not who and what they are.

In terms of your being able to go there in the past and people in the future, as I said my bill permits — at least does not stop — the assisting of injured whales and dolphins, taking them to the facility, doing research with them, and if they can't be returned to the wild they would stay there. If they can be returned to the wild, they should be. It doesn't stop that from happening.

(On motion of Senator Mockler, for Senator Johnson, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

Hon. Lillian Eva Dyck moved second reading of Bill S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women).

She said: Honourable senators, I rise today at second reading as the sponsor of Bill S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women). For the purposes of this bill, the definition of "Aboriginal" will include those individuals who are of First Nations, Inuit or Metis heritage.

• (1550)

Bill S-215 amends the Criminal Code to require a court to consider the fact that when the victim of an assault or murder is an Aboriginal female person, this constitutes an aggravating circumstance for the purpose of sentencing. In doing so, it adds new sections immediately after sections 239 and 273 of the Criminal Code.

Colleagues, according to the 2014 RCMP report, Aboriginal females are four times more likely to be murdered than non-Aboriginal females. Nearly 1,200 Aboriginal women and girls have been murdered or have gone missing over a 32-year period. The RCMP report confirmed what Amnesty International and the Native Women's Association of Canada have said for many years, that Aboriginal women and girls are more likely to be victims of violence, be murdered or be made missing.

This tragic phenomenon of missing and murdered Aboriginal women and girls is now the subject of a national inquiry. Such an inquiry, it is hoped, will uncover the root causes and allow the

formulation of effective evidence-based policies to prevent Aboriginal women and girls from being made missing or being murdered. In the meantime, colleagues, my bill is a focused proposed legislative action that we can implement now to help remedy the situation.

Colleagues, there are three lines of reasoning that support the implementation of Bill S-215. First, I will outline the human rights and equity considerations; second, I will outline several provisions within the Criminal Code that allow for protection for certain types of people and animals that are also subjected to violence; and third, I'll discuss societal indifference.

First, with respect to the human rights and equity considerations, Canadians are truly blessed to be protected by the Canadian Charter of Rights and Freedoms. The Charter is meant to guarantee that all Canadians are treated equally before and under the law and that all Canadians have the equal benefit and protection of the law. The reality, however, is that this simply is not true for Aboriginal women and girls.

In 2004, Amnesty International released its groundbreaking *Stolen Sisters* report, noting that Canadian Aboriginal women were far more likely to be victims of violent crimes than any other Canadian women. Similarly, the Native Women's Association of Canada in 2010 documented that a disproportionate number of Aboriginal women and girls have been murdered or have gone missing.

As mentioned previously, the 2014 RCMP report confirmed the increased rate of violence directed against Aboriginal women and girls. Moreover, it showed that even greater numbers of Aboriginal women and girls were missing or murdered. The RCMP found that 1,182 Aboriginal women have been murdered or have gone missing and that Aboriginal women were four times more likely to be murdered than other Canadian women. According to Statistics Canada, the homicide rate for Aboriginal women is actually six times higher than for other Canadian women.

These reports show the undeniable risk of being subjected to violence simply because you are born a female Aboriginal Canadian. It is obvious that despite the guarantees enshrined in the Charter of Rights and Freedoms, in reality, Aboriginal women do not have the equal protection of the law.

Our esteemed colleague Senator Joyal, in his arguments articulated and shared publicly to support a national inquiry, asked this question:

Does the Government not have [a legal] obligation to ensure that aboriginal women benefit from the protection of the equality rights under Section 15 of the *Charter*?

Honourable senators, surely the answer can only be yes. Bill S-215 is meant to increase the protection of Aboriginal women and girls from assault and murder.

Colleagues, I will now discuss precedents where special provisions have been enacted in the Criminal Code to protect certain categories of persons, Aboriginal offenders and some animals.

Within the Criminal Code, there are a number of aggravating circumstances enumerated that are considered during sentencing of an offender. These aggravating circumstances in effect protect certain people. Section 718.2 lists a large number of these: for example, abuse of a minor, abuse of a spouse or abuse of the elderly are aggravating circumstances. More general factors such as race, ethnicity, sex or religion of the victim are also included as aggravating circumstances.

In addition, subsection (e) instructs the court to pay “particular attention to the circumstances of Aboriginal offenders.” This consideration, known as the *Gladue* principle, is intended to recognize that complex cultural factors such as racism, residential schools and foster care have led to the over-incarceration of Aboriginal people.

In 1999, in *R. v. Gladue*, the Supreme Court stated that this section of the Criminal Code was enacted to respond to the disproportionate incarceration of Aboriginals compared to non-Aboriginal Canadians. It is stressed that this section of the Criminal Code was a remedial response enacted specifically to oblige the judiciary to make special efforts to find reasonable alternatives to imprisonment for Aboriginal offenders and to take into account the background and systemic factors that contributed to their contact with the justice system.

Colleagues, nowhere in the Criminal Code, though, is there any provision for the over-victimization of Aboriginal women, who we know are raped at three times the rate and murdered at six times the rate of other Canadian women. The proposed amendments to the Criminal Code contained in Bill S-215 are somewhat akin to the *Gladue* principle, but they apply to the victim rather than to the offender. The purpose of the bill is also a remedial response and is meant to rectify the over-victimization of Aboriginal females. However, it is not meant to, nor should it be used to, justify the abandonment of the *Gladue* principle when an Aboriginal person is accused of assault or murder of an Aboriginal female.

Colleagues, now I will discuss two recent bills that have amended the Criminal Code to protect public transit operators and service animals. The first example is Bill S-221, An Act to amend the Criminal Code (assaults against public transit operators). Bill S-221 created a new section in the Criminal Code to make assault of an on-duty public transit worker, such as a taxi driver, an aggravating circumstance in sentencing the offender. During parliamentary study of Bill S-221, one of the most important arguments brought forward was that public transit operators are a particular segment of the population targeted for assault.

The same argument for protecting Aboriginal women can be made. At second reading of Bill S-221, the sponsor, Senator Runciman, said:

... the homicide rate for taxi drivers from 1997 through 2011 was 3.2 per 100,000

That is significantly higher than for police officers.

[Senator Dyck]

Colleagues, the average homicide rate for Aboriginal women for the years 2001 to 2014 from Statistics Canada says that it's 4.8 per 100,000 — 4.8 — even higher than for taxi drivers. By contrast, the corresponding rate for non-Aboriginal women, for other Canadian women, was 0.8 per 100,000 — less than one. These data clearly show the increased rate of murder of Aboriginal women compared to non-Aboriginal women, police officers and taxi drivers.

During debate on Bill S-221, the detrimental effects of assault on public transit operators on other people, such as passengers, was brought up as an important consideration.

• (1600)

It can be said that violent assaults and murders of Aboriginal women have long-lasting detrimental effects on their children, their families and their communities as a whole. When an Aboriginal female is subjected to violent offences, made missing or murdered, her family is devastated. Communities are torn apart and the well-being of all involved is adversely affected. It should be noted that Aboriginal girls grow up being anxious and afraid that they too will be victimized. This fear has given rise to the “Am I next?” campaign in which Aboriginal girls speculate whether or not they are next in line to be murdered or go missing.

Colleagues, the second example of legislation protecting a certain category of victims is Bill C-35. Last June we passed Bill C-35, Justice for Animals in Service Act, known as Quanto's Law. Quanto was a police dog killed while on duty. This bill created a new specific offence prohibiting the killing or injuring of a law enforcement animal, service animal or military animal. One of the provisions was to create a mandatory minimum sentence of six months for the killing of these types of animals.

Colleagues, these are recent examples in which we have amended the Criminal Code to make specific provisions to protect public transit operators, such as taxi drivers, and service animals, such as police dogs. If we can make special provisions for them, then surely we can make special provisions for Aboriginal female persons.

Hon. Senators: Hear, hear!

Senator Dyck: Colleagues, I would now like to raise the issue of societal indifference to Aboriginal women.

Not only are Aboriginal women more likely to be victims of violent crime, their circumstances are also more likely to be taken less seriously. Societal indifference is thought to further victimize Aboriginal women whose safety and lives are seen as less important and less worthy than other Canadian women. As noted in Amnesty International's report, *Stolen Sisters*, some of the acts of violence that Aboriginal women are subject to are “motivated by racism,” and others are carried out:

... in the expectation that societal indifference to the welfare and safety of indigenous women will allow the perpetrators to escape justice.

Similarly, as noted in the Native Women's Association of Canada's report, *What Their Stories Tell Us*:

The experiences of violence and victimization of Aboriginal women do not occur in a vacuum. Violence is perpetuated through apathy and indifference towards Aboriginal women, and stems from the ongoing impacts of colonialism in Canada. . . . Systemic racism and patriarchy has marginalized Aboriginal women and led to intersecting issues at the root of the multiple forms of violence. The result of the system of colonization is a climate where Aboriginal women are particularly vulnerable to violence, victimization, and indifference by the state and society to their experiences of violence.

For the three reasons that I've just discussed — one, fulfilling the Charter rights of Aboriginal women and girls to the equal benefit and protection of the law; two, accessing the same type of protection available to taxi drivers and others, such as police dogs; and three, overcoming societal indifference — I believe the courts should take into account the female identity of the victims in cases of assault, sexual assault and murder as an aggravating circumstance from the outset. This bill aims to balance the criminal justice system for female Aboriginal victims by so doing.

Honourable senators, I will now describe two case examples to illustrate what Aboriginal females encounter in the courts. And I should give you a warning, the stories are graphic. If you were watching TV they would say, "What you're about to hear is very disturbing."

One recent example of this is the case of Cindy Gladue. Cindy Gladue was a 36-year-old Cree mother of three found bleeding to death in an Edmonton hotel bathtub in June 2011. The accused in the case was a truck driver who had spent two days with Gladue. Gladue bled to death from an 11-centimetre tear to her vaginal wall while the accused slept. The Crown argued that the tear in her vagina was caused by a sharp object. The defence argued that the tear was caused by consensual rough sex, as Gladue was a sex worker at the time. The jury found the accused was not guilty — this was last spring — of murder, not even guilty of manslaughter. Fortunately, the Attorney General of Alberta is appealing the decision.

In the last 20 years there have been only three reported cases in Canada where a victim died as a consequence of rough sex. In all three of those cases the defendant was convicted of at least manslaughter. As I said, the jury in the case did not even do that. There was no Aboriginal person on the jury. The Crown, in an unprecedented move, actually entered into evidence the torn vagina of Cindy Gladue in the courtroom. Ms. Gladue was reduced to a mutilated body part. This was not only highly offensive and extremely disrespectful to the victim and her family, it didn't even result in a guilty verdict.

The second example is the case of Helen Betty Osborne. Osborne was 19 years old when she was abducted and brutally murdered near The Pas, Manitoba, on November 13, 1971. The RCMP eventually thought four men were responsible for the murder. However, charges against three men were not brought until 1986 — 15 years after the murder. In the end, only one man

was convicted to life in prison for the murder of Osborne, one man was acquitted and a third was given immunity and set free in exchange for testifying against the others.

It should be noted that Helen Betty Osborne's murder was extremely violent. She was badly beaten, assaulted and stabbed more than 50 times, apparently with a screwdriver. I remember this case very well. As a young woman, can you imagine hearing something like that?

I'm so pleased that the University of Winnipeg has named a building after Helen Betty Osborne to honour her and to remember what happened to her.

Helen Betty's case sparked the Aboriginal Justice Implementation Commission to conduct an investigation into the length of time it took to resolve this case. The commission concluded that the most significant factors that delayed and deterred the case were racism, sexism and indifference from the community, right through to the criminal justice system. The report stated:

It is clear that Betty Osborne would not have been killed if she had not been Aboriginal. The four men who took her to her death from the streets of The Pas that night had gone looking for an Aboriginal girl with whom to "party." They found Betty Osborne. When she refused to party she was driven out of town and murdered. Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism and indifference. Those who knew the story and remained silent must share their guilt.

• (1610)

The whole community protected the men, and I can understand that. So, for 15 years, her family suffered.

Colleagues, these are just two of the numerous cases in which offenders who are accused of violent attacks or brutal murders of an Aboriginal woman have received sentences that appear to be more lenient than warranted.

Colleagues, it was reported in *The Globe and Mail* just a few months ago, in November, that the family of an Aboriginal woman who was murdered and mistakenly identified as Caucasian chose not to reveal that she was Aboriginal because they feared that her Aboriginal identity would lead to police bias and public apathy.

In response, the Minister of Indigenous Affairs, Carolyn Bennett, is quoted as saying:

The poignancy of the family having to hide the indigenous identity of a loved one just speaks to the huge problem in this country of racism and sexism on this issue.

Honourable senators, the release of the summary report of the findings of the Truth and Reconciliation Commission last June was a watershed moment in Canadian history. Commissioner Justice Murray Sinclair stated:

Even those children who didn't go to residential school, who went to public schools, were affected by the very same teachings that were going on in the schools, because the attitude of society as reflected in residential schools was also reflected in public schools.

In other words, colleagues, all Canadians were taught that Aboriginals:

... were heathens, savages, pagans, they came from an inferior culture, an inferior people.

These teachings underlie present-day stereotypes of Aboriginal men as sexual predators and Aboriginal women as sexual prey.

Honourable senators, I think it is fair to say that being an Aboriginal female person is a unique circumstance. The combination of being Aboriginal, female and living in a colonial society has devalued and dehumanized them. They are still seen by some as inherently less worthy than other women.

Worse yet, the stereotype of Aboriginal women as loose and sexually available still persists and makes them more vulnerable to unwanted and, unfortunately, more violent sexual assaults and more gruesome murders.

In addition, the so-called subtle discrimination against Aboriginal women and girls in the justice system minimizes the grievous harm done to them, which can result in leniency in the sentencing of offenders.

To put it simply, Bill S-215 will increase the likelihood that the consequences of assaulting or murdering an Aboriginal woman or girl are appropriate and meaningful.

Colleagues, Bill S-215 obviously won't fix all the complex issues of a criminal justice system that has so profoundly failed Cindy Gladue, Helen Betty Osborne and many other Aboriginal women, but it is a step in the right direction towards reconciliation. By including Aboriginal female persons as a specific aggravating circumstance — that is, a protected category of persons — we would acknowledge the historic roots that have led to their over-victimization and the systemic discrimination against them in the judicial system.

Honourable senators, Bill S-215 amends the Criminal Code in two places. First, the bill inserts a new clause at the end of the sections of the Criminal Code that outline the murder provisions. The new clause reads:

239.1 When a court imposes a sentence for an offence referred to in section 235, 236 or 239, it shall consider as an aggravating circumstance the fact that the victim of the offence is a female person who is Indian, Inuit or Métis.

Secondly, the bill inserts a new clause at the end of the sections of the Criminal Code that outline the assault and sexual assault provisions. The new clause reads:

273.01 When a court imposes a sentence for an offence referred to in paragraph 264.1(1)(a) or any of sections 265 to 269 or 271 to 273, it shall consider as an aggravating circumstance the fact that the victim of the offence is a female person who is Indian, Inuit or Métis.

Honourable senators, the tragic phenomenon of the high numbers of missing and murdered Aboriginal women and girls is undeniable. The homicide rate of Aboriginal women is 4.8 per 100,000. The corresponding homicide rate is 3.2 for taxi drivers, 2.6 for police officers and 0.8 for non-Aboriginal women. Aboriginal women and girls in Canada are victims of more violent offences and go missing at far higher rates than other Canadian women. Bill S-215 addresses this inequity by specific consideration of their greater vulnerabilities as an aggravating factor in sentencing.

Thus, if an Aboriginal female person is a victim of assault, sexual assault or murder, her identity is an aggravating factor. Such a move would send a clear and strong signal to the court system and to the public at large, denouncing the violent targeting of Aboriginal women and girls. Proclaiming this bill will demonstrate that we value Aboriginal women just as much as we value other Canadian women, taxi drivers, other public transit operators, police officers, and police dogs and other service animals.

Honourable senators, the laws of a country reflect the beliefs and values of its citizens. As the president of Inuit Tapiriit Kanatami, Terry Audla, stated, "we will be judged as a society on how we treat our most vulnerable."

Colleagues, we have an opportunity, with this bill, to declare that we, as members of the Senate, value Aboriginal women and girls and will take their identity as Aboriginal female persons into consideration as an aggravating circumstance that must be considered during sentencing for assault and murder.

Honourable senators, we have an opportunity to take a united stand and deal with this bill expeditiously and to send it to committee for thorough study. It is my honour and privilege, as an Aboriginal female senator, to ask for your support on behalf of the murdered and missing Aboriginal women and girls, their families and their communities.

The Hon. the Speaker *pro tempore*: Senator Dyck, will you take a question?

Senator Dyck: Yes, I will. Thank you.

Hon. George Baker: Thank you, Your Honour. First of all, I'd like to congratulate the honourable senator for introducing this bill. We can see the same reasons, as expressed by the Supreme Court of Canada in the case she referenced of *Gladue*, supporting the bill that she has introduced.

My question to her is a bit technical, but I think it's important. The normal section of the Criminal Code — she has researched this thoroughly. I know this from her presence and her speeches at our Standing Senate Committee on Legal and Constitutional Affairs concerning similar subjects. The aggravating and mitigating factors on sentencing are contained in section 718.2 of the Criminal Code. She is very familiar with it.

• (1620)

In this case, with this bill, I imagine the question will be asked down the road if she had considered amending that section on sentencing, but I would congratulate her in saying that she went right to the core of the problem, section 239 of the Criminal Code, attempted murder. The other section which she referenced, 273, is aggravated sexual assault.

So you have gone right to those very sections, and you've introduced an aggravating factor. The mitigating factor that you referenced earlier, senator, in your speech related to section 718.2(e) of the Criminal Code, as you're well aware.

Senator Dyck: Correct.

Senator Baker: My question is this: From all the research you have done, did you come across any suggestion, either from some legal authority or from some academic authority, that either of those sections of the Criminal Code should be amended to do exactly what you're trying to do now? Did you encounter anybody in any writings who had made this excellent suggestion that you're making now? I'm not aware of any, but perhaps you can tell us if you have encountered that.

Senator Dyck: Thank you for that question, Senator Baker. We did look through the literature. As you may know, in most cases, people are focused on the offenders. They're not thinking about the victim. We didn't find anything at all like that. We specifically picked assault and murder because it has been proven by all the previous reports that that is what happens to Aboriginal women and girls.

We considered amending section 718 itself to put it in with all those other factors, but that would have made it more general, and I didn't think that was correct. We did not find anywhere any suggestion that something like this should be done. However, on the weekend I was searching — and you know how when you're searching on the Internet you kind of find things by happenstance — and I did find a Master of Laws thesis from the University of Saskatchewan, my alma mater, by a lawyer who was suggesting amending section 718.2. In order to do that, it seemed very convoluted, and you could see that by the way she was discussing it, because you would have to prove that hate is involved. You know that something like hate is very difficult to prove, whereas in this case, looking at the specific sections having to do with assault and murder makes the intent of the bill much clearer, and it's directly targeting what's happening to the women.

Senator Baker: Hear, hear!

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

Hon. Yonah Martin (Deputy Leader of the Opposition): I was under the impression that there was another senator wishing to speak. If not, I will take the adjournment.

(On motion of Senator Martin, debate adjourned.)

NATIONAL FINANCE

COMMITTEE AUTHORIZED TO STUDY FEDERAL ESTIMATES GENERALLY

Hon. Larry W. Campbell, pursuant to notice of January 26, 2016, moved:

That the Standing Senate Committee on National Finance, in accordance with rule 12-7(5), be authorized to examine such issues as may arise from time to time relating to federal estimates generally, including the public accounts, reports of the Auditor General and government finance; and

That the committee report to the Senate no later than December 31, 2017.

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

Hon. Senators: Agreed.

(Motion agreed to.)

TRANSPORT AND COMMUNICATIONS

MOTION TO AUTHORIZE COMMITTEE TO STUDY EMERGING ISSUES RELATED TO ITS MANDATE—DEBATE ADJOURNED

Hon. Dennis Dawson, pursuant to notice of January 26, 2016, moved:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report on emerging issues related to its mandate under rule 12-7(6);

That it be further authorized to examine and report on the elements related to its mandate found in the ministerial mandate letters of the Minister of Transport, the Minister of Infrastructure and Communities and the Minister of Canadian Heritage; and

That the committee submit its final report no later than June 30, 2017.

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

Senator Dawson: Honourable senators, before Senator Hubley asks a question about the report regarding the phrase “no later than June 30,” I can assure her that for communications purposes, the committees will do their report not at the same time. I’ve studied the question long enough to know that we should not all report on June 30. We have that as an extension date, but we will be doing a report with a strong consideration for the communication of the report and to make matters easier for the clerk and the office to have reports come in at a reasonable period.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Might I ask a question? Thank you, Your Honour. I have a question for the chair of the committee. Are you planning to hear from the actual ministers about their mandate letters?

Senator Dawson: All three ministers. We have the Minister of Transport, the Minister of Heritage Canada and the Minister of Infrastructure and Communities. They have all been requested to appear in front of the committee to go forward on their mandate letters and explain to us their interpretation of their mandate letters and cooperate with them in making their mandates as easy as possible.

To answer the question, Senator Fraser, we want the important ministers to come in front of us and explain to us what they are addressing in their mandate letters. We will use that as a reference on what studies or work the committee could do to help them go forward with their mandate letters.

Senator Fraser: Thank you very much. If I might just add a comment to my earlier question, I think this is an absolutely terrific idea. I think other committees could profitably learn from your example. We haven’t had mandate letters public in the past, but now we do. I think what you’re doing to build on that foundation will be a very useful piece of work by your committee and I hope by other committees as well.

Hon. Yonah Martin (Deputy Leader of the Opposition): I have a question because it just seems very broad, and it’s something that I haven’t heard. The deputy chair is here sitting next to me. I was wondering whether I should adjourn this for some consideration. If you don’t mind, Senator Dawson, I will adjourn for today.

Senator Dawson: You don’t trust the deputy chair?

Senator Martin: It’s not that I don’t trust — it’s just so broad.

Senator Dawson: No problem.

(On motion of Senator Martin, debate adjourned.)

[Senator Dawson]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO STUDY PRESENT STATE OF THE DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

Hon. David Tkachuk, pursuant to notice of January 26, 2016, moved:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report upon the present state of the domestic and international financial system; and

That the committee submit its final report no later than December 31, 2017, and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

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

Hon. Jane Cordy: May I ask a question of the senator?

The Hon. the Speaker *pro tempore*: Will you accept a question, Senator Tkachuk?

• (1630)

Senator Cordy: I’ll ask the same question I asked Senator Lang yesterday, being a member of the Communications Committee. As members of the committee, we’ve noticed that a lot of reports are to be finalized before either the end of December or the end of June. We know that last year was the Communications Committee was trying to deal with so many excellent reports, and the reports were not getting the communications they should have been getting because there were — I’m not sure of the number — but let’s say 20 reports all coming out at the same time.

I’m wondering if your committee looked at that and if you would consider having your report presented no later than the end of November or the end of January, just so that your committee gets the support and maximum publicity, instead of having 15 reports all being finished within the last week of December.

Senator Tkachuk: Senator Dawson’s answer. But I’ll just add to what he said about his committee. We chose that date to give us flexibility, but we are aware that we have to give time to have a communications plan that makes sense. So we’ll definitely be cooperating with the Communications Committee on that.

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

(Motion agreed to.)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMMITTEE AUTHORIZED TO STUDY ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY

Hon. A. Raynell Andreychuk, pursuant to notice of January 26, 2016, moved:

That the Standing Senate Committee on Foreign Affairs and International Trade, in accordance with rule 12-7(4), be authorized to examine such issues as may arise from time to time relating to foreign relations and international trade generally; and

That the committee report to the Senate no later than June 30, 2017.

Hon. Jane Cordy: If I might ask the same question. This is the other favoured date. It's either December 31 or June 30. I am questioning my own committee, but in light of the fact that we want every committee and every report to get as much publicity and coverage by the media as possible, have you and the executive determined that while June 30 would be the deadline, perhaps you would work to have the report finished before that?

Senator Andreychuk: Thank you. I anticipated you might be asking that question, Senator Cordy. This is our general reference that has historically been with the committee so that we can from time to time deal with foreign affairs issues in a timely way.

They don't necessarily always lead to a report, because they are for information and for valuable background for the senators, so it's not contemplated to be one study, per se.

If we come with a major study, we will take your issue into account, as we have in the past, to ensure that we don't hit the deadline that it would probably be. We filed our major report last year well in advance of June 30.

We may have reports under this, but they would be on a timely basis, after we hear the witnesses. We don't anticipate having the problem of June 30. It was simply the date to extend the general mandate.

Senator Cordy: I think that the members of the Communications Committee are not trying to be troublesome by asking why all the dates are the end of June and the end of December. What we're concerned about is that everybody and every report that comes out from the Senate, because the reports are so good and they're such an important part of the Senate, be given the proper notice by the media. If they're looking at 20 reports being filed within two or three days, that's not going to happen. I appreciate your answer. Thank you.

Hon. Joan Fraser (Deputy Leader of the Senate Liberals): Would Senator Andreychuk take another question?

This is one of those references — authorizations — that can have sweeping application if the committee chooses to use it in that way. I have had it explained to me in the past that it's very handy to be able to invite in a visiting foreign leader or diplomat on very short notice, and that's all very well.

I used to say to Senator Banks, when he was proposing broad motions for the environment committee, that you could also interpret this as enabling you to travel to Mars, assuming we find a population on Mars with which to have foreign relations.

Do you expect, under this authorization, to incur any unusual expenses, notably for travel?

Senator Andreychuk: I can assure you, having had the steering committee meeting, that we are all adamant that we will not be travelling under this reference, nor will we embark on a study that might bring in experts. It is simply generic. Historically it has been there, and we have not utilized it for travel in any way or extra costs. We would definitely come back under a specific mandate for that.

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

(Motion agreed to.)

(The Senate adjourned until tomorrow at 2 p.m.)

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