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Monday, June 4, 2018

The Honourable GEORGE J. FUREY,  
Speaker

## CONTENTS

(Daily index of proceedings appears at back of this issue).

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## THE SENATE

Monday, June 4, 2018

The Senate met at 6 p.m., the Speaker in the chair.

[*Translation*]

Prayers.

[*Translation*]

Senator Ravalia is like many of us in that his journey to the Senate began in another country, on another continent.

[*English*]

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, there have been consultations and there is an agreement to allow a photographer in the Senate Chamber to photograph the introduction of a new senator.

Armed with his medical degree, Senator Ravalia left his home in Zimbabwe in 1984 to make Canada his new home. His story as a newcomer is a familiar one. He left behind uncertainty and unrest to find opportunity in Canada and to seize it for himself and his family.

Is it agreed, honourable senators?

As a family physician, he devoted himself to making communities healthier, educating the next generation of doctors and dedicating himself to the well-being of his province and his new country. Indeed, even if Senator Ravalia has not quite acquired the typical accent we equate with Newfoundlanders and Labradorians, he has certainly acquired the typical attachment to his province and community that we equate with all Newfoundlanders and Labradorians.

**Hon. Senators:** Agreed.

Among the distinctions he has received over the course of his career as a doctor and an educator, I would note that in 2004 he was recognized as Family Physician of the Year by the College of Family Physicians of Canada.

### NEW SENATOR

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that Mohamed-Iqbal Ravalia, C.M., has been summoned to the Senate.

In 2015, he was named a member of the Order of Canada for his contributions to rural medicine. His special areas of interest and knowledge include very important health policy issues, such as primary care reform, care for the elderly and chronic disease management.

### INTRODUCTION

**The Hon. the Speaker** having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senator was introduced; presented Her Majesty's writ of summons; took the oath prescribed by law, which was administered by the Clerk; and was seated:

I am certain we will all look forward to hearing from him frequently with regard to the insights that he can offer both in committees and in this chamber.

**Hon. Mohamed-Iqbal Ravalia**, of Twillingate, Newfoundland and Labrador, introduced between Hon. Peter Harder, P.C., and Hon. Kim Pate.

Senator Ravalia, I thank you for accepting your new role as senator. It will take you frequently away from your family and the community you so love, but I think you will find that over time the Senate has its own kind of community.

**The Hon. the Speaker** informed the Senate that the honourable senator named above had made and subscribed the Declaration of Qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

[*Translation*]

• (1810)

I know my colleagues will join me in welcoming you. We are glad to have you as a member of this little Senate of Canada community, and we hope you will feel at home here.

[*English*]

[*English*]

### CONGRATULATIONS ON APPOINTMENT

Welcome senator, and God bless.

**Hon. Peter Harder (Government Representative in the Senate):** It is my pleasure, as the Government Representative in the Senate, to welcome our newest colleague, the Honourable Mohamed-Iqbal Ravalia, here to represent his home province of Newfoundland and Labrador.

**Hon. Larry W. Smith (Leader of the Opposition):** Honourable senators, I would also like to offer some words to welcome our new colleague in the Senate of Canada, the Honourable Senator Mohamed-Iqbal Ravalia.

On behalf of all Conservative senators, I extend congratulations to the senator on his recent appointment. We send our best wishes to the senator and his family as they begin this new chapter of their lives here today.

[*Translation*]

Conservative senators want to get to know their new colleague. They hope he, too, will come to know them and understand the importance of their work as the official opposition in the Senate.

[*English*]

Senator Ravalia will find that our caucus has four senators from his home province of Newfoundland and Labrador: Senators Doyle, Manning, Marshall and Wells, — who are all proud representatives of their province in the Parliament of Canada. And, of course, our Speaker hails from the great province as well.

Honourable senators, it is a great honour to be named to serve in the Senate and to have an important part in shaping the legislation and public policy that impact the daily lives of our fellow citizens from coast to coast to coast.

Senator Ravalia joins us today in the midst of our debate on the legalization of marijuana, one of the biggest policy shifts in decades. I am certain that our colleague will find his work here tremendously interesting as he takes on his new responsibilities.

Welcome, Senator Ravalia.

**Hon. Yuen Pau Woo:** Honourable colleagues, with the tip of the hat to Senator Fabian Manning, I am pleased to present a special chapter of “Telling our Story.”

This chapter is about a man who was born in Rhodesia, which is modern-day Zimbabwe. Aspiring to overcome the prejudice that he faced in that country, he came to Canada to start a new life. He found his way to Newfoundland in 1984, fell in love with the province and settled in Twillingate, which is a town of about 2,500 people on an island in Notre Dame Bay. He became a family doctor, community leader, senior medical officer, professor of medicine and staunch advocate of rural health, in particular for marginalized people. Along the way, he earned the Order of Canada and the Queen’s Diamond Jubilee Medal. He was also named Canadian Family Physician of the Year in 2004.

This man is none other than our new colleague, the Honourable Senator Mohamed-Iqbal Ravalia, who was named to the upper chamber on June 1, 2018, representing Newfoundland and Labrador.

His story is remarkable because of what it says about him as a person, but it is also remarkable because of what it says about his adopted home. Describing his experience as a come from away who had recently landed in remote Newfoundland, Senator Ravalia had this to say: “The community welcomed me into their hearts and their homes. I, a single Muslim from an African country, surrounded by 2,500 Protestants and 10 Catholics.”

As someone who also arrived in Newfoundland in the mid-1980s and spent seven happy years exploring rural outposts across the island, including Twillingate, I can attest to the warmth, openness and generosity of Newfoundlanders and Labradorians.

Now, most newcomers to the province expect to carry the come-from-away label their whole life, perhaps even for the lives of their children and grandchildren. In Senator Ravalia’s case, however, I have already heard it said that “He is such a true Newfoundlander, he must have come over on the first fishing boat.” Colleagues, that may be the highest praise that any newcomer to the province can receive.

Senator Ravalia said in a 2017 speech that he left Rhodesia to escape a society that defined him solely by his ethnicity and to be in a country where he could experience democracy. He is now in the upper house of the Parliament in that country, where he will not only experience democracy, but also contribute to its proper functioning.

Senator Ravalia, on behalf of the Independent Senators Group, we welcome you, your wife, Dianne and sons Adam and Mikhail, to the Senate family. We look forward to working with you.

**Hon. Joseph A. Day (Leader of the Senate Liberals):** Colleagues, I am delighted to welcome to the Senate of Canada our newest member, Dr. Mohamed-Iqbal Ravalia.

As we have heard already, Senator Ravalia comes here as a family physician from rural Newfoundland and Labrador, as well as a professor and assistant dean at Memorial University, a very good medical school. He has received numerous accolades, including the Order of Canada, for his contributions to rural medicine in his home province of Newfoundland and Labrador.

There can be no doubt that the focus of his career has been to improve the lives of his fellow Newfoundlanders and Labradorians. This is a role he will no doubt continue here in the Senate, but not only for the people of the province he represents but also for others across the country. I’m confident that Senator Ravalia will quickly find his feet in our chamber because all of us are here to make our provinces, our regions and Canada, as a whole, a better place.

• (1820)

Nevertheless, Senator Ravalia, this chamber and its workings are unique, and, for most, it does require a period of adjustment. In addition to our fundamental duties as a chamber of sober second thought, we are also changing and modernizing how we operate here in the Senate. I am certain that your expertise will be an asset as we go forward together in that journey.

On behalf of my colleagues, the Independent Liberal senators, we welcome you to the Senate of Canada, and we look forward to working with you, Senator Ravalia.

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## SENATORS' STATEMENTS

### PATRICK FOGARTY CATHOLIC SECONDARY SCHOOL BANDS

**Hon. Gwen Boniface:** Honourable senators, I rise today to salute the members Orillia's Patrick Fogarty Catholic Secondary School Band, who recently competed at Music Fest Canada. The senior concert and jazz band, led by their dedicated director, James Hilts, received a gold medal, and the jazz band was awarded a silver medal at the national competition held at the University of Toronto last month. This included 6,000 performers. Patrick Fogarty's two bands competed at the Series 400 level, which featured not only advanced high school bands but also often university-level performers.

The bands made such an impression on one of the competition's four adjudicators that it garnered them an invitation to perform at a festival at Carnegie Hall in February, something they would never have imagined when they visited the iconic music hall a year prior.

Dr. Brendan Caldwell, the artistic director and clinician for this festival, plans to use this opportunity to bring awareness to the gun violence in American schools. The Patrick Fogarty Senior Band is one of only six invited Canadian ensembles to the festival.

Naturally, all members of the band, their coaches and chaperones are extremely proud and humbled to have received such an honour and gratified that their hard work and dedication has been recognized.

The school principal, Carolyn Healy, is among their many cheerleaders, and echoed these sentiments, stating, "We're very proud of the students and grateful for the opportunity." But she also reinforced their strong work ethic, quipping the adage: "How do you get to Carnegie Hall? Practice, practice, practice."

Member of Parliament Bruce Stanton and I join all Orillians in congratulating this impressive group of up and coming young musicians and sending them best wishes for their upcoming performance at Carnegie Hall.

[*Translation*]

### PRIX BORÉAL

#### CONGRATULATIONS TO RECIPIENTS

**Hon. Joseph A. Day (Leader of the Senate Liberals):** Honourable senators, I am thrilled to have some good news to share with you this evening. Our former colleagues, retired senators Maria Chaput and Claudette Tardif, will be honoured this week by the Fédération des communautés francophones et acadienne, or FCFA, which is awarding them the 2018 Boréal prize. This prize is given to individuals or groups who have made outstanding contributions to the development and vitality of francophone and Acadian communities.

To anyone who has worked with these two extraordinary women, this honour from the FCFA will come as no surprise. These women made it their life's work to promote and protect the French language here in Canada. Their contributions to the cause have had a lasting impact that is still felt today.

During her time in the Senate, Senator Chaput vigorously defended the rights of linguistic minorities, especially the rights of minority francophones in Manitoba and across Canada. During her term as chair of the Standing Senate Committee on Official Languages, the committee produced a tremendous number of comprehensive reports. Furthermore, she introduced four bills in the space of five years aimed at modernizing the rules governing communications and services to the public under the Official Languages Act.

Likewise, as I said on the occasion of her retirement, Senator Tardif has also been a strong advocate for the cultural and language rights of minority francophones across Canada, especially in Alberta. She too chaired the Standing Senate Committee on Official Languages for several years, where she was instrumental in preparing many reports on various subjects. The FCFA credits her leadership for the study being conducted right now on the modernization of the Official Languages Act.

On behalf of the independent Liberal senators, I want to congratulate Senators Chaput and Tardif and wish them every success in the future.

[*English*]

### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of His Worship David Nash, Mayor of Merrickville-Wolford. He is the guest of the Honourable Senator Boyer.

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

**Hon. Senators:** Hear, hear!

### VILLAGE OF MERRICKVILLE, ONTARIO

#### TWO HUNDRED AND TWENTY-FIFTH ANNIVERSARY

**Hon. Yvonne Boyer:** Honourable senators, I rise today to acknowledge the two hundred and twenty-fifth anniversary of the formation of the Village of Merrickville, Ontario, home to over 3,000 people and my home for the past seven years.

Located on unceded Algonquin territory, the Village of Merrickville was developed by William Merrick in 1793. This quaint village sits along the Rideau Canal, 85 kilometres southwest of Ottawa. Although it has a mill and manufacturing history, today it is best known as a tourist destination. People come from all parts of the world to learn about the Rideau Canal, which was named a UNESCO World Heritage Site in 2007, or to explore the town's 19th-century architecture or to visit the famous artists that work and live in this village.

Walking through the Village of Merrickville feels as if one has travelled back in time. The village has many beautiful, well-preserved 19th-century homes and other buildings. Merrickville's unique character and architecture survived many of the ravages of modernization, and so today it exists as a modern village with a naturally preserved 19th-century flavour.

In fact, it has more designated heritage buildings than any other Ontario community of like size. Many of the houses and buildings are built from sandstone or limestone. Of particular interest is the Blockhouse, which was built in 1832 to protect the canal locks and is now a museum and home to many local artifacts from the 19th century.

The Alloy Foundry is Canada's oldest foundry that began as an iron foundry in 1840. Many beautiful iron works can be bought in their shop. In fact, they produced the iron castings for the Governor General's fence at Rideau Hall.

You can watch the artists blowing glass in their studio at Gray Art Glass, where it not only is a family-run business but artisan craftsmanship at its finest, with custom-made sculptures and installations and one-of-a-kind art works that are showcased in over 250 galleries across Canada.

The village also boasts a vibrant main street, lined with restaurants and unique shops. For instance, the Sugar Belle bakery has a world-class chef, where you will never find a better-tasting cream puff.

We have our own homemade ice cream and gelato shops, and don't forget the chip stands while you're there.

• (1830)

Merrickville also has one of Ontario's highest per capita populations of artists, such as potters, quilters, cast metal artists, painters, fibre artists, writers, photographers, engravers, jewellers, dressmakers and soap makers. It's a great place to stop when travelling down the Rideau Trail or Canal. You can stop for the jazz festival, the theatre productions, the antique car show, the motorcycle show, and on and on and on.

The Merrickville community is holding several events to celebrate its anniversary. The kick-off is June 9, when a music festival is scheduled, and it will be announced by our own town crier.

All year long, Merrickville hosts exciting events, but the summer is the best. The atmosphere, the food and the people all make Merrickville a very special village.

Thank you, *meegwetch*.

#### AUTISM SPECTRUM DISORDER

**Hon. Leo Housakos:** Honourable senators, as I have spoken about many times in this chamber, the challenges faced when dealing with autism spectrum disorder, or ASD, continue to be well documented. At present, 1 out of 66 children receives a lifelong diagnosis. In essence, ASD is the most common neuro-developmental disorder diagnosed among children in Canada, occurring in all racial, ethnic and socio-economic groups.

The quality of Canadian expertise in autism care is not in question. It is with great pride that we can acknowledge a wide variety of organizations in our great nation that are working diligently to improve what is a complex situation. However, as we identified in the Senate's 2007 report *Pay now or pay later*, the startling reality is that we, as a government, continue to underfund the resources needed to help an ever-increasing number of Canadian families.

The obvious lack of a national strategy and the necessary resources to assist families and organizations confronting ASD was the focus of the Senate's Autism Awareness Month last October, in which Senator Munson, Senator Bernard and I all took part. At that time, we invited Health Minister Ginette Petitpas Taylor to meet with us to discuss the state of autism care in Canada and what the federal government is doing about it. Minister Petitpas Taylor did meet with us and was generous in both her time and interest in this important matter.

Further to that meeting, the minister visited two organizations in Montreal last week — Giant Steps school and resource centre, and the Transforming Autism Care Consortium, or TACC — that are working hard to provide services to people living with ASD and to conduct autism research. While efforts such as those of Giant Steps and TACC must be commended, without sufficient support from the federal government, they — and other organizations like them — are facing a daunting task.

So where do we go from here? I am encouraged by the minister's interest in this important issue that affects several hundred thousands of Canadians, and I would like to thank her for taking the time to visit these two organizations in Montreal that are playing such a key role. We must continue to work together as parliamentarians, regardless of our political stripe, to support Canadians living on the autism spectrum. The time to act is now. Whether focusing on research and early intervention, family support services, or job training, the time has come to develop a government-led national strategy to deal with this ongoing crisis. Thank you, colleagues.

#### THE LATE HARRY BAGLOLE

**Hon. Diane F. Griffin:** Senators, I rise today to mark the passing of Harry Baglolo of Bonshaw, Prince Edward Island. He was involved in many Island institutions, some of which he helped establish, including *The Island Magazine*, Theatre P.E.I., the PEI Museum and Heritage Foundation, Island Nature Trust, the Belfast Historical Society, and Farmers Helping Farmers.

Probably one of Harry's greatest loves was the Sir Andrew Macphail Foundation, for which he recently served as president of the board. This gave him the opportunity to bring together human-sized agriculture, theatrical presentation, and the preservation of the Island home of Sir Andrew Macphail, a man whose work Harry greatly admired. Macphail had been a professor of medicine at McGill University, an author, and in World War I served at the front as a medical officer.

Prince Edward Island was near and dear to Harry Baglole's heart. He loved it at the micro level, such as annually planting hundreds of spring bulbs and a significant vegetable garden. He also loved it at the macro level, which meant advocating for keeping the Island landscape in agriculture of a human scale. To this end, he worked as the founding director at the Institute of Island Studies at the University of Prince Edward Island. Mr. Baglole worked on publications, on organizing public fora, and on influencing policymakers in various levels of government.

Harry, although keenly interested in public policy, never ran for office for any political party. He preferred to be an "ideas" person with a low profile; and as a result, many candidates and elected politicians of different stripes had the benefit of his counsel.

A celebration of Harry's life is being held tonight in Charlottetown.

I have never known a more altruistic person than Harry Baglole. I miss him, and I extend my sympathy to his family and friends.

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## QUESTION PERIOD

### NATURAL RESOURCES

#### TRANS MOUNTAIN PIPELINE

**Hon. Larry W. Smith (Leader of the Opposition):** Honourable senators, I have a question for which I need assistance from the government leader.

Today, news reports of bonuses paid to Kinder Morgan executives in conjunction with the Government of Canada's taxpayer-funded purchase of Trans Mountain pipeline became public. The filing with the U.S. Securities and Exchange Commission clearly showed that on May 28, a day before the government's announcement, two Kinder Morgan executive officers were given bonuses of \$1.5 million each. According to the filing, the bonuses were "in connection with the Purchase Agreement."

My question is simply this, and I would appreciate your help because I'm sure it's probably also news to you: If the Minister of Finance knew of the bonuses paid to the two Kinder Morgan executives, why was the information not included in the minister's announcement last week? Why was the information hidden from Canadian taxpayers, who are on the hook for footing the bill for Trans Mountain?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for his question. What I can report, of course, is that Kinder Morgan continues to own and operate the project until the sale is complete. Decisions such as those made by the board before the completion of the transaction are the accountabilities of that board, and they alone are responsible for both the decisions and reporting to their shareholders with regard to those decisions.

**Senator Smith:** As a follow-up, the press release announcing the government's purchase of Trans Mountain pipeline stated that "the agreement will guarantee the resumption of work for the summer construction season."

However, the filing with the U.S. Securities and Exchange Commission also shows that Kinder Morgan is still working to "firm up the construction contracts and prepare a revised cost estimate."

Senator Harder, how can the government guarantee that construction will take place this summer, when Kinder Morgan's contracts with construction companies have not yet been finalized?

**Senator Harder:** Again, I want to assure the honourable senator, and all senators, that the agreement that the government has reached is that the project would advance and take advantage of this construction season. That is the objective of the project, and that is the commitment that has been made.

• (1840)

## AGRICULTURE AND AGRI-FOOD

### CARBON TAX

**Hon. Donald Neil Plett:** Honourable senators, my question as well is for the government leader.

Leader, last week the Minister of Agriculture was here for Question Period. In response to a question from Senator Stewart Olsen, the minister stated:

... you would find that most farmers support the moves we have made to make sure that we put a tax on carbon.

Leader, the Chair of the Western Canadian Wheat Growers Association, Jim Wickett, said the minister is dead wrong. Mr. Wickett stated:

We would be the only producer in the world that's paying this tax. All of our competitors are not paying this tax. We trade our grain on the world price, and we have to take what the world price is, and this would just be an expense on our bottom line, and would certainly put us at a competitive disadvantage.

Mr. Wickett added he is not sure who is briefing the Minister of Agriculture but that they're feeling misrepresented. I quote again from Mr. Wickett:

Maybe two, or three, of his neighbors in Prince Edward Island agree with the carbon tax, but you'd be hard pressed to find many farmers in Western Canada that would certainly agree with a carbon tax.

In a release, the Western Canadian Wheat Growers Association said:



Farmers should be rewarded for the huge carbon sink that agriculture creates, not penalized through a carbon tax.

Leader, would you please tell me whether this is an official position of the Government of Canada, that most farmers support a carbon tax and if so how they arrived at this conclusion?

**Hon. Peter Harder (Government Representative in the Senate):** I thank the honourable senator for his question. Let me remind all senators that, at present, 80 per cent of the Canadian population operates in a jurisdiction that enjoys some level of carbon pricing. That would include the agricultural communities in those jurisdictions.

I would also point out, as the Minister of Agriculture did last week, that the government is investing in agricultural research and clean technology to help our farmers improve their contributions and adapt to the effects of climate change. The government, as senators will know, has invested \$100 million in agricultural science and is investing \$27 million in the Agricultural Greenhouse Gases Program and \$25 million in the Agricultural Clean Technology Program. The government has also made environmental sustainability a key focus of the Canadian Agricultural Partnership program of this government.

Clearly, this is a sector that is very important to Canada's well-being. It is certainly a sector that outperforms in the export marketplace, and it is important that all Canadians work together with our agricultural neighbours and friends and family to ensure the agricultural sector remains vibrant as we move to a sustainable, climate-sensitive economy.

**Senator Plett:** Well, of course, leader, with all due respect, that didn't even touch on the question that I asked.

First of all, I think you would be hard-pressed to find 20 per cent of farmers who enjoy this carbon tax, never mind 80 per cent.

So my question again, leader — and if you can't answer it, I would ask that you get me the answer to this question — how did the Minister of Agriculture and the Government of Canada come to the conclusion that farmers support this tax? You're saying that 80 per cent of Canadians support or enjoy the tax — I'm not sure that any of us enjoy the tax.

I would like to know how the minister got to that conclusion, Mr. Leader, and if you can't give me that information, I would like a written response that comes from either the Minister of Agriculture or the Government of Canada.

**Senator Harder:** Again, I thank the honourable senator for his question. Let me repeat that when I say that 80 per cent of Canadians live in jurisdictions that have a carbon pricing regime, that includes the agricultural sector in those jurisdictions. I think we all recognize that that is an important tool in equipping Canada to deal with climate change globally, and it is a responsibility that this government takes seriously.

With respect to the specific question about comments made by the specific minister, I would be happy to undertake, as the honourable senator has suggested, an inquiry of the minister.

[Translation]

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before we start debate on Bill C-45, let me remind you that today we are dealing with international issues relating to cannabis, including matters such as treaties and border issues. As you know, speeches and amendments are to only deal with that theme. A senator can speak only once to the third reading motion today, but can also speak once to any amendment or subamendment moved. Each speech is limited to a maximum of ten minutes, including any questions. There has been agreement that there will be no extensions, so no such request should be made. If there is a request for a standing vote the bells will ring for 15 minutes, and the vote cannot be deferred.

Let me thank you once again, senators, for your cooperation.

[English]

### CANNABIS BILL

BILL TO AMEND—THIRD READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Dean, seconded by the Honourable Senator Dupuis, for the third reading of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, as amended.

**Hon. Patricia Bovey:** Honourable senators, I rise today to speak to third reading of Bill C-45, the cannabis act, in regard to Canada's international obligations. I commend the chair, the deputy chair and members of the committee for the comprehensive study done under strict timelines. I thank the clerk and researchers who put in many extra hours as well.

Three International Drug Control Conventions in particular relate to Bill C-45: The 1961 Single Convention on Narcotic Drugs as amended by the 1972 protocol, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

We heard from the Minister of Foreign Affairs, officials from Global Affairs Canada, from the Canada Border Services Agency, academics and NGOs and received written submissions from UNICEF Canada, the International Narcotics Control Board and the Canadian Bar Association. To be clear, with no uncertainty, we were made aware by all that passing Bill C-45 would cause Canada to be in violation of the three international drug conventions. There is no equivocation regarding that. We also heard of potential damage to Canada's international reputation and the need for Canada to support international law as an example to other countries. All very serious implications.

The committee heard what implications of being in violation might be and how that might be dealt with: sanctions, negotiation, mediation, consultation or remedial measures. If brought to the attention of the UN General Assembly or the International Narcotics Control Board, an embargo on trade and drugs and medicines may be recommended.

However, the committee also heard testimony regarding the experiences of countries that have gone down this path before. We heard of the Netherlands' and Portugal's decriminalization of cannabis in 1976 and 2001 respectively. No sanctions came as a result of that. Spain's limited decriminalization in 2001 also drew no sanctions. Uruguay legalized non-medical marijuana for use in 2013 yet remains a signatory to the conventions. Bolivia withdrew from the 1961 Single Convention and received a reservation for traditional use of coca leaf and was re-acceded to the treaty.

The inter se option was also discussed. Article 41 of the Vienna Convention on the law of treaties allows for the negotiating of a side deal amongst like-minded signatories to the three drug conventions. While an uncommon procedure, it could be a viable option for countries moving to create an updated regime within their own jurisdictions regarding cannabis.

Also put forth was a non-compliance principle by which a state admits to being in contravention yet remains active on the international stage. This was described by one witness, Steve Rolles from Transform U.K., as:

... moving into a temporary period of technical non-compliance with certain articles of the treaties, whilst — in parallel — proactively seeking to reform and modernize the outdated and malfunctioning drug control framework, would seem to be far more respectful of the treaty system than abandoning the system altogether, propping up a failing system with compromise reforms, or hiding behind dubious legal arguments.

• (1850)

Colleagues, our neighbours to the south find themselves in the situation today where 29 states have some form of legalized cannabis. Nine states and Washington, D.C., have legalized recreational use of cannabis. That is roughly 190 million people, or slightly more than six times Canada's population, with legal access to some form of cannabis.

There are 15 bills now before Congress dealing with access or respecting a state's right to legalize cannabis or allowing for taxation of cannabis.

[ Senator Bovey ]

I think we have to understand that Canada is not alone as society changes. As the minister said, "... it is ... our government's view that our approach is consistent with the overarching goal of these conventions, namely, to protect the health and welfare of society."

Several Social Affairs Committee recommendations have been included in the Bill C-45 report. First, that the Government of Canada engage with the relevant U.S. federal authorities to adopt a common understanding among Canadians and Americans of the changes in Canadian domestic policy, of the consequences of these changes, and of the different approaches undertaken by the two states regarding the legalization of cannabis.

Regarding the Canada Border Services Agency, no changes are foreseen. It is illegal now to take cannabis across the border; it will be illegal post Bill C-45.

CBSA officials testified that bill 45 "... maintains the existing control framework associated with the prohibition of the cross-border movement of cannabis ..."

Second, the Government of Canada should take such action that mitigates Canada's violation of the three drug control treaties, and that should be communicated in a clear and transparent manner to Canadians, Parliament and the international community.

The Minister of Foreign Affairs said there is no indication of the change in Canada-U.S. relations regarding the passage of Bill C-45. She noted that consultations have been held with the G7 partners as well as Austria, New Zealand, Mexico, the Netherlands, Sweden, Ireland, Finland, Israel and Portugal, and assured the committee that "... our international partners agree with us, with Canada's approach to staying within the framework of the conventions."

Third, the government examined Part 1, Division 1, clause 8 of Bill C-45 by which Canadian youth are criminalized for behaviour that is legal for adults.

Fourth, the Minister of Foreign Affairs reported back to the Standing Senate Committee on Foreign Affairs and International Trade their actions taken regarding Canada's compliance with the international conventions impacted by Bill C-45.

Minister Freeland added the goal is to work with "... international partners to prevent international drug trafficking, while also mitigating the consequences of substance abuse." And is "... designed to prevent young people from having ready access to cannabis and to prevent organized crime from continuing to profit from its illegal market."

Therefore, colleagues, I support Bill C-45 and the international actions recommended in the report.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to third reading of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts.

I must inform you that I have absolutely no will to vote in favour of this bill, and I have not been prompted by any good reason as to why I should. In my view, this bill is unconscionable and morally objectionable. I have had great difficulty accepting the fact that Canada's national government is leading on the legitimization of the frequent and recreational consumption of cannabis, known as marijuana, and does so despite the abundant and copious evidence in its possession that cannabis is a dangerous psychoactive narcotic.

The Government of Canada is well informed and fully aware that cannabis legalization is not solely a matter of the government's presenting and providing cannabis as a harmless and healthy form of recreation and entertainment. The real issue here is that marijuana is, in fact, a mind-altering drug and is most harmful to the human mind, the brain, and the cognitive functions of its users, whether frequent or occasional, and most particularly to the minds of our youth.

The *Merriam-Webster Dictionary* defines psychoactive as "affecting the mind or behavior." In addition, *The Oxford English Dictionary* defines psychoactive as "Of a drug: that possesses the ability to affect the mind, emotions, or behaviour."

Colleagues, I believe that the consequence of cannabis decriminalization and legalization is a much deeper issue than the properties of the drug itself. As Deputy Chair of our Senate Committee on Foreign Affairs and International Trade, I was struck and impressed by the quality and quantity of concerns raised by many witnesses regarding Canada's obligations, conventions and international treaty agreements.

Mr. Bruno Gélinas-Faucher, a PhD candidate in International Law at Britain's Cambridge University, testified before our Senate Foreign Affairs Committee, a committee which I must add is ably chaired by our honourable colleague, Senator Andreychuk, on March 29, 2018. He informed, as recorded in this committee's report on Bill C-45, at page 11, that:

... this is not minor at all. Legalizing cannabis will lead to the violation of a fundamental principle that is at the very heart of the conventions.

Honourable senators, this witness, Mr. Gélinas-Faucher, cited documents from Global Affairs Canada, obtained through an access to information request. These documents recognized that the legalization of cannabis would have "a significant impact" on Canada's obligations under the international drug control conventions.

Colleagues, I believe that this bill, which will make drastic and radical behavioural and social changes, has not been sufficiently and vigorously thought through, nor have our Canadian citizens and our international partners been sufficiently consulted.

Colleagues, testifying before the Standing Senate Committee on Foreign Affairs and International Trade, many witnesses raised the important question, being the extent of the impact of Canada's legalization of cannabis on our population.

In a written brief to our Senate Foreign Affairs Committee, the quasi-judicial control body called the International Narcotics Control Board, which was established by the Single Convention on Narcotic Drugs of 1961, and which is also responsible for the implementation of the United Nations drug conventions, wrote that Bill C-45 is "incompatible with the treaty obligations to which Canada is bound."

The International Narcotics Control Board further noted, and is recorded in our Foreign Affairs Committee's Report at page 11, that:

... it "views any legislative measure aimed at legalizing and regulating the use of controlled substances for non-medical purposes as a fundamental breach of the international treaty provisions to which State parties to the international drug control conventions are held."

Accordingly, the International Narcotic Control Board further noted that:

... the legalization and regulation of cannabis for non-medical purposes ... as foreseen in Bill C-45, cannot be reconciled with Canada's international obligations ...

Colleagues, section 91 of our Constitution Act, 1867, is headed "Powers of the Parliament," and informs us that the fundamental purpose of government is:

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and the House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; ...

Honourable senators, I do not believe that Bill C-45 can possibly be for the peace, order and good government of Canada. As a senator, I feel morally and politically bound to use my intellect at all times. For many reasons, I have simply not been persuaded that Bill C-45 is legally, morally and spiritually sound. I sincerely believe and I know that psychoactive drugs are a mighty foe to our society and to our young people. I believe that I have a duty to uphold those whom I do not know, and the many who have no voice, to speak on these issues.

Colleagues, a worrisome characteristic of cannabis that should preoccupy us is that whereas the human body can process and excrete alcohol quickly, the human body is slow to discharge marijuana, which can reside and remain in the body for up to four weeks.

Throughout this debate, I have rarely heard this health question raised. For myself, this health fact this is not one that I can ignore. The slow exit of cannabis from the human person should be a source of concern to all senators.

I maintain that cannabis is a very dangerous drug, which many have been persuaded to think is less dangerous and less harmful than cocaine and heroin.

Honourable senators, I shall close with Saint Thomas Aquinas.

• (1900)

He said:

Every judgement of conscience, be it right or wrong, be it about things evil in themselves or morally indifferent, is obligatory, in such wise that he who acts against his conscience always sins.

Honourable senators, from where I look out at life and at these issues which deeply affect our youth and young people, I am convinced that Bill C-45 cannot possibly be for the peace, order and good government of Canada. I shall vote with my conscience.

I thank honourable senators for their attention in this very important matter.

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Honourable colleagues, I rise today to speak to Bill C-45 and the implications that this bill will have for Canada as a whole and Canadians who work or travel internationally.

Canada's relationship with its international partners is critical for the growth and prosperity of all Canadians. As a middle power being a part of a rules-based multilateral international system is critical to Canada's success. It is therefore very concerning that when we look at Bill C-45, we see a lack of leadership and comprehension by the present government for the real and impending consequences of Bill C-45 on Canada's bilateral and multilateral relations as well as our international reputation.

There are many concerning aspects of this legislation from an international point of view, but I believe the starting point of this discussion should begin by looking at our most important trading partner and closest ally, the United States.

Canada and the United States share the world's longest undefended border with over \$673 billion worth of trade taking place in 2017 alone. Therefore, ensuring a strong and prosperous relationship with our closest ally and trading partner is critical for the growth and success of Canada. However, Bill C-45 will put Canada in an unfortunate position due to a disastrous policy decision that will put us at odds with our trusted neighbour.

Under federal law, cannabis is illegal in the United States. Once Bill C-45 passes and recreational cannabis is legal in Canada, cross-border travel and therefore trade will be put in a very troublesome position.

Colleagues, the government keeps telling us that education is the best way for Canadians to protect themselves. The government says it is the best way to make sure Canadians realize they cannot travel internationally with cannabis. But where is this education? Most, if not all of the stakeholders I have met with have many more questions and concerns than answers. Passage of Bill C-45 will put Canadians who choose to

use recreational marijuana, as well as those who do not, at risk of more questioning, searches and arrests at border crossings and security checks at airports.

According to the Foreign Affairs Committee report:

As stated by CBSA officials, "the United States has the authority to declare someone inadmissible for cannabis use as well as other crimes related to cannabis."

According to Global Affairs officials, they say that once the bill is passed, they are planning to issue the following warning: You may be denied entry to a foreign country if you have previously used cannabis products, whether for medical purposes or not, even if you use them legally in Canada.

As the mother of a millennial with a lack of understanding of what the ramifications of this law will be, and with such frequent travel back and forth to the United States, I am very concerned about what will happen at the border.

There will also be an inevitable increase in the frequency of vehicle searches after legalization. With anticipated longer wait times at the border, Bill C-45 could ultimately impact the everyday flow of goods and the important North American supply chain critical to both our economies.

According to the Foreign Affairs Committee report:

In addition, witnesses testified that Canada's international reputation could be affected by the adoption of Bill C-45 and Canada's subsequent contravention of the international drug conventions. Mr. Paul Larkin, Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, stated, "[T]here is a risk that the passage of Bill C-45 could adversely affect the judgment of the world community regarding the reliability of Canada as a partner to international conventions."

Foreign governments have already begun to express concern over Bill C-45. For instance, I have previously stated that the Korean government issued a statement that reads:

In accordance with the nationality principle, all Koreans should follow the Korean law. The Korean government will step up inspections of people who come from Canada and their belongings as well as all packages from the country. Please be aware that Koreans could face serious legal consequences for having or using cannabis.

The *Globe and Mail* article published on April 29, 2018 about an internal federal memo revealed that:

Chinese officials have been quietly grilling Canada about illicit marijuana flowing to their country, prompting Ottawa to agree to work with them on the problem . . .

With recreational cannabis being illegal federally in every other country around the world except one other jurisdiction, we can only begin to imagine the warnings about Canadians entering these jurisdictions and warnings to their citizens about travelling to and from Canada.

Bill C-45, as stated by other senators, will violate Canada's obligation under various treaties and conventions. These treaties have played an important role in combatting international drug trafficking, among other criminal activities.

In the Foreign Affairs Committee report, it states:

Accordingly, signatories to these conventions are committed to prohibiting the production, sale, distribution and possession of psychotropic and narcotic drugs, including cannabis, as well as substances used in their manufacture. They are also obliged to make it a criminal offence to possess, purchase or cultivate narcotic or psychotropic drugs (including cannabis); and to make drug offences punishable by imprisonment or other forms of deprivation of liberty, as well as by pecuniary sanctions and confiscation. Exceptions to such prohibitions are made for medical and scientific purposes. At the international level, the conventions also oblige signatories to limit the import and export of cannabis to medical and scientific purposes while also combating illicit drug trafficking. The conventions were also described to your Committee as “a vehicle for facilitating mutual legal assistance and extradition between States and for combating money-laundering. Furthermore, these obligations are undertaken “together with the body of internationally agreed human rights standards and norms.”

We are also aware from the Aboriginal Peoples Committee report about the lack of consultation with Indigenous communities, which will be debated further later this week. But what this points to is the violation of the UN Declaration on the Rights of Indigenous People and the government's duty to consult.

Colleagues, this problematic piece of legislation is going to create a significant shift in the international perception of Canada. We will lose our reputation as an advocate for multinational forums and rules-based international systems in order to complete a campaign promise made by this current government.

Honourable senators, as we continue our debate at third reading, I hope that you, like me, will pay careful attention to the concerns raised by expert witnesses at various committees being quoted or referred to in the thoughtful statements by our colleagues. As we prepare for the final vote, please consider whether you believe legalizing cannabis will strengthen Canada's position in the world and whether legalizing this drug is in the best interests of Canadian youth and families.

I think not.

**The Hon. the Speaker *pro tempore*:** Senator Martin, would you accept a question. There is one minute and 51 seconds left.

**Senator Martin:** Yes.

**Hon. Jane Cordy:** In your speech, you said that Canada would lose its credibility and reputation if Bill C-45 passes. Were you aware that in March 2017, one week after Bill C-45 had been tabled in the other place, that Canada was re-elected to the UN Commission on Narcotic Drugs in a contested election? The minister before the committee said that she was certainly very heartened by that recognition, not only of Canada's place in the international rules-based order overall but specifically on the Commission on Narcotic Drugs?

• (1910)

**Senator Martin:** Like the rest of the world, I think Canadians are waking up to the concerns that have been raised. Things were rushed through in the other house. Based on the different committee pre-studies and having heard from expert witnesses, officials and academics in all fields, there is a growing concern. Because this is such a complex piece of legislation that will have ramifications within Canada and internationally, I truly believe there will be unintended consequences and complications that we cannot even imagine at this point.

That may well be, senator, but I still believe the world will be

**The Hon. the Speaker *pro tempore*:** I'm sorry, senator, but your time is up.

Senator Housakos, on debate.

**Hon. Leo Housakos:** Honourable senators, I wish to speak today on the implications of Bill C-45 for cross-border travel.

During second reading, I raised my concerns over the many failures of this legislation, namely, that it does not outline how it accomplishes its stated goal of keeping marijuana out of the hands of young people and that, in general, it just isn't ready. Additionally, following the testimony we heard at the Foreign Affairs Committee, I am certainly not convinced the issue of border implications has been completely and adequately considered, despite the profound ramifications.

Everyone recognizes that Canada's prosperity is directly linked to the strength of our trading relationship with the United States. Global Affairs Canada itself has noted that:

Secure and efficient flow of legitimate goods and people are vital to our economic competitiveness and mutual prosperity.

What does that “secure and efficient flow of legitimate goods and people” consist of? In part, it consists of over 30 million vehicles driving across the Canada-U.S. border every year. We should all recognize that any interruption, even any slowdown, of that type of traffic would have very serious implications for the Canadian business communities, Canadian workers and Canadian jobs.

That's on the economic and trade side. But Canada's cooperation with the United States has also been based on shared values. Laws pursuing complementary objectives and a shared approach to law enforcement have been integral to our partnership to ensure the security of our two democracies. All Canadian governments, Liberal and Conservative alike, have worked to deepen such cooperation with the aim of making travel and trade easier.

Initiatives like Bill C-23 — the land pre-clearance bill, which we adopted in the Senate only a few months ago — and Bill C-21 are particularly important in the current political climate, given that we now face a more protectionist American administration. So important is our economic relationship with the United States that it might be appropriate for every major Canadian government initiative to undergo an evaluation as to whether it advances or undermines our cross-border relationship.

Were we to evaluate Bill C-45 in that way, how would it measure up, colleagues? To answer that, we need to carefully consider what expert witnesses told senators at both the National Security and Defence Committee and the Foreign Affairs and International Trade Committee over the past several months. At the Foreign Affairs and International Trade Committee, on which I sit, the testimony from the Canadian officials was not ambiguous: For any Canadian seeking entry into the United States, the past use of a substance that is illegal under U.S. federal law is a ground for admissibility to the United States for life.

I think the statement by Jennifer Lutfallah, Director General of Enforcement and Intelligence Programs at the Canada Border Services Agency stated at the Foreign Affairs and International Affairs committee is worth quoting:

When legalization of cannabis is done in Canada, it will remain, obviously, a federal offence at the U.S. level. Right now the United States has the authority to declare someone inadmissible for cannabis use as well as other crimes related to cannabis.

At the end of the day, we've had discussions with our counterparts at Customs and Border Protection and they have indicated that they are not changing their posture at the border.

Based on this reality, Global Affairs Canada tabled with the Foreign Affairs and International Trade Committee the message that it intends to convey the following to Canadians once Bill C-45 becomes law:

You may also be denied entry to a country if you have previously used drugs, including cannabis after it becomes legal in Canada, that are considered to be illegal in that country.

That many Canadians would be very surprised by this, though some senators may claim this is not new. But with the legalization of marijuana, many Canadians will not imagine that doing something legally in Canada would be grounds for being inadmissible to the United States. I think most will be shocked at that.

There will be some senators in this chamber who will want to condemn the Americans strongly for that. I understand that sentiment. Obviously Canada has the sovereign right to draft its own laws. However, so does the United States of America. They also have the sovereign right to undermine who they allow to cross their own border.

Before we act, we should probably take a moment to consider this issue from an American point of view. From the perspective of the American federal government, where marijuana use remains a crime, the legalization of marijuana in Canada will almost certainly provide new opportunities for organized crime to traffic marijuana from a jurisdiction where it is legal to one where it is illegal.

In legalizing marijuana, Canada will be, by its own admission, violating three international drug conventions it has signed. There is no ambiguity on that, even if witnesses before our committee disagreed how serious the violation would be. From the perspective of the American federal government, Canada's violation of the three drug conventions is likely to be seen as more, rather than less, serious.

I know some senators may point to the legalization of marijuana in some American states, but we need to remember that at the federal level the perspective is different. The perspective of American federal administrations, whether Democrat or Republican, have been fairly consistent on this issue. It would be naïve for us to base our policies on the hope that the perspective of the American federal authorities will change.

What are the consequences of potentially increased American scrutiny at the border?

Professor Christian Leuprecht of the Royal Military College filed a written brief with the National Security and Defence Committee, stating that the legalization of cannabis is likely to augment the criminal export of marijuana from Canada. He predicted that as U.S. inspections increase, so too will wait times at the U.S. border and so too will the cost of doing business. He said:

The legalization of cannabis will come at the expense of the efficiency of cross-border trade. Economically, the legalization of cannabis is thus a poor efficiency trade-off in terms of crossborder commerce.

Senators, we need to ask ourselves what the impact of this could be on Canadian businesses, particularly those that depend on just-in-time delivery to the United States. What immediately comes to mind is the auto sector, with shipments that in the Windsor-Detroit corridor, for instance, are highly reliant on bridges or tunnels that can become bottlenecks if subject to long delays and line-ups.

In keeping with the trend I spoke of during second reading, these issues have been completely inadequately considered by the government. The government undertakes many different analyses of legislation before it is introduced, but it is clear that when it comes to Canada's most important trading relationship, virtually no analysis has been undertaken on the potential impacts, and no answers have been given by Foreign Affairs.

The shortcomings, as far as the border implications are concerned, are particularly glaring, given the challenges posed by a more protectionist American administration. In this context and in order to protect Canadians at the border and also to ensure our trading relationship is not inadvertently undermined, it is imperative that the bill be amended to ensure the government presents its plans to protect Canada's interest at the border.

MOTION IN AMENDMENT NEGATIVED

**Hon. Leo Housakos:** Therefore, honourable senators, in amendment, I move:

That Bill C-45, as amended, be not now read a third time, but that it be further amended in clause 226, on page 124,

(a) by replacing line 20 with the following:

**“226 (1) Subject to subsections (2) and (3), the provisions”;** and

(b) by adding the following after line 29:

**“(3) No order may be made under subsection (1) unless the Minister has caused to be prepared and laid before each House of Parliament a report setting out the measures to be taken to assist any Canadian citizen or permanent resident, within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, who is denied entry into the United States on the basis of an activity in relation to cannabis that is authorized or not otherwise prohibited under the *Cannabis Act*.”.**

Thank you, colleagues.

**The Hon. the Speaker pro tempore:** In amendment, it was moved by the Honourable Senator Housakos, seconded by the Honourable Senator Smith, that the bill, as amended, be not now read a third time, but that it be further amended — shall I dispense?

**Some Hon. Senators:** Dispense.

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

**Senator Housakos:** Absolutely.

**Hon. Art Eggleton:** Senator Housakos, there was a recommendation adopted by this chamber last week. It comes from the report of the Social Affairs Committee and is very similar to what you've moved today. But the difference is that you have put a delay on the implementation of the act until this is met.

• (1920)

I'm trying to understand what it is that you see that's so different, what you're looking for from the recommendation we adopted in the report from the committee last week, and why you would feel that a delay is needed.

You don't spell out here what you're looking for, or does the plan have to be approved by Parliament before? Could you please elaborate?

**The Hon. the Speaker pro tempore:** You have 35 seconds, Senator Housakos.

**Senator Housakos:** Senator Eggleton, I would invite you to read the transcripts from the Foreign Affairs and International Trade Committee where we had, on a couple of occasions, senior officials from Global Affairs Canada, including the minister herself.

When we asked specifically if some of these border thinning issues had been addressed with her colleagues at the State Department in the United States, it was crystal clear from the minister's answer, and even more crystal clear from the senior bureaucrats at Global Affairs, that no mitigating steps have taken place to deal with one of the most serious aspects of this bill. Trade with the United States and Canada is about the lifeline —

**The Hon. the Speaker pro tempore:** Senator Housakos, I'm sorry, your time is up.

[Translation]

**Hon. Jean-Guy Dagenais:** Honourable senators, I rise today to speak to Bill C-45 and its major repercussions on trade and cross-border travel.

The government's neglect of the border issue is reckless. The McClellan Commission, responsible for studying issues regarding marijuana legalization, was not even tasked with looking at cross-border issues or the possible repercussions of this legalization on trade and cross-border travel. That just shows how unimportant the consequences of Bill C-45 are to this government.

Whenever cross-border trade is obstructed or slowed down in any way, that has an impact not only on travellers, but also on our entire national economy. A second check ordered by a U.S. customs officer results in the loss of \$100 an hour for the company involved. How many times a day will this happen with the passage of Bill C-45? Maybe 10 times per border crossing? Do the math.

For your information, the [ezbordercrossing.com](http://ezbordercrossing.com) web site estimates that more than 30 million vehicles cross the Canada-U.S. border every year and more than 400,000 people cross our border every day. Canada's economic prosperity is closely tied to the free flow of people and goods across our shared border.

The questions this government should have asked regarding Bill C-45 are the following: Will marijuana legalization make things better or worse at the border? Will marijuana legalization make it harder or easier for Canadians to cross the border? Will Bill C-45 create issues or secondary risks for Canadians seeking to cross the American border?

To answer these questions, we must carefully examine what expert witnesses told senators, both at the National Security and Defence Committee and at the Foreign Affairs and International Trade Committee.

Here are some key points from their testimony.

First, U.S. Customs and Border Protection is responsible for enforcing U.S. federal legislation at the border. U.S. federal law is clear: possession of marijuana is a crime. The fact that some U.S. states have liberalized their own marijuana laws may be confusing for Canadians. The U.S. federal government is responsible for the Canada-U.S. border and Canadians will deal with federal agents at the border. Although some people hope that our two countries' marijuana laws will be harmonized, that is not going to happen today.

With respect to U.S. federal law and entering the United States, not only is possession of marijuana a criminal offence, but it also constitutes a reason for denying entry to the U.S. This may be temporary, but it could also be permanent, at the country's discretion.

This was clearly stated in the report to Parliament of the Committee on National Security and Defence and the Committee on Foreign Affairs and International Trade. However, supporters of marijuana legalization, in the other place and here, in the Senate, suffer from political blindness.

The report of the Standing Senate Committee on National Security and Defence states that, after marijuana is legalized:

. . . Canadians could face delays and more Canadian travellers could face legal proceedings and/or inadmissibility for life for a cannabis offence or for simply admitting previous cannabis use to U.S. customs and border protection officers.

This finding is based on the testimony of Canadian government officials and American and Canadian lawyers specializing in American immigration law.

Jennifer Lutfallah, Director General of Enforcement and Intelligence Programs at the Canada Border Services Agency, told the Standing Senate Committee on Foreign Affairs and International Trade the following, and I quote:

When legalization of cannabis is done in Canada, it will remain, obviously, a federal offence at the U.S. level. Right now the United States has the authority to declare someone inadmissible for cannabis use as well as other crimes related to cannabis.

Witnesses clearly told Senate committees that Canadian travellers could be refused entry to the United States for life simply for admitting at the border that they have used cannabis before.

Len Saunders, for example, is an American lawyer who has been practising American immigration law for over a decade. He told the National Security and Defence Committee that he currently sees about one or two cases a week involving Canadians who have been refused entry to the United States for life simply because they admitted to having used marijuana before.

Based on his experience, Mr. Saunders unequivocally told senators the following, and I quote:

There's a brick wall going up on the northern border for Canadians if they answer truthfully whether they have smoked marijuana. . . . I'm trying to help fellow Canadians get out of this. . . . If you admit to smoking marijuana, you will lose your NEXUS card for life. If they smell marijuana on you, you will lose your NEXUS card for life.

Mr. Saunders' testimony was corroborated by other lawyers who appeared before the senate committees, including Lorne Waldman and Scott Railton, who testified before the same committee on April 16.

What's even more troubling is that Canadian government organizations have also acknowledged that Canadians can be barred from the United States just for admitting to having used marijuana in the past. On April 19, the Department of Global Affairs provided the Standing Committee on Foreign Affairs with the key public messages it plans to send Canadians about the potential consequences of using marijuana. The message is that Canadians may be denied entry to a foreign country if they have previously used cannabis products, whether for medical purposes or not, even if they used them legally in Canada.

There's no question that Canadians need be made aware of this, but the current government has done nothing so far to warn them about what's in store for them. In my opinion, the reality is that this message has not been clearly conveyed yet because it undermines the government's argument that Bill C-45 won't cause any problems, or at least any problems that can't be handled. What should worry everyone here today is that ordinary Canadians are going to pay the price for the government's deliberate negligence.

I'm not saying that U.S. customs officers are suddenly going to start interrogating every Canadian about past marijuana use. How are Canadians supposed to protect themselves after marijuana is legalized in Canada? We've heard conflicting advice.

Speaking on behalf of the government, Bill Blair, a former police officer turned advocate for cannabis legalization, is among those who advised telling the truth at the border. Mark Holland, Parliamentary Secretary to the Minister of Public Safety, made a similar recommendation a few months ago. In contrast, the message tabled by the Department of Global Affairs and other evidence senators have heard suggest that being honest can earn you a lifetime ban from the United States. If I understand



correctly, lying to a customs officer is not recommended, but telling the truth can get a person banned from the United States for life. That is where things stand right now.

Contrary to what Minister Goodale told the National Security and Defence Committee, this is not something Canadians can avoid simply by “being careful”. To date, the government has not provided a satisfactory or informative answer as to how Canadians are supposed to “be careful”. The governing party has a real knack for anything vague and half-baked.

Turning to economics, this bill, if passed, will affect the flow of trade and cross-border travel. Canadians do not cross the border just for pleasure. As I mentioned, cross-border travel is an integral part of our national economy and crucial to the prosperity of our businesses. Canadians travel as much for business as they do for pleasure — perhaps even more.

For Canadians who depend on cross-border travel to earn a living, Bill C-45 will have a major impact. As I have said, cannabis legalization will impede cross-border trade. What is the government planning to do about this? Absolutely nothing. I can’t believe that it still hasn’t done anything, the evening before we’re being rushed to vote on this bill.

• (1930)

Drew Dilkens, the mayor of Windsor, Ontario, expressed his concerns about how Bill C-45 would affect his community. He said the following to the National Security and Defence Committee, and I quote:

I am concerned about any additional delays at our border crossings and the effects these will have not only on local nurses and health care professionals who cross the border to work in U.S. hospitals, but students who study in Michigan universities . . . on both sides of the border, and cross-border international trade generally.

If the government wants to be believable when it claims to care about Canadians crossing the border, it will need to address the problems that it will have created.

The government should introduce a revised Bill C-45 featuring a viable plan for cross-border travel that Canadians can trust. Such assurances from the government should be more important to parliamentarians than immediately and blindly passing Bill C-45, which we are presently being forced to do.

I believe we should delay the coming into force of Bill C-45 for one year to give the government the time to develop and communicate a solid plan to protect Canadians at the border. We need a plan that assures Canadians that border crossings and trade will not be put in jeopardy simply so that some people have the right to legally smoke cannabis. Besides, those who smoke cannabis don’t need this legislation to do so.

I’m not saying we should get rid of Bill C-45. However, I want us to work together and do everything we can to ensure that Canadian travellers are protected from the potentially negative consequences of this legislation.

**The Hon. the Speaker *pro tempore*:** Senator Dagenais, I regret to inform you that your time is up.

[English]

**Hon. Denise Batters:** Honourable colleagues, I rise today to add my support to Senator Housakos’ amendment to give the federal government more time to properly inform Canadians about the significant U.S. border concerns that will result from marijuana legalization after the passage of Bill C-45.

In early April, I went to Washington, D.C., with two of our colleagues, Senator Carignan and Senator Boivenu. We held meetings with top American government officials to get some straight answers that weren’t forthcoming from the Trudeau government about how marijuana legalization will impact the Canada-U.S. border.

The answers we received two months ago demonstrate the clear need to pass Senator Housakos’ amendment. Despite the Trudeau government’s downplaying and constant attempts to portray minimal impacts, American officials are concerned about how marijuana legalization will impact the U.S.

We are concerned what this will mean for the huge number of Canadians who travel and do business in the United States. U.S. Homeland Security officials told us the impact of marijuana legalization has the “potential to be very adverse” on U.S.-Canada trade.

It is important to note that marijuana remains illegal at the federal level in the United States. This includes the entire Canada-U.S. border, even though a few U.S. states have legalized it. Homeland Security officials told us that the United States will not change their law, their policies or their drug-sniffing dogs, which can detect marijuana residue on clothing and in vehicles for days afterward.

The U.S. will also not add more border guards at the Canadian border. This means that increased inspections will likely result in more delays crossing the border, holding up everyone, not just those who have to go through secondary inspection.

For those with a Trusted Traveler pass like NEXUS or FAST-EXPRESS for truckers, an infraction will result in the pass being cancelled. For many Canadians, this could mean loss of employment.

It is also important to note that American officials do not exempt medical marijuana. Canadians may be surprised to learn that could be grounds for inadmissibility to the U.S. Those who work in the marijuana industry could also face problems at the border.

Canadians can apply for a waiver which costs almost \$600 U.S. and is only granted on a discretionary and annual basis. Meanwhile, a determination of inadmissibility to the U.S. is perpetual and indefinite.

We were told two months ago that U.S. Homeland Security had been encouraging the Government of Canada to undertake a broad-based “more robust messaging campaign” so that Canadians are prepared for these border implications. They told us that this messaging needs to be about more than you can’t import and export marijuana. Yet this is the very line Minister Ralph Goodale and the federal government continue to use for a protracted period of time.

This more robust messaging still hasn’t happened, and now we see the minimal messaging the federal government intends to relay to Canadians, but only once Bill C-45 is passed. This is absolutely unacceptable and is certainly not the “more robust messaging” U.S. Homeland Security has been encouraging our federal government to relay to Canadians for months.

The Trudeau government has been more concerned with downplaying the significant consequences of their marijuana legalization scheme so they can ram this legislation through rather than doing their job to inform Canadians about these important considerations at the U.S. border.

It is for these reasons, honourable senators, that I ask you to join me in supporting Senator Housakos’ amendment. Canadians deserve to be properly and fully informed about the significant U.S. border concerns affecting them that will result from marijuana legalization. Thank you.

**Senator Eggleton:** Thank you very much. Colleagues, on the question of the three UN drug conventions, I think it is worthy to take note of the comments that were made by the Minister of Global Affairs at the Foreign Affairs Committee because I think it puts it in good context. She said:

... we do believe that our approach is consistent with the overarching goal of the conventions, which is to protect the health and welfare of society.

On the point about children, she went on to say:

... I think that a clear objective of the legislation is to be clear about what is legal and what is not legal when it comes to cannabis. To move it out of criminal groups, out of that whole space, and to be clear that this is illegal for children and it is illegal to be promoting and selling cannabis in anyway to children. . .

I think she has put the three UN conventions in proper context at this point in time because it’s a changing situation. Even former Secretary General of the United Nations Kofi Annan was part of a commission at one point in time that suggested it needed to be decriminalized, that we needed to change all these rules. A very prominent blue ribbon committee, he was part of, suggested that needed to happen. These are old and some were based back decades ago.

The circumstances are changing. We see changes in different countries of the world. The fact that last year, when the narcotic commission was being appointed, Canada got re-elected in a contested situation when they knew that this bill was already in existence, indicates the UN does believe it is time to be able to make changes.

Secondly, much of the attention in the debate so far has been attached to the border with the United States, a very critical issue, of course. We already have adopted an amendment that is very similar to the one that Senator Housakos has put.

Last week, we adopted the report of the Social Affairs Committee. It had several recommendations, not amendments to the report but separate recommendations. Indeed, all of the recommendations on this very issue, either from Foreign Affairs or Defence and Security, were all recommendations to the government to do this or do that and to try to settle this or that issue with the United States. This is one we adopted:

Your committee supports the recommendation of the Standing Senate Committee on National Security and Defence to continue this dialogue —

I pause here to say, because we heard it from the officials, that dialogue is already under way. The recommendation continues:

... with the United States government, and calls on the federal government to present a plan in Parliament which will clarify and firmly communicate Canada’s position so as to minimize the impact on Bill C-45 on Canadian travellers.

It’s already there. It’s already part of the record, except for one difference: Senator Housakos is suggesting delay. Well, I understand that. I mean, he, together with his colleagues, opposed the bill. They opposed it on second reading and they are going to oppose it on third reading; so, yes, they want to find any means they can to delay it. But that is definitely not in the interest of health and safety, which is the original reason for reducing the crime element in all of this. It’s not in the interests of that to have a further delay.

• (1940)

Now, when the officials appeared before the Social Affairs Committee, the official from Global Affairs said U.S. federal law currently prohibits the importation, possession, production and distribution of cannabis even though it is legalized in certain U.S. states. He went on to say that the U.S. federal government has clarified they do not plan to change their approach at the border in the event that cannabis is legalized in Canada.

In fact, a Canada Border Services agent said that it would not be a primary question: Have you ever smoked cannabis? He said if somebody comes to the border and their clothes are reeking of it, yes, there will be questioning about that because of the possible intoxication of a person trying to gain entry into that country. But I’ll use more polite language and say I really think colleagues have gone overboard in their suggestions that this is going to suddenly create a problem for the 13 million people who travel from Canada into the United States every year.

I don’t see that as happening and I think they are already into discussions about this. We have passed a resolution that is very similar to the one that Senator Housakos is putting, so I would say that we do not need the amendment, and I will not support the amendment of Senator Housakos.

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

**Senator Eggleton:** Yes.

**Senator Housakos:** Senator Eggleton, I don't quite agree with the interpretation of the facts of Foreign Affairs as you put them forward. The Foreign Affairs Committee made a recommendation based on the evidence we heard. The recommendation, of course, that we made was nowhere near as rigid as it should be in protecting the interests of that strong relationship and the strategy we have of continuously thinning the border so we can continue to expand our commercial trade with the U. S.

I know that this current government and some of its supporters are not that preoccupied with those issues between Canada and the United States, but my question to you is: Are you going to ignore the testimony of the minister herself, who came before the committee and acknowledged that they had not taken steps in order to mitigate the potential conflicts that are going on based on the testimony that we heard from Canadian officials and the American officials that have made it crystal clear? They have said that regardless of the Canadian legislation, the American law stands as it is and they are going to enforce it in the most rigid of fashions at the border.

**Senator Eggleton:** We certainly heard from those same officials. We heard from numerous other witnesses, and you do hear that there are matters still to be resolved but that's what is already under way. You said you wanted a plan; okay. We said in the recommendation that I just read a moment ago that, yes, there should be this plan, so we don't need your amendment at all. It has already been adopted.

**Senator Housakos:** Senator Eggleton, I remember in the last campaign in 2015 this being a cornerstone of the Liberal Party's platform. It's 2018. You still have a reliable confidence this government will resolve the problem in the next 12 months when they couldn't resolve it in the last three years? Please.

**Senator Eggleton:** Of course I understand that, coming from the official opposition, as you call yourselves. That is part of your role. You listen to whom you want to listen. We have heard enough evidence to indicate that the matter is in hand.

**The Hon. the Speaker *pro tempore*:** Senator Pratte, on debate.

**Hon. André Pratte:** Honourable senators, this amendment is based on a scenario foreseeing a significant number of Canadians who would be denied entry onto U.S. soil because of their consumption or past consumption of cannabis.

In terms of Canadians being found inadmissible to the U.S., according to CBSA statistics last year, every day across the border there were 400,000 Canadians seeking entry into the U.S. and fewer than 0.06 per cent were found inadmissible, so it's a really rare occurrence.

The question is: Is there reason to think that this number will increase significantly after legalization of cannabis?

I guess there would be if there was either a large increase in the use of cannabis or if U.S. customs officers adopted a stricter policy regarding marijuana use. I won't discuss here today the issue of whether legalization will produce an increase in use of cannabis. We have discussed this extensively.

On the second point, whether the U.S. will change its policy at the border, Senator Housakos already quoted Ms. Jennifer Lutfallah from CBSA. I would like to complete the quote, however. Senator Housakos quoted the part where Ms. Lutfallah said:

... we've had discussions with our counterparts at Customs and Border Protection and they have indicated that they are not changing their posture at the border.

The quote continues:

So what I mean by that is that when a Canadian goes to the border and is seeking entry into the United States, right now it's not a mandatory question —

— that is, they don't question you on marijuana use —

— being administered by their officers. Based on the feedback we've received from them, from various levels, that will be maintained at the border.

So the situation will not be different than is the case today. Today, may I remind you, from the latest data — and I just received that data today from Statistics Canada — 32 per cent of 20- to 24-year-old Canadians have used cannabis in the last three months — 32 per cent. Twenty-six per cent of 25- to 34-year-olds used cannabis in the last three months, so they are pretty regular consumers of cannabis.

If these young Canadian adults arrive at the border with the United States and they are asked and answer truthfully, they very well may be denied entry to the United States. So it is a problem, but it's not a new problem. It has nothing to do with the legal status of cannabis. It has to do with U.S. policy, of course, but it also has to do with the fact that cannabis today is very widely used by otherwise perfectly law-abiding, reasonable and ordinary Canadians.

This is not an issue that is simple to solve whether cannabis remains illegal or whether it becomes legal. It would require the U.S. to change its policy, and we know that will be very difficult to achieve, again, whatever Canadian policy is, especially with the current administration but even with a different administration.

I have to remind honourable senators that three Senate committees have looked closely at this issue: the Social Affairs, Foreign Affairs and National Security committees have all looked at this. They have all made recommendations, but none of these committees have recommended delaying the implementation of the bill while the government reports on the issue, which is what this amendment proposes.

We have been told again and again by members opposite that we should listen to what the committees have told us where, I believe, in this case we should.

**Senator Plett:** Oh, in this case.

**Senator Pratte:** I believe if we are intent on looking seriously into this matter and not simply trying to delay the cannabis act's implementation, we should add this as a mandatory topic of the three-year review in clause 151.1. The government would then have to report on what happened in the first three years of the bill's implementation. Instead of building scenarios, we would know exactly what happened and the government would have to explain, in detail, what it has done to solve the problem.

If such an amendment was moved — which would address the substance of the matter without delaying the bill's implementation — I would vote in favour. But I will not vote in favour of an amendment the purpose of which is obviously delay. I would not be surprised if future amendments have the same goal: delay camouflaged under some noble purpose.

• (1950)

This bill has been studied in detail for more than a year now in this chamber and in the other place. There has been extensive consultation by the task force, by the government and by the provinces. I believe it is not for us, as legislators, to decide on an arbitrary date to set some date for the enactment of the bill. It is the government that is in daily contact with the provinces, the Indigenous peoples, the police forces, the municipalities and other stakeholders. It is the government that is accountable. It is the government, of course, that wants to give the green light as early as possible, but I'm confident that they also want this to be a success story, Senator Plett. Therefore, they will be careful, and they will give the go-ahead only when they are confident that the provinces are ready and the police forces are reasonably ready, because the price of failure for the country but also for the government would simply be too great.

Therefore I will vote against this amendment and against any other amendment, the underlying goal of which is to delay the implementation of Bill C-45.

[Translation]

**The Hon. the Speaker pro tempore:** The Hon. the Speaker *pro tempore*: Senator Pratte, will you take some questions?

**Senator Pratte:** Of course.

[English]

**Hon. A. Raynell Andreychuk:** Senator Pratte, I listened to you and at one point you indicated that nothing has changed, in essence, that crossing the border should therefore not change but perhaps should be reinforced, et cetera. I don't want to misconstrue your words, but are you not aware that when Canadians go abroad they often find themselves in difficulty and then they rely on Canadian law and say, "But I have my rights." If you have been a consular officer — Senator Harder will understand this — it's a difficult situation to tell people in another country that their rights are the rights of that country, not what you have back home.

[ Senator Pratte ]

Will the factor not be different? Marijuana is now illegal here, as it is in the United States. Should Bill C-45 pass, it will be legal in Canada but illegal in the United States, at the border, and to compound it, some states are going to give some decriminalization and they have variations. Is that not a more confusing and difficult situation than exists now, so something has changed?

**Senator Pratte:** Yes, I understand it will be a more complicated situation; however, I don't think that's reason enough not to adopt a policy. There are many complicated issues. It's a matter of educating Canadians on the situation.

As I said earlier, I believe this situation today is complicated because many Canadians do use cannabis and have to face this issue at the border regularly. Of course it will be more complicated, but I believe the government has already undertaken to educate Canadians on this new situation, and Canadians are intelligent. I think they will understand this situation.

**Senator Housakos:** Just to clear up the context, Senator Pratte brought up the fact that some committees have brought unanimous amendments to Social Affairs and were turned down. The Aboriginal Committee brought a unanimous amendment to the Social Affairs Committee that was approved by everyone — ISG members, Liberals and Conservatives alike, which was turned down.

In this instance, my amendment was very contentious at Foreign Affairs, and we compromised by having a report making a suggestion to the government in order to clarify this issue. I'm appealing right now to the common sense of members of this independent Senate that we should not go forward on a whim.

Don't you think we should clarify some of the misconceptions? You say that the government has started educating the Canadian public. What education have they started on, because I've missed it?

**Senator Pratte:** I disagree that anything regarding Bill C-45 is being done on a whim. We have looked at this bill extensively.

**Senator Housakos:** What education is the government doing

**Senator Pratte:** We have looked at this bill extensively and any decision will be done thoughtfully.

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

**Hon. Senators:** Question.

**The Hon. the Speaker pro tempore:** In amendment, it was moved by the Honourable Senator Housakos, seconded by Honourable Senator Smith, that Bill C-45 be not read a third time but that it be amended in clause —

**Some Hon. Senators:** Dispense.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker *pro tempore*:** All those in favour of the motion in amendment, please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker *pro tempore*:** All those opposed to the motion in amendment, please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker *pro tempore*:** It’s awfully close. However, in my opinion, the “nays” have it.

*And two honourable senators having risen:*

**The Hon. the Speaker *pro tempore*:** We have a 15-minute bell. The vote will take place at 8:10p.m. Call in the senators.

• (2010)

Motion in amendment of the Honourable Senator Housakos negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	McIntyre
Ataullahjan	Mockler
Batters	Ngo
Beyak	Oh
Boisvenu	Patterson
Carignan	Plett
Dagenais	Poirier
Doyle	Richards
Duffy	Seidman
Housakos	Smith
MacDonald	Stewart Olsen
Maltais	Tkachuk
Marshall	Wells
Martin	White—29
McInnis	

NAYS  
THE HONOURABLE SENATORS

Bellemare	Harder
Bernard	Hartling
Black ( <i>Alberta</i> )	Jaffer
Black ( <i>Ontario</i> )	Joyal
Boniface	Lankin

Bovey	Marwah
Boyer	Massicotte
Campbell	McCallum
Christmas	McPhedran
Cordy	Mégie
Cormier	Mercer
Coyle	Mitchell
Dawson	Moncion
Day	Munson
Deacon	Omidvar
Dean	Pate
Downe	Petitclerc
Dupuis	Pratte
Dyck	Ravalia
Eggleton	Ringuette
Gagné	Saint-Germain
Galvez	Verner
Gold	Wallin
Greene	Wetston
Griffin	Woo—50

ABSTENTIONS  
THE HONOURABLE SENATORS

Nil

**The Hon. the Speaker:** Resuming third reading of Bill C-45.

**Hon. A. Raynell Andreychuk:** Honourable senators, I rise to speak to Bill C-45 in relation to international conventions.

Before I address Bill C-45 directly, I think it is important that we all note how vital Canada’s international reputation is. It has been fought for in war and in peace — step by step, inch by inch — and it is one that others marvel at and take pride in. Therefore, any time it is being questioned, I think it deserves to be repeated over and over again why our international relations and commitments are important. It is in that context that I wish to speak to Bill C-45.

The government’s approach to the legalization of recreational cannabis has been clouded in uncertainty. Bill C-45, with respect to Canada’s international obligations, is no exception.

All witnesses advised the Standing Senate Committee on Foreign Affairs and International Trade that Bill C-45 places Canada in violation of the provisions of three international drug control treaties. I won’t enumerate them, as Senator Bovey has done an adequate job in that.

Throughout decades, Canadian governments, organizations and citizens have been leaders in promoting international conventions, treaties and agreements as the best avenue, on many issues, that demand universal cooperation and adherence. Drug policies are a prime example.

The three major conventions are the result of long negotiations to a changing and, often, criminal scene in the use, sale and transboundary activity of illicit substances. Any reasonable response was deemed to need an international response.

In his appearance before the committee, Professor Dwight Newman, Professor and Canada Research Chair, College of Law, University of Saskatchewan, stated that “large-scale renegotiation would be a long-term project and in many ways not feasible.”

As such, it appears it is too late to turn back now. The fact is that Bill C-45 will place Canada in violation of these three conventions. We lose the moral, as well as the legal, ground in calling out their violations.

• (2020)

The International Narcotics Control Board, the body tasked with monitoring adherence to the UN drug control conventions, indicated in its submission to the committee that Bill C-45 is:

... incompatible with the treaty obligations to which Canada is bound.

In this respect, witnesses before the committee provided varying options for Canada. Many indicated that withdrawal from the conventions would have required earlier action on the part of the government.

Other suggestions included the declassification of cannabis or re-adherence under a reservation.

Finally, others felt that strict compliance with the conventions is necessary.

Witnesses also discussed a shift taking place globally with respect to international drug control and the non-medical use of cannabis. I would note, however, that this shift has only taken root in certain parts of the world and by certain advocates. While some countries have looked domestically at the decriminalization of cannabis, there has been no outright violation of the drug control conventions. The most notable exception is Uruguay.

Although the breadth of their legalization is worth looking into, it is not as far-reaching as Canada's. While Uruguay remains a signatory to the conventions in spite of the country's decision to legalize the non-medical use of cannabis, we are not privy to the internal discussions between Uruguay and other international partners. It would, therefore, be premature to use Uruguay as an example for Canada either way.

Despite receiving testimony from officials at Global Affairs that violations represent a “technical breach,” the Minister of Foreign Affairs, Chrystia Freeland, stated in her appearance before the committee:

... this issue of the conventions is an important one, and we need to be clear about it.

While acknowledging the violation, the minister stated that the government believes that Bill C-45 is consistent with the overarching goals of the conventions.

When asked about the government's approach to the violations, the minister continued:

We are definitely open to working with treaty partners to identify solutions that accommodate different approaches to cannabis within the international framework.

While indicating that a direct withdrawal from the conventions will not be undertaken, the minister was unable to provide any clarity to the committee regarding the government's plan.

The fact that Canada has been elected to the Commission on Narcotic Drugs should not be taken again either for or against any position. It is too early to say, and those of us who worked in the international field all know what negotiations are like and — surprise, surprise — who ends up on which board or which commission.

It is therefore worrisome and I think troubling that Canada as a leader in promoting international conventions and the rule of law has no firm plan.

It is discouraging that no information has been disseminated to parliamentarians or to Canadians with respect to the government's specific intentions.

I would like to highlight one instance in Canadian history which sets a precedent. There are few precedents that we could find. It is the adoption of the Arctic Waters Pollution Prevention Act; Canada violated the Law of the Sea and the Geneva conventions on the Law of the Sea. In his appearance before the committee, Armand de Mestral, Professor, Faculty of Law, McGill University, described the government's approach in addressing this issue. He stated:

The Canadian government at that point in 1970, having legislated in a way which clearly was seen as interfering —

— not violating, but interfering —

— with international shipping but where we deemed it absolutely imperative that we do so to protect the Arctic and the waters and the environment of the Arctic, took a reservation to the jurisdiction of the International Court of Justice on matters pertaining to pollution prevention. . . .

We built a consensus, the third Convention on the Law of the Sea gave us a platform where we were able to make our arguments successfully that change was needed.

In this particular instance, Canada took no forward action or plan in advance.

With respect to Bill C-45, we will be breaching the international conventions without real knowledge or understanding of the implementation of the bill. Too often we have heard there will be education, there will be implementation, there will be data, but we do not have a concrete plan such as we had in the Law of the Sea.

Honourable senators, a breach of international conventions carries with it significant political ramifications for Canada and the international community, and I underscore the international community as a whole.

In his appearance before the committee, Professor Steven Hoffman, Faculty of Health and Osgoode Hall Law School, York University stated:

. . . the practice of international law is the collection of micro decisions that take place every day in rooms like this, committees like yours and by people like you, who are deciding every day whether international law matters enough for it to be adhered to or whether it doesn't.

Colleagues, in my opinion, international law must matter.

A basic principle of international treaty law, *pacta sunt servanda*, means that treaty obligations must be obeyed.

We made a commitment to abide by the provisions of these agreements, and we therefore cannot be selective in our adherence.

In his testimony before the committee, Mr. Paul Larkin, Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, stated:

. . . there is a risk that the passage of Bill C-45 could adversely affect the judgment of the world community regarding the reliability of Canada as a partner to international conventions.

International treaties and agreements play a critical role because they maintain order and stability in our very fragile world.

A direct violation of Canada's treaty obligations sets dangerous precedents in an already fragile and increasingly fractured world. The timing could not be worse. In fact, it is curious to note that we have been consistent in approaching China about the increased opioids coming from China to Canada.

It is interesting that after Bill C-45 was in Parliament, China is now calling on Canada, expressing concern about illegal marijuana going to China. This is the kind of issue that troubles me because it is just the start of an unravelling that took decades to build.

In my view, an outright violation of drug control conventions will signal to international actors that breaches of international law and agreements are acceptable. We are already witnessing international actors taking destabilizing actions in defence of their so-called national interests. And that is what our minister said about national interest regarding violations.

We can just count the number of times the not so friendly countries that we deal with say, in national interest, that they violate conventions.

Honourable senators, we are placing our international reputation at risk.

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

**Senator Andreychuk:** Thank you.

(On motion of Senator Bellemare, debate adjourned.)

• (2030)

## BUDGET IMPLEMENTATION BILL, 2018, NO. 1

TWELFTH REPORT OF AGRICULTURE AND FORESTRY COMMITTEE  
ON SUBJECT MATTER—DEBATE CONCLUDED

The Senate proceeded to consideration of the twelfth report of the Standing Senate Committee on Agriculture and Forestry (*Subject matter of Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*), tabled in the Senate on May 31, 2018.

**Hon. Diane F. Griffin:** Honourable senators, last week I tabled the Standing Senate Committee on Agriculture and Forestry's pre-study report on Part 5 of Bill C-74 as it relates to farming. This is part of the Budget Implementation Act that enacts the Greenhouse Gas Pollution Pricing Act, which creates the federal backstop carbon levy.

The committee heard from farmers who made three technical recommendations that directly relate to Bill C-74. If government acts on these technical recommendations by farmers, it will ensure that the financial impact of the carbon levy does not burden specific classes of farmers. Whether you grow chickens in Manitoba, operate a greenhouse in Saskatchewan or harvest New Brunswick maple syrup or Christmas trees, all farmers, where the federal backstop could apply, must be treated equally. The Senate's National Finance Committee could amend Bill C-74 and seek clarification from government on the definition of "farming."

I would like to highlight three technical recommendations from farmers to changes or clarifications to Bill C-74 that would ease the financial cost of the carbon levy for farmers.

First, exempt heating and cooling fuel costs related to farming from the carbon pricing levy in the Greenhouse Gas Pollution Pricing Act. Second, specifically include propane and natural gas under the definition of a "qualifying farm fuel" in the Greenhouse Gas Pollution Pricing Act to exempt those fuels from the carbon pricing levy. And third, ensure that the definition of "farming" in the Greenhouse Gas Pollution Pricing Act is consistent with the Income Tax Act and also the Canada Revenue Agency's ordinary definition of "farming activities."

Senators, I agree with these three sensible suggestions by farmers. The Canadian Federation of Agriculture, the Canadian Horticultural Council and the Canadian Produce Marketing Association also support these suggestions.

Our committee received a brief from the Chicken Farmers of Canada highlighting the need to amend Bill C-74 to exempt heating and cooling fuel costs for eligible farming machinery from the carbon levy. Currently, the act applies the carbon levy to eligible farming machinery used for heating and cooling. The chicken farmers noted that — I'm distracted here. There are several conversations on the go. I'm sorry.

Currently, the act applies the carbon levy —

**The Hon. the Speaker:** Excuse me for a moment, Senator Griffin. You're quite right to point out that there are a number of distractions. Please, honourable senators, Senator Griffin has the floor. If there is something you wish to discuss, please take it outside. Senator Griffin.

**Senator Griffin:** Thank you, Your Honour. The chicken farmers noted that:

Using natural gas, propane or other fuels is critical for maintaining proper temperature and humidity levels in the barns for optimal bird comfort.

They argue that the levy could:

Unfairly burden farmers who are committed to doing the right thing when it comes to animal care and the environment.

I urge the Senate's National Finance Committee to act upon the farmers' request to amend Bill C-74 to include propane and natural gas under the definition of a "qualifying farm fuel" in the Greenhouse Gas Pollution Pricing Act to exempt those fuels from the carbon pricing levy.

As we heard from Mr. Ron Bonnett, the President of the Canadian Federation of Agriculture:

Natural gas and propane play a very important role in production, for example, in grain drying to maintain quality and avoid spoilage prior to marketing and in the greenhouse sector, which is a large user of natural gas for both heat and as a pure source of CO2 to promote plant growth within the controlled atmosphere of the greenhouse. . . . It is the CFA's position that all on-farm fuels be exempt from carbon pricing.

In a brief to the committee, the Quebec L'Union des producteurs agricoles reiterated this point:

The definitions of qualifying farming fuel and eligible farming machinery mean that certain fuels, such as propane and natural gas and the use of fossil fuels to run certain machinery for heating and cooling buildings, would be ineligible for potential exemption from the charge. This is also a matter of equity among farmers, since this equipment can be just as critical to certain farming sectors as the machinery and fuel used for field work. . . the UPA

recommends revising these definitions in order to broaden the definition of qualifying farming fuel and eligible farming machinery to include all fuel and machinery used for farming operation needs.

The third observation I would like to highlight today is to ensure that the definition of "farming" in the Greenhouse Gas Pollution Pricing Act is consistent with the Income Tax Act and also the Canada Revenue Agency's ordinary definition of "farming activities." We heard this again and again in our committee. For instance, Mr. Chris van den Heuvel, Past President of the Nova Scotia Federation of Agriculture, told us:

The definition of a farmer used within the draft legislation is seen as overly simplistic and could inadvertently disqualify legitimate farmers from receiving carbon price exemption charges on farm fuels. In reading the proposed definition, it would seem to exclude agricultural activities such as Christmas tree farming, greenhouses, maple syrup [production, aquaculture] and others.

Although the legislative definition is the same for the Income Tax Act and Bill C-74, the Canada Revenue Agency issues interpretation guidelines that expand the definition.

Senators, the solution in this case is not legislation but communication. All that the government needs to do is to state that when Bill C-74 comes into force, they intend to apply the CRA's ordinary definition of farming in the Greenhouse Gas Pollution Pricing Act. The Nova Scotia Federation of Agriculture observed:

This will provide far greater consistency across the government on what constitutes farming and will be easier to interpret for all.

On this point, I am hopeful. Last Tuesday, I made the request to the Minister of Agriculture and Agri-Food during Question Period, and he seemed quite open to ensuring that the two definitions correspond. Mr. MacAulay said:

I will make sure that the Canada Revenue Agency is aware of what you propose, and if those changes can be made and if it helps people involved in agriculture, that's certainly the way to go.

Members of the Senate National Finance Committee, the Minister of Finance will be appearing tomorrow at your committee meeting. I hope that you raise these three concerns from farmers with him during your meeting. Due to logistical and scheduling issues, farmers were unable to raise these issues in the House of Commons' National Finance Committee. I am grateful that government agreed that the Senate Agriculture and Forestry Committee study the impact of the carbon levy on farmers.



Senators, farmers across the country took the time out of their planting season to speak to the Agriculture and Forestry Committee. The committee listened. Now it is time for the Senate's National Finance Committee and the Senate to act.

• (2040)

**Hon. Yuen Pau Woo:** I have a question for Senator Griffin, if I may.

**The Hon. the Speaker:** Will you take a question, Senator Griffin?

**Senator Griffin:** Yes.

**Senator Woo:** Thank you, Senator Griffin, for presenting the Agriculture and Forestry Committee report on behalf of the other members, of which I am one.

I wonder if you might clarify with the chamber that under the climate action framework, provinces are strongly encouraged to come up with their own climate action plans, which include the possibility of defining on-farm fuels and the extent of the exemptions that they wish to make. Also, they have the flexibility and the power to use revenues generated from carbon pricing to reinvest in farming activities. Therefore, as we heard in testimony, many of these issues, while subject to some federal guidelines, are very much in the power of the provinces to put in place.

**Senator Griffin:** There is a lot in that. Thank you for the questions.

The situation is that it's different in different provinces. Some provinces already have a cap and trade system or their own carbon pricing system. Others do not and, of course, that's where the federal backstop will come in. That's where the definition in these acts is going to be really important to provinces like Prince Edward Island, Saskatchewan, New Brunswick and the others that will need to have the federal backstop because they are not doing their own carbon pricing. That's one issue. It is different in different provinces.

Regarding reinvestment, yes, the provinces that do have their systems in place can easily reinvest it in agriculture. Alberta has a wonderful system of paying farmers for carbon sequestration. We heard that loud and clear when our committee was out west. But it is uneven because not all provinces are doing the same thing, unfortunately. Maybe someday they will be, but in the meantime, we're pointing out that this is an issue that, for the federal legislation, needs to be considered.

**Hon. Michael Duffy:** Senator Griffin, did I understand you to say that there are different definitions about the treatment of fuels on farms compared to other industries? If that's the case, do you foresee a situation in which people will be going to court, maybe the tax court, to appeal for equal treatment rather than have various industries treated differently under the same regime?

**Senator Griffin:** Those are some interesting thoughts. There are different definitions in the provincial legislation as to which fuels are included. In many cases, the natural gas and propane

used on farms for farm-related purposes are included, but it is not included in the federal legislation. That's where the issue comes for provinces like Prince Edward Island and New Brunswick.

Going to court, that's anybody's guess.

**The Hon. the Speaker:** Honourable senators, if no other senator wishes to speak, this order is considered debated.

(Debate concluded.)

## CRIMINAL CODE

### BILL TO AMEND—TWENTY-FOURTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED

Leave having been given to revert to Government Business, Bills, Reports of Committees, Order No. 1:

The Senate proceeded to consideration of the twenty-fourth report of the Standing Senate Committee on Legal and Constitutional Affairs (*Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, with amendments and observations*), presented in the Senate on May 31, 2018.

**Hon. Serge Joyal:** moved the adoption of the report.

He said: Honourable senators, I want to draw your attention to the work of the Legal and Constitutional Affairs Committee in a relation to Bill C-46. The committee held 13 meetings on this bill between January 31 and May 23. We spent almost five months studying this bill.

The committee heard from a total of 68 witnesses. I want to draw your attention to this because, with all due respect to the Social Affairs Committee and all the other committees charged to study some aspect of Bill C-45, the Legal and Constitutional Affairs Committee was the committee that heard the largest cross-section of witnesses in relation to cannabis generally, within the confines of Bill C-46, which is essentially an act that deals with drug-impaired driving.

We also received a very large number of written briefs. Seven amendments to the bill were adopted from a total of 14 amendments proposed during the committee's clause-by-clause consideration of the bill. I want to list those seven amendments in a very short way.

The first one adds to the preamble that the Parliament of Canada is committed "to adopting a precautionary approach in relation to driving and the consumption of drugs."

The second amendment removed proposed section 320.27(2) of the Criminal Code, which would have authorized mandatory alcohol screening.

The third amendment was to propose section 320.31(4) of the Criminal Code concerning the legal presumption for alcohol by specifying that the presumption applies with regard to the person's blood alcohol concentration within two hours after the

person ceasing to operate the conveyance; and by specifying that the addition of 5 milligrams of alcohol in 100 millilitres of blood for every interval of 30 minutes in excess of those two hours only applies when the person's blood alcohol concentration is equal to or exceeds 20 milligrams of alcohol in 100 millilitres of blood.

The fourth amendment specified a proposed section 320.31(9) of the Criminal Code that a statement made to a peace officer is admissible in evidence for the purpose of justifying a demand made under section 320.27 and section 320.28.

The sixth amendment specifies a proposed section 320.34 of the Criminal Code concerning the disclosure of information by the prosecutor with regard to messages produced by the approved instrument that only error or exception messages must be disclosed.

The seventh amendment specified a clause 31.1, that the review of the bill that must be done within three years must include an evaluation on whether their implementation and operation have resulted in differential treatment of any particular group based on a prohibited ground of discrimination.

Finally, specify at clause 38 that any person designated as an analyst will keep their designation when Part 2 of the bill comes into force.

Honourable senators, in annex to the report, you will find a summary of all the testimony that was heard. I invite you to read those 10 pages because they summarize the bulk of the testimony that we heard.

Again, honourable senators, I will mention that it includes the testimony of more than 68 witnesses during a period of 26 hours of testimony. I don't want to qualify the work of the committee. I think each and every one of you can understand the work that has been achieved by the committee members. I'm very grateful to the members on both sides of the table of the Legal and Constitutional Affairs Committee for their cooperation and dedication to that work, which I think will remain a very important element of information for the interpretation of this bill by all the stakeholders who have an interest in drug-impaired driving.

I want to add there was an observation in the report, which is essentially that permanent residents and foreign nationals would be deemed inadmissible to Canada because the charge they would face under drug-impaired driving would be treated in a way that deals with their status. I think there is an amendment in relation to Bill C-45 that is of notice in the report of Senator Eggleton, the Chair of the Social Affairs Committee, which deals with that specific observation. I'm grateful to the Social Affairs Committee for having reflected the concern we have had in relation to Bill C-46.

• (2050)

Honourable senators, I submit that for your consideration. I know that this chamber will certainly want to organize the debate in relation to this bill in a structured manner so that those of you who are interested in taking any part in the discussion of the

amendments to this bill will have an opportunity to do so, and then, of course, we could send that bill to the other place for due consideration.

Thank you, honourable senators, for your attention.

**Hon. Denise Batters:** Honourable senators, I rise today to speak to the twenty-fourth report of the Senate Legal and Constitutional Affairs Committee on Bill C-46, the Trudeau government's impaired driving legislation.

I am a member of the Senate Legal Committee and have been for the past five years. In that time, the Legal Committee has devoted significant time to studying the problem of impaired driving, particularly as it relates to the critical problem of significant court delays. We also studied various legislative initiatives seeking to reduce the frequency of impaired driving both for drug-impaired and alcohol-impaired driving.

The impaired driving legislation currently before this chamber, Bill C-46, addresses both drug-impaired and alcohol-impaired driving. It was introduced in the House of Commons as a piece of companion legislation to the marijuana legalization legislation, Bill C-45.

Perhaps a more cynical person might even suggest that Bill C-46 was created to provide some political cover for the government's untested drug legalization measures in Bill C-45. The first part of Bill C-46 creates drug-impaired driving offences and a regime for roadside testing of drivers based on a reasonable suspicion of impairment, much as alcohol impairment measures in place currently.

The second part of the bill addresses measures concerning alcohol-impaired driving. Most notably, Bill C-46 proposes mandatory or random alcohol testing, which would mean that police would no longer need to have a reasonable suspicion of alcohol impairment in order to ask a driver for a breath sample.

As many of you will know, I proposed an amendment at our Legal Committee to delete the random alcohol testing provisions of this bill. That amendment, passed by a majority of committee members, is contained in this report, as our chair just told you.

We heard a mountain of evidence legal experts at committee that this random alcohol testing regime is unconstitutional. In fact, in my five years on the committee, I have never before heard legislation so roundly denounced as unconstitutional.

The vast majority of experienced criminal lawyers who appeared before our committee expressed grave concerns about the Charter implications of this provision. Witnesses told us that Bill C-46, and in particular the random alcohol testing measures, could be found to violate the Charter of Rights, section 8, unreasonable search and seizure; section 9, arbitrary detention; and section 10(b), the right to counsel.

Adam Steven Boni of the Canadian Council of Criminal Defence Lawyers told us that "all of the Charter nerves that have been set tingling by this proposed legislation."

One very experienced criminal defence lawyer testified that random alcohol testing would lead to a decade of Charter litigation. Another said that if these random alcohol testing measures passed, it would be Christmas for defence lawyers.

Virtually every lawyer and legal expert who came before our committee found random alcohol testing to be unconstitutional. One exception was law professor Peter Hogg, who argued that section 8 challenges of random alcohol testing would be saved by section 1. Unfortunately, Mr. Hogg didn't appear before the Legal Affairs Committee, but instead submitted a copy of the written brief he had prepared for the House of Commons on the topic last year, meaning senators did not have a chance to question and challenge his assertions.

Professor Hogg drew from Robert Solomon's evaluation of random alcohol testing in countries like Australia and New Zealand, countries that don't have charters of rights and freedoms; but renowned legal Professor Don Stuart, the person who literally wrote the textbook on Charter rights and criminal law, effectively refuted Hogg's claim. He said that in 35 years of Charter challenges under section 8, the Supreme Court has never justified a section 8 Charter challenge under section 1.

Lawyer Kyla Lee, herself an expert in impaired driving cases, delivered a compelling argument to us that Canadian cases about roadside testing and approved screening device testing that had been saved under section 1 were successful because of three components: the reasonable suspicion requirement, the forthwith requirement, and use immunity. She went on to say:

In British Columbia, in particular, we've eliminated use immunity because we have the immediate roadside prohibition scheme. That's out the window already. Now we're taking away the reasonable suspicion and forthwith requirements and making it simply make people blow or make people participate in these invasive testing procedures.

Ms. Lee also advised us in her brief:

There is no other instance in the *Criminal Code* that authorizes a search based on no articulable or legal standard. There is no other instance in Canadian law in which such a search has been held to be reasonable.

In the landmark case of *R. v. Oakes* from 1986, the Supreme Court of Canada established criteria for determining whether a law that infringes on the Charter should be upheld as a reasonable limit under section 1. That test, known as the Oakes test, requires the law to have a sufficiently important objective, a rational connection to that objective, be minimally impairing or extend no further than is necessary to achieve that objective, and for there to be proportion between the infringement and the benefit of the law.

Legal witnesses testified that the random alcohol testing provisions of Bill C-46 would neither be minimally impairing nor proportional under that evaluation.

A number of witnesses alerted us to an increased risk of racial profiling under a random alcohol testing regime. Professor Stuart said:

So what's the worry about taking out reasonable suspicion? The worry is undoubtedly racial profiling and the police force against racialized groups, Indigenous people and vulnerable groups. I'm always a bit reluctant to state that. I was a prosecutor. I've worked with police officers. Are all police officers racist? Of course not, and many times when you assert that, they're very upset. But that's no doubt at all with the empirical data we've had in Toronto, Vancouver, Saskatchewan and elsewhere that investigative detention under the practice of carding has resulted in huge racial discrimination against vulnerable groups.

Professor Stuart then went on to say that the potential for abuse of mandatory checks is "exactly why the Supreme Court of Canada has put in place a standard of reasonable suspicion."

Another major concern is the impact an avalanche of Charter challenges will have on an already burdened court system in this country. Cases of impaired driving comprise one of the biggest gluts on our criminal court system. That system is already overstretched to the point where it is breaking.

For me, the Supreme Court of Canada's *Jordan* decision was a game changer. The decision, which established strict timelines by which court cases must be resolved or thrown out, has created a stark new reality where serious criminal charges, including charges of murder, sexual assault and child assault, are being stayed because of extreme court delays. The Charter rights infringement of random alcohol testing will only exacerbate this crisis.

Most senators who have been members of the Legal Committee could tell you that I'm generally pretty tough on crime. That's why I don't want to see murderers and rapists go free because of court delays based on unconstitutional legislation, while law-abiding Canadians are potentially treated like criminals by the state.

I thought it was interesting to hear the Justice Minister call our committee amendment to delete the random testing provisions "irresponsible." I submit instead it is irresponsible for this Justice Minister to be acutely aware of the court delay crisis in this country and to fail to take even the most basic actions like appointing more judges in order to address it.

The Justice Minister's lack of action on court delays has been abysmal. Our Legal Committee put out an extensive report on court delays a year ago, the culmination of an intensive 18-month study. The Justice Minister has largely ignored our recommendations. We recently heard from one of her officials that the minister still has 59 judicial vacancies to fill.

This Trudeau government's priorities are all about politics, not about policy.

A number of the measures in Bill C-46 which will actually prove effective for fighting impaired driving were introduced in Conservative government legislation in 2015. The Liberals could have implemented those changes two and a half years ago. Think about how much lives could have been saved by that.

Instead, the Liberals introduced Bill C-46 in order to provide themselves cover for legalizing marijuana because they know that we will see an increase in impaired cases after legalization is passed. We have seen similar results in jurisdictions where marijuana has already been legalized.

I had asked the Justice Minister to explain why it is that drugs and alcohol are treated differently under Bill C-46. Police need a reasonable suspicion to pull over a driver and administer a drug screening test, but not for a Breathalyzer for alcohol. When I asked the minister to explain the discrepancy, she responded that the science for testing drug impairment was still evolving — minister-speak for “just not ready.”

• (2100)

This begs the question: If that’s the case, then why legalize marijuana now?

As senators, our role is always to provide sober second thought on legislation. That is what we have done in our Legal Committee by voting to remove this unconstitutional measure from Bill C-46.

Make no mistake, random alcohol testing would lead to Charter rights violations, endless legal wrangling and significant court delays. Our courts are in crisis, honourable senators. We cannot burden them further with clearly unconstitutional legislation. The consequences are simply too dire. Thank you.

**Hon. Marc Gold:** I have a question for Senator Batters.

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

**Senator Batters:** Yes, I will.

**Senator Gold:** Thank you, Senator Batters. As you know, I happen to think the mandatory alcohol screening legislation is in fact constitutional, but I’ll save that for third reading debate.

You mentioned that we heard from a large number of experienced criminal lawyers, which we did. You spoke of the witnesses who came before us, but you properly reminded us that we did not hear or have the benefit of questioning either Professor Peter Hogg, the noted constitutional scholar, or Professor Solomon and Dean Erika Chamberlain, both experts in impaired driving law.

Can you explain or comment on why, over the course of months of study and 13 meetings, we weren’t able to accommodate all of those who spoke in favour of the constitutionality of the bill, but we were able, literally on the day we went clause by clause, to find time for Professor Don Stuart, a leading criminal law expert, to be sure? Thank you.

**Senator Batters:** I’m not on the Legal Committee’s steering committee anymore, so I’m not sure of the ins and outs of that, but I know considerable effort was made to try to accommodate the witnesses you speak of.

I addressed the remarks Professor Hogg made in his brief, which he provided to the House of Commons and which was then just forwarded along to our committee. It was not updated but just simply the brief he provided to the House of Commons. As well, I dealt with how two significant witnesses, Professor Stuart and lawyer Kyla Lee, dealt with his particular argument.

I also appreciate the fact that you acknowledge at Professor Stuart is a leading expert in the area of criminal law and Charter reform.

**Senator Gold:** Thank you. Indeed he is. A whole generation of lawyers in this country learned their criminal law from his readings and writings. I have enormous respect for him, though you may not be surprised to hear that I found his testimony somewhat less helpful than it has been made out to be.

You did quote him, and it’s a fantastic sound bite that happens to be true, that the Supreme Court has never upheld a section 8 violation under section 1; but you did not remind us, so I’ll ask you to comment on the following — that Professor Hogg, Dean Chamberlain and Professor Solomon all argued that there would be no violation of section 8 under mandatory alcohol screening.

Can you comment on how many section 8 cases the Supreme Court has decided where section 1 was actually at issue? Thank you.

**Senator Batters:** I don’t have that information at hand. However, I do know that Professor Stuart, when directly asked about that — and I think it was in his opening remarks — the Supreme Court of Canada in 35 years of Charter jurisprudence has never held a section 8 case to be saved by section 1.

In relation to the other questions you raised, certainly Professor Hogg has one position on this particular piece of legislation. Other noted experts have a different position. I don’t know what the ins and outs were of which particular witnesses came to our committee. I just know that the ones who did come to our committee, where we had the chance to question and challenge their testimony, effectively refuted Professor Hogg’s arguments. You may disagree. That can be a matter for debate at third reading.

**Senator Gold:** Thank you for your indulgence.

Senator Batters, one cannot read the evidence before the committee without acknowledging that there are very powerful arguments on both sides, by credible lawyers, members of the defence bar, members of the Civil Liberties Bar and notable academics in all their fields.

Would you agree with Professor Stuart when he says, with disapproval, that over time since the *Oakes* case the Supreme Court has changed its approach to section 1 of the Charter and is showing increasing deference to legislative choices? He also cites with disapproval, and perhaps can you tell me whether you agree, the following statement of the Supreme Court:

. . . if legislation is amenable to two interpretations, a court should choose that interpretation that upholds the legislation as constitutional. Thus courts must presume that Parliament intended to enact constitutional legislation —

**The Hon. the Speaker *pro tempore*:** I'm sorry. Your time is up, Senator Batters.

[*Translation*]

**Hon. Pierre-Hugues Boisvenu:** Honourable senators, I want to congratulate the members of the Standing Senate Committee on Legal and Constitutional Affairs who, I believe, conducted a very professional and very thorough study of the bill. Senator Joyal also did an excellent job as chair of the committee.

Briefly, it is important to remember that Bill C-46 is, in a way, a descendant of Bill C-73, which the Conservative government introduced in June 2015. If the Liberal government had introduced this bill in January 2016 or December 2015, we would not be in this mess today, wondering whether we're putting the cart before the horse.

The committee report clearly shows that police forces will not be ready to enforce the law when marijuana is legalized. If police forces aren't properly equipped and trained, it could prove to be extremely dangerous for Canada's youth for a certain period of time. On top of that, this period could last quite a long time given that the department can't tell us how long it will take to train and prepare all police officers in Canada to enforce the criteria set out in this bill. It could take six months or a year.

This failure to properly prepare police officers on how to proceed with laying charges will likely lead to many court challenges.

Another aspect of the bill's study that really disappointed me was how victims of crime and their families are treated. Some victims appeared before the committee and they were astounded to learn that when individuals are caught and arrested for impaired driving, they receive the same minimum sentence as individuals convicted of impaired driving causing death. Victims' families simply can't understand how cases of impaired driving causing no serious consequences are treated as severely as cases of drunk driving causing death. In terms of minimum sentencing, the two are treated essentially the same.

People don't understand how senators can go along with the notion that the minimum sentence for killing someone while intoxicated should be a \$1,000 fine. Victims' families really feel as though senators were insensitive and failed to understand what these families go through when a loved one is killed by a driver impaired by alcohol or drugs.

I hope that when it comes time to vote at third reading stage or to propose amendments, you will be more sensitive to victims and their families. Think of the families. Put yourself in their shoes when the judge hands down a minimum sentence of \$1,000 after one of their own is killed by an impaired driver. What are they to think of Canadian justice?

**Hon. Renée Dupuis:** Would Senator Boisvenu take a question?

• (2110)

**Senator Boisvenu:** Certainly.

**Senator Dupuis:** Thank you. Senator Boisvenu, speaking of victims, I would like to know if you have read the May 28 letter addressed to all senators from MADD Canada. This association believes that the amendment to Bill C-46 removing random alcohol screening of drivers is a serious mistake.

Have you read this letter and the letter sent to us today by the President of the Canadian Association of Chiefs of Police, Mario Harel? He supports MADD in asking senators to reverse their decision concerning the amendment proposed by the Standing Senate Committee on Legal and Constitutional Affairs to eliminate mandatory alcohol screening in Bill C-46.

**Senator Boisvenu:** There are two things I'd like to clarify. With regard to MADD's position, I'm very uncomfortable when an organization claiming to represent the families of victims of motor vehicle accidents resulting in death supports the legalization of marijuana. The fact that this organization receives funding from marijuana companies only adds to my discomfort.

With regard to the position of the police, before the committee studied random testing I was very much in favour of it. However, experts on Canada's Constitution and the Canadian Charter of Rights and Freedoms proved to us that we would be faced with two problems. First, if we were to have random testing and allowed drivers to be stopped randomly and without cause, there would be a clear risk of profiling. Second, as we have seen in recent years, legal challenges would cause serious cases before the courts, such as cases of rape, assault and murder, to be unduly delayed.

The experts warned us that although we can do random tests, we won't see offenders in court charged with possession of marijuana. Instead, we'll see defence counsel challenging all of the random arrest cases on the basis that they violate the Canadian Charter of Rights and Freedoms.

In light of two major problems, I think that we are better off protecting our justice system and preventing obvious court challenges and undue delays in that result in murderers being set free.

**Hon. Pierrette Ringuette:** Senator Boisvenu, I hadn't planned on speaking, but I have a lot of respect for MADD Canada. You said that this organization, which has been warning Canadians about the dangers of drinking and driving for decades, receives funding from marijuana companies. Incidentally, a senator, the former Conservative caucus leader, was one of the founders of this organization. Senator Boisvenu, can you tell me where you got your information about this funding?

**Senator Boisvenu:** There are two companies that provided funding to MADD Canada.

**Senator Ringuette:** Can you name them and indicate how much they contributed?

**Senator Boisvenu:** I'll give the information to the Speaker.

[English]

**Hon. Gwen Boniface:** Senator Boisvenu, will you take a question? As you're well aware from the evidence given at the committee, we lose about 1,000 Canadians a year to impaired driving, and about 60,000 are injured. Successive governments have attempted to deal with the matter of impaired driving in this country. We do not rank where we should as a country, when you compare Canada to other developed countries.

I'm interested in the work that has been done by previous governments, in particular, bills that have been introduced in the other place. Can you tell me why you think that aspect of this bill to do with mandatory alcohol differs from others?

[Translation]

**Senator Boisvenu:** I didn't quite understand the question. Could the senator repeat it?

[English]

**Senator Boniface:** On the matter of driving impaired by alcohol, successive governments have attempted to bring these statistics down. The previous government attempted to deal with that, both through the work of the government and the work of committees in the other place, as well as a private member's bill.

My question really is: Why, at this point, would you take a position that you are against mandatory alcohol testing?

[Translation]

**Senator Boisvenu:** Madam Speaker, since we are in the computer age, I will give the names of the two companies: Tweed Canada and Bedrocan Canada. They funded MADD Canada for a period of three years.

In response to Senator Boniface's question, as I said earlier, before the committee studied random testing, I was very much

in favour of these tests, for both alcohol and cannabis consumption. I remind you that the bill is discriminatory. People who consume alcohol would be tested randomly, but not those who consume marijuana.

Furthermore, the experts who testified in committee were almost unanimous in saying that these measures would not pass the constitutional test or the charter test.

I would remind you that, when you were in the opposition, the Liberals were constantly arguing that bills were unconstitutional. Some of our laws were challenged and we lost, so I'm using the same reasoning.

The experts made compelling arguments. It is not constitutional. All of these cases will end up before the courts. We won't be any further ahead legally speaking and the delays will be disastrous in Canada and even worse in Quebec. I therefore understood that it would be better to focus on indisputable cases.

[English]

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

**Some Hon. Senators:** Question.

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

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** On division.

(Motion agreed to, on division, and report adopted.)

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

(On motion of Senator Boniface, bill, as amended, placed on the Orders of the Day for third reading at the next sitting of the Senate.)

(At 9:21 p.m., the Senate was continued until tomorrow at 2 p.m.)

## CONTENTS

Monday, June 4, 2018

	PAGE		PAGE
<b>Business of the Senate</b> . . . . .	5766	<b>ORDERS OF THE DAY</b>	
<b>New Senator</b>		<b>Business of the Senate</b> . . . . .	5771
Introduction . . . . .	5766	<b>Cannabis Bill (Bill C-45)</b>	
Congratulations on Appointment		Bill to Amend—Third Reading—Debate Continued	
Hon. Peter Harder . . . . .	5766	Hon. Patricia Bovey . . . . .	5771
Hon. Larry W. Smith . . . . .	5766	Hon. Anne C. Cools . . . . .	5773
Hon. Yuen Pau Woo . . . . .	5767	Hon. Yonah Martin . . . . .	5774
Hon. Joseph A. Day . . . . .	5767	Hon. Jane Cordy . . . . .	5775
<b>SENATORS' STATEMENTS</b>		Hon. Leo Housakos . . . . .	5775
<b>Patrick Fogarty Catholic Secondary School Bands</b>		Motion in Amendment Negatived	
Hon. Gwen Boniface . . . . .	5768	Hon. Leo Housakos . . . . .	5777
<b>Prix Boréal</b>		Hon. Art Eggleton . . . . .	5777
Congratulations to Recipients		Hon. Jean-Guy Dagenais . . . . .	5777
Hon. Joseph A. Day . . . . .	5768	Hon. Denise Batters . . . . .	5779
<b>Visitor in the Gallery</b>		Hon. André Pratte . . . . .	5781
The Hon. the Speaker . . . . .	5768	Hon. A. Raynell Andreychuk . . . . .	5782
<b>Village of Merrickville, Ontario</b>		<b>Budget Implementation Bill, 2018, No. 1 (Bill C-74)</b>	
Two Hundred and Twenty-fifth Anniversary		Twelfth Report of Agriculture and Forestry Committee on	
Hon. Yvonne Boyer . . . . .	5768	Subject Matter—Debate Concluded	
<b>Autism Spectrum Disorder</b>		Hon. Diane F. Griffin . . . . .	5785
Hon. Leo Housakos . . . . .	5769	Hon. Yuen Pau Woo . . . . .	5787
<b>The Late Harry Baglole</b>		Hon. Michael Duffy . . . . .	5787
Hon. Diane F. Griffin . . . . .	5769	<b>Criminal Code (Bill C-46)</b>	
<hr/>		Bill to Amend—Twenty-fourth Report of Legal and	
<b>QUESTION PERIOD</b>		Constitutional Affairs Committee Adopted	
<b>Natural Resources</b>		Hon. Serge Joyal . . . . .	5787
Trans Mountain Pipeline		Hon. Denise Batters . . . . .	5788
Hon. Larry W. Smith . . . . .	5770	Hon. Marc Gold . . . . .	5790
Hon. Peter Harder . . . . .	5770	Hon. Pierre-Hugues Boisvenu . . . . .	5791
<b>Agriculture and Agri-Food</b>		Hon. Renée Dupuis . . . . .	5791
Carbon Tax		Hon. Pierrette Ringuette . . . . .	5791
Hon. Donald Neil Plett . . . . .	5770	Hon. Gwen Boniface . . . . .	5792
Hon. Peter Harder . . . . .	5771		
<hr/>			