SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 218

OFFICIAL REPORT
(HANSARD)

Monday, June 11, 2018

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

Published by the Senate
Available on the Internet: http://www.parl.gc.ca

THE SENATE

Monday, June 11, 2018

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

Prayers.

SENATORS' STATEMENTS

THE SENATE

TRIBUTE TO DEPARTING PAGE

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

[*Translation*]

Jacqueline Sirois will begin her third year at the University of Ottawa in the fall. She will continue working on her honours degree in political science with a minor in law. After she graduates, she hopes to continue studying in common law, a field she is passionate about.

It has been a privilege for Jacqueline to represent the Franco-Saskatchewanian community as a Senate page over the past two years. Jacqueline would like to thank each and every one of you for making this unique and wonderful experience unforgettable.

[*English*]

GUATEMALA

VOLCANIC ERUPTION

Hon. Rosa Galvez: Honourable senators, I rise today to speak on the recent volcanic eruption in Guatemala.

On June 3, the Guatemalan volcano called Volcan de Fuego erupted violently, causing deaths and disappearances and destroying infrastructure. Although this active volcano has regular, small eruptions every year, an eruption of this magnitude has not occurred in decades.

With columns of ash launched some 15,000 metres above sea level and pyroclastic flow destroying towns miles away from the summit, this is the second most violent eruption in Guatemalan history, second only to an eruption in 1974 from the same volcano. The affected areas include the provinces of Escuintla, Sacatepéquez and Chimaltenango, and destruction continues to spread to the west and the southwest.

In response to this disaster, the Guatemalan government has declared a state of emergency for these provinces. Organizations such as the Red Cross are providing humanitarian aid for the victims of the disaster. The human effect is devastating. As of today, 110 people have lost their lives, 200 people are currently missing, 3,100 people have been evacuated from their homes, and 1.7 million citizens have been affected. The surrounding villages that have been hit hardest are generally inhabited by people of Indigenous descent.

Already, the government has declared many of the affected areas as uninhabitable, causing many citizens to be permanently displaced. Such destruction and loss should have been prevented. Everywhere and at all levels of government potential environmental disaster zones should be taken into consideration when planning and building infrastructure. By putting a stronger focus on prevention, we could reduce the tragic loss of life that we witnessed last week in Guatemala.

Across the world, we all face similar issues of adaptation to our environment and natural disasters. Humans need to adapt, and this is the most pressing environmental issue. I encourage my colleagues to reflect on this matter as we send our thoughts and condolences to the people of Guatemala.

Thank you.

AL-QUDS DAY

Hon. Linda Frum: Honourable senators, I rise to draw your attention to a serious event that occurred in my city of Toronto this past weekend. The annual anti-Semitic hate fest known as al-Quds Day was held at Queen's Park, followed by a march that shut down University Avenue.

Since 1979, Quds Day has been a regular international event sponsored by the Islamic Republic of Iran. In Toronto, it attracts local terrorists and regime sympathizers who call for the eradication of Israel and the mass murder of Jews. It is disturbing that 500 people, including families with young children, participated in this hateful demonstration.

The murderous ideology expressed at this rally must not be tolerated in Canada as it is not representative of our peaceful, multicultural values. There is no place in Canada for such a vile demonstration of racist hate.

I would like to thank premier-elect Doug Ford for his strong words condemning this event and his pledge that he will prevent any such blatantly racist or anti-Semitic events from being allowed on the grounds of Queen's Park again in the future.

I would also like to thank Canada's national Jewish community organizations, including CIJA and B'nai Brith for their vigilance and moral leadership on this issue.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Ms. Rachel Bocher, Ms. Naïma Kaioua and Mr. Denis Caille. They are the guests of the Honourable Senator Cormier.

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

Hon. Senators: Hear, hear!

[*English*]

UNESCO WORLD HERITAGE SITES

Hon. Fabian Manning: Honourable senators, today I am pleased to present Chapter 34 of "Telling Our Story." Senator Woo was trying to get in on my work last week, but I called copyright and he won't be allowed to do that anymore.

Canada is home to 18 UNESCO World Heritage Sites and in my home province of Newfoundland and Labrador, we are both proud and thrilled to have four of these world-renowned and unique attractions.

L'Anse aux Meadows National Historic Site was one of the first 12 sites declared as a World Heritage Site by the inaugural group in 1978. There you will find the remains of an 11th century Viking settlement and the first and only site of Norse presence and the earliest known European settlement in North America outside of Greenland.

Next, we have the beautiful and majestic Gros Morne National Park, designated in 1987. With its deep ocean crust and rocks of the earth's mantle lying exposed, the park illustrates continental drift. Landlocked freshwater fjords and glacier-scoured headlands in an ocean setting contribute to the natural beauty of this wilderness area. People from all over the world have walked the trails of Gros Morne, sat on the mountaintops and watched the sunset over this spectacular piece of nature.

Then, in 2013, the Red Bay Basque Whaling Station in Labrador received UNESCO status because between 1550 and the early 17th century, Red Bay was a major Basque whaling area. The site is home to three Basque whaling galleons and four small chalupas used in the capture of whales. The discovery of these vessels makes Red Bay one of the most precious underwater archeological sites in the Americas.

But why stop there when you still have so much to explore? In 2016, the Mistaken Point Ecological Reserve, located on the southeast corner of the Avalon Peninsula, received UNESCO designation. Mistaken Point contains the oldest evidence known of early multicellular life on the planet, with fossils calculated to be 560 million to 575 million years old.

Is it any wonder my province is affectionately and accurately referred to as "The Rock?" Mistaken Point is the only place in the world where you can actually view a 565-million-year-old sea floor.

I know that some of what I have told you today sounds out of the ordinary, and indeed it is, because one thing we do not aspire to be in Newfoundland and Labrador is ordinary.

Receiving the designation of a UNESCO World Heritage Site takes a long time and a tremendous amount of hard work by many people. I congratulate all those who have been involved in those efforts and applaud them on their success to date.

UNESCO status indicates you have something very unique and special to offer. Well, we believe that can be said for our entire unique and special province of Newfoundland and Labrador. But don't just take my word for it, come see it for yourselves. I guarantee you will not be disappointed.

• (1810)

PRIDE MONTH

Hon. Wanda Elaine Thomas Bernard: Honourable senators, I rise today to commemorate Pride Month. Pride Month is more than a celebration of gender and sexual diversity; it is a time to reflect on LGBTQ2+ history, to recognize the continuing barriers faced by this community and to celebrate the strength and resilience of this community.

Pride Month resulted from the Stonewall riots in New York City in 1969. These riots were a result of police raids at the Stonewall Inn, a gay bar in New York City. Marsha P. Johnson was a Black trans woman who was at the forefront of this resistance. In Canada, protests for the rights of LGBTQ individuals unfolded in many cities across the country, particularly after numerous bathhouse raids during the 1980s.

Despite being at the forefront of these civil rights movements, racialized LGBTQ individuals and Indigenous two-spirited people continue to face many forms of erasure, exclusion and direct discrimination from the LGBTQ community and mainstream society. I would like to emphasize this month the resilience and strength of the LGBTQ2+ people who deal with multiple barriers from intersecting identities of sexuality, gender, race and ability.

Despite some progress, systemic barriers remain for the LGBTQ2+ community in institutions such as education and health care. First, many people fear stigma and discrimination in disclosing their sexual orientation and/or gender identity to their physician. This is a barrier to maintaining good health. Second, many LGBTQ2+ people are not reflected in the comprehensive sexual education in many Canadian schools. This is also a barrier to health and perpetuates stigma about different sexual orientations and gender identities.

Honourable colleagues, Pride Month is a great opportunity to join our LGBTQ2+ community members, colleagues, family and friends as they celebrate their pride, resilience and strength.

Happy Pride Month.

[*Translation*]

ROUTINE PROCEEDINGS

EXPORT DEVELOPMENT CANADA

CANADA ACCOUNT—2016-17 ANNUAL REPORT TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the Canada Account Annual Report for the fiscal year ended March 31, 2017, pursuant to the *Financial Administration Act*, R.S.C. 1985, c. F-11, sbs. 150(1).

[*English*]

PARLIAMENTARY LIBRARIAN

CERTIFICATE OF NOMINATION TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the certificate of nomination of Heather Lank, the nominee for the position of Parliamentary Librarian.

FEDERAL FRAMEWORK ON POST-TRAUMATIC STRESS DISORDER BILL

EIGHTEENTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE PRESENTED

Hon. Gwen Boniface, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Monday, June 11, 2018

The Standing Senate Committee on National Security and Defence has the honour to present its

EIGHTEENTH REPORT

Your committee, to which was referred Bill C-211, An Act respecting a federal framework on post-traumatic stress disorder, has, in obedience to the order of reference of Thursday, May 3, 2018, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

GWEN BONIFACE
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 3641*.)

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

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

PARLIAMENTARY LIBRARIAN

CERTIFICATE OF NOMINATION REFERRED TO JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, with leave of the Senate, I move:

That the Certificate of Nomination for Heather Lank as Parliamentary Librarian, tabled in the Senate on June 11, 2018, be referred to the Standing Joint Committee on the Library of Parliament for consideration and report; and

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

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Foreign Affairs and International Trade have the power to meet, Wednesday, June 13, 2018, at 4:15 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES RELATING TO FOREIGN RELATIONS AND INTERNATIONAL TRADE GENERALLY

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding the order of the Senate adopted on Wednesday, June 21, 2017, the date for the final report of the Standing Senate Committee on Foreign Affairs and International Trade in relation to its study on such issues as may arise from time to time relating to foreign relations and international trade generally be extended from June 30, 2018 to June 30, 2019.

HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO HOLD OCCASIONAL IN CAMERA MEETINGS ON STUDY OF BILL C-65

Hon. Wanda Elaine Thomas Bernard: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(a), I give notice that, later this day, I will move:

That, notwithstanding rule 12-15(2), the Standing Senate Committee on Human Rights be empowered to hold occasional meetings in camera for the purpose of hearing witnesses and gathering specialized or sensitive information in relation to its study on Bill C-65, An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, as authorized by the Senate on June 7, 2018.

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

Hon. Senators: Agreed.

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON THE STUDY OF THE POTENTIAL IMPACT OF THE EFFECTS OF CLIMATE CHANGE ON THE AGRICULTURE, AGRI-FOOD AND FORESTRY SECTORS

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

That, notwithstanding the order of the Senate adopted on Thursday, March 9, 2017, the date for the final report of the Standing Senate Committee on Agriculture and Forestry in relation to its study on the potential impact of the effects of climate change on the agriculture, agri-food and forestry sectors be extended from June 30, 2018 to December 21, 2018.

• (1820)

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

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

That the Standing Senate Committee on Banking, Trade and Commerce have the power to meet on Wednesday, June 13, 2018, at 4:15 p.m., even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT TWO INTERIM REPORTS ON THE STUDY OF ISSUES RELATING TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY GENERALLY WITH CLERK DURING ADJOURNMENT OF THE SENATE

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

That the Standing Senate Committee on Social Affairs, Science and Technology be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate two interim reports on issues relating to social affairs, science and technology generally, between June 18 and September 14, 2018, if the Senate is not then sitting, and that the reports be deemed to have been tabled in the Senate.

POWERS AND DUTIES OF THE AUDITOR GENERAL

1977 AUDITOR GENERAL ACT—NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the powers and duties of the Auditor General of Canada, the officer authorized by the *1977 Auditor General Act* to be "the auditor of the accounts of Canada," which officer and office were first constituted in 1878 by the statute *An Act to Provide for the Better Auditing of the Public Accounts*; and to the renewed *1977 Auditor General Act* and its section 7(2) which says "Each Report of the Auditor General under subsection (1) shall call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that," as prescribed by 7(2)(d), which says "money has been expended without due regard for economy or efficiency," which power has been described as the *value for money power*, which power had the effect of moving the Auditor General out of his

traditional quantitative bean-counting accounting role, into the more subjective and qualitative public policy judgement role.

1865 BRITISH PUBLIC ACCOUNTS COMMITTEE REPORT—
NOTICE OF INQUIRY

Hon. Anne C. Cools: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to the powers and duties of the Auditor General of Canada, the officer authorized by the *1977 Auditor General Act* to be "the auditor of the accounts of Canada," which officer and office were first constituted in the 1878 statute *An Act to Provide for the Better Auditing of the Public Accounts*; and to the seminal *1865 British Public Accounts Committee Report*, wherein the Secretary of the British Board of Audit explained the limited function and scope of audit, and the intention of audit, which is to inform the House of Commons members on the actual and proper use of the moneys appropriated by their House to meet the public expenditure and the public finance.

QUESTION PERIOD

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

NAFTA NEGOTIATIONS

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. It is a follow-up question I asked about a month ago regarding tariffs imposed on our steel and aluminum industries by the U.S. administration. American tariffs of 25 per cent on steel imports and 10 per cent on aluminum were announced on May 31. They came into effect the next day. These tariffs already impact the steel industry, a sector that employs over 23,000 Canadian workers.

However, the retaliatory tariffs announced by the Prime Minister and the Minister of Foreign Affairs on the very same day are scheduled to be imposed three weeks from now, around July 1. Could the government leader please give us the strategy and background which explains why Canada's countermeasures against the United States trade action were not immediately put into place?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. Let me say it is the normal practice to give notice of such tariffs. The ongoing hope of the Government of Canada is that the Canadian action will cause a reflection south of the border so as to reverse the imposition of tariffs that the Trump administration has undertaken. Obviously, the government is also reaching out to the potentially affected communities to make sure that they and those who represent them understand the significance of the trade action Canada has announced, with the hope of encouraging the Government of the United States to withdraw the tariffs that have been imposed.

Senator Smith: The Canadian Steel Producers Association has publicly urged the Government of Canada to impose these tariffs as quickly as possible. The president of this association recently stated in the media:

> We're seeing customers in steel right now who are changing orders, putting orders on hold. Companies are experiencing damages and interruptions today.

With all the rhetoric and tweets going back and forth with Mr. Trump after the G7 meetings, will the government reconsider its position regarding the July 1 date and impose these tariffs to demonstrate will versus will?

Senator Harder: I will ensure that the government is aware of the suggestion of the honourable senator. But let me simply restate that the government is confident with the strategy it has been engaging now for some time with respect to the American administration, the renegotiation of the NAFTA and related matters that the Americans have undertaken.

This is a time of turbulence for Canadian workers and companies and jurisdictions that are affected. I believe that the unity that Canada has shown in the face of the actions being taken over the last number of months has added to the voice and impact of Canada's position with our American friends, and I am grateful to see that it continues even as recently as today in the other chamber.

DELAYED ANSWER TO ORAL QUESTION

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table the response to the oral question asked in the Senate on May 29, 2018 by the Honourable Senator Griffin, concerning the carbon tax.

AGRICULTURE AND AGRI-FOOD

CARBON TAX

(*Response to question raised by the Honourable Diane F. Griffin on May 29, 2018*)

> The Pan Canadian Framework — to which virtually all provinces and territories are signatories — establishes that carbon pricing should apply to a common and broad set of sources to ensure effectiveness and minimize interprovincial competitiveness impacts.
>
> The definition of farming under the *Greenhouse Gas Pollution Pricing Act* (GGPPA) is consistent with the definition of farming under the *Income Tax Act* (ITA).

Ultimately, the Canada Revenue Agency (CRA) will be responsible for administering the fuel charge under the GGPPA. It is within its purview to interpret the legislation in administering the Act.

The CRA has published extensive guidance on the interpretation of definition of farming under the ITA. Specifically, the CRA has interpreted the definition of farming under the ITA to include other types of farming, such as the planting, growing and harvesting Christmas trees, operating a nursery or greenhouse, or operating a chick hatchery.

As such, it is reasonable to expect that the CRA would interpret the definition of farming under the GGPPA similar to its existing interpretation for purposes of the ITA.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to Rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: second reading of Bill C-74, followed by all remaining items in the order in which they appear on the Order Paper.

[*English*]

BUDGET IMPLEMENTATION BILL, 2018, NO. 1

SECOND READING—DEBATE ADJOURNED

Hon. Grant Mitchell moved second reading of Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures.

He said: Colleagues, I would like to begin by thanking those senators who have participated in the pre-study of Bill C-74 and their related staff members and Senate administrative staff members, all of whom have done so much excellent work in that important task. I would also like to make a special mention of the public servants, the minister's office staff and my staff who have done amazing work in briefing me and other senators. It is impressive and reassuring to witness the intellect and expertise of these dedicated people.

Together, the initiatives contained in Bill C-74 contribute to an important aim of a modern budget, stimulating and preparing the economy for the challenges of today and of the future, while supporting Canadians by building equality of opportunity and strengthening their ability to participate fully in our economy and our society. It also includes several administrative process matters to facilitate the functioning of government.

There are any number of specific initiatives that define this bill. It will implement a national carbon pricing regime; it will strengthen supports for families with children, for veterans and for first responders; it will strengthen business and the economy in several ways. It will strengthen the country's financial system, and it will implement the financial structure called for by the legalization of cannabis.

• (1830)

Each of these measures, and others in the bill, were mentioned in the most recent federal budget. Many represent the explicit fulfilment of promises and commitments. I will begin by talking about the initiatives in the bill that are designed to support individuals and families.

The indexation of the Canada Child Benefit will be advanced to start July 2018 — two years earlier than anticipated. It will mean that families with children will get more money sooner and these grants will remain tax free. The grants will now be almost $6,500 annually for children under 6 and almost $5,500 annually for children between 6 and 18.

This would mean that, next year, a single parent with an income of $35,000 and two children aged 5 and 12, will receive an additional $560, for a total annual benefit, under this program, of almost $13,000. On average, families eligible for the Canada Child Benefit are getting about $6,800 per year. Three hundred thousand Canadian children have been lifted out of poverty with this program.

Bill C-74 enhances the Canada Workers Benefit as follows: It will provide more money to low-income workers. The application of the benefits will be phased in more quickly and phased out more slowly. The maximum benefit provided through the disability supplement will be increased. To build on these enhancements in the BIA 2, the CRA will be mandated to screen for low-income tax filers who may not be aware of the benefit and, therefore, will have failed to claim it.

So low-income workers will take home more money and will have stronger incentives to join and remain in the workforce. This program will help 2 million Canadians, and 300,000 low-income workers who have not applied for the benefit before will be identified and helped to apply in the future.

Turning to Employment Insurance Enhancement, all of this will be supplemented by provisions in the bill to make permanent the Working While on Claim program. This program allows EI claimants to keep 50 cents of their weekly EI benefits for every dollar earned from working while on claim, up to a maximum of 90 per cent of their weekly insurable earnings. Until 2021, claimants can choose to revert to a previous program to ensure a smooth transition to this new one.

Canadians on EI will, therefore, have an incentive to find work, even if it is part time, while not being discouraged from doing so by a precipitous drop in EI benefits.

On the subject of strengthening the Canada Pension Plan, CPP benefits will be enhanced in following ways: The accrual of CPP benefits will be sustained for parents who decide to stay home for a period of time after the birth or adoption of their children. Those who take this important time away from work outside the home will, as a result, not have to meet their retirements with a hole in their CPP pensions. The bill provides the same pension accrual continuity for people with disabilities. It provides a benefit to disabled retirement pension beneficiaries under the age of 65; and it enhances CPP survivor benefits. These improvements will be offered at no increase in premiums.

I shall speak now to support for veterans and their families. Since 2006, 67,000 veterans have received what is called the Lump Sum Disability Award. For some of the severely injured, a lump sum, now at $365,000, can be challenging to manage. Veterans benefits have been highly complex, inflexible and administratively burdensome. The current funding model, therefore, has been questioned by the military, family of veterans and veterans themselves.

Bill C-74, with this in mind, restructures veterans' compensation in three ways, which define what is now going to be called the Pension for Life program. It creates a lifetime monthly pain and suffering pension and an additional monthly pain-and-suffering pension that, together, can be as much as $2,650 per month tax-free. This will be an alternative to the lump sum, which will still be available. It creates the Income Replacement Benefit, which consolidates, for greater simplicity, six of seven existing benefits. This benefit will be 90 per cent of pre-release salary, indexed annually for inflation, and will be increased in addition annually, in recognition of lost career progression.

The bill will increase the survivor's benefit from 50 per cent to 70 per cent of the income replacement pension. These provisions reflect a determined effort to respond to concerns about the structure of veterans' benefits making them more easily understood, less complicated, more flexible and more accessible, with less administrative burden. These provisions also represent an increase, overall, in funding for veterans of $3.6 billion.

In addition, the bill will enhance support for military personnel, police officers and other first responders on deployment abroad. They will receive enhanced tax relief. Members of the Canadian Armed Forces and police officers and other first responders who are deployed internationally on operational missions, regardless of the risk level, will be able to claim a deduction against their taxable income now up to the pay level of a lieutenant-colonel, which amounts to a deduction of as much as $132,000. Currently, the deduction is limited to a non-commissioned officer's pay level, which is somewhat lower.

There will also be support for families of first responders. The Memorial Grant Program for First Responders is a $300,000 grant for families of first responders who have died in the line of duty. Bill C-74 will make it tax-free.

The second broad category of measures in this bill focuses on economic growth. These measures will have a stimulative impact on Canada's economy. First, cutting taxes for small business. This is exciting. We all know that small businesses are a key driver of Canada's economy. They account for 70 per cent of our private sector jobs. The small business tax rate has already been cut to 10 per cent. This legislation will implement a further cut to 9 per cent, effective January 2019.

By this time next year, the combined federal-provincial-territorial average income tax rate for Canadian small businesses will be 12.2 per cent, the lowest in the G-7 and the third-lowest amongst members of the OECD.

The second initiative that will have implications for economic stimulation is remediation agreements. Bill C-74 provides for remediation agreements between an organization accused of committing an offence and a prosecutor to stay a court proceeding if the organization complies with certain conditions. These agreements will be supervised by a judge.

Remediation agreements mitigate the uncertainty and other business-damaging consequences that arise if a company is charged criminally. They can provide quicker reparations to victims, encourage voluntary disclosure of wrongdoing and stimulate changes in corporate culture while — and this is important — saving jobs.

These agreements will allow companies to continue operating when they might otherwise fail, thereby protecting employees, investors, and contractors who were not involved in the wrongdoing. Remediation agreements can save jobs, investment and a company's contribution to our economy, while not precluding culpable individuals within the organization from being prosecuted criminally. If the conditions are not met, the prosecutor can revert to traditional court proceedings at any time.

One of the best-known features of this bill, of course, is its creation of the Greenhouse Gas Pollution Pricing Act, which puts a price on greenhouse gas emissions across the country. Science tells us that climate change is a serious threat and that human activity is causing it. Some argue that dealing with climate change would be damaging to our economy. I believe that ignoring the threat of climate change, or taking action inadequate to the challenge of dealing with it, is a far greater risk. On the other hand, dealing with climate change will stimulate, motivate and inspire a new 21st-century economy. It will be a catalyst for an economy of the future.

It is this appreciation of threat and opportunity that drives Canada's commitment to the Paris Agreement; inspires our commitment to lower emissions by 232 megatonnes of greenhouse gas emissions, by 2030; and drives the decision to implement a carbon price to do it. Economists tell us that the most efficient and effective way to make significant emissions reductions is by putting a price on carbon.

The federal government worked with provincial, territorial and Indigenous partners to adopt the Pan-Canadian Framework on Clean Growth and Climate Change in December 2016. The framework aims to have carbon pricing in place in all provinces and territories this year. Provinces and territories can implement their own system, or they can default to the federal backstop system. The federal backstop system will have two features: a carbon price on fossil fuels and an output-based system for larger emitters, designed in particular to help emitters with trade exposure.

• (1840)

If a jurisdiction chooses not to set up a system of its own, and most are choosing to do so, the backstop system created by this act will be applied. In either case, the money will stay in the province or territory where it is raised.

It is interesting to note several observations about how this will affect our economy. First, 80 per cent of Canadians already live in jurisdictions that have carbon pricing: British Columbia, Alberta, Ontario and Quebec. Interestingly, and importantly, these were the four fastest-growing economies in the country in 2017.

More than 70 per cent of farms in this country are in these four provinces. Most provinces and territories, as I said, will implement their own pricing systems and not opt for the backstop default.

Environment and Climate Change Canada's most recent models show that the difference in GDP growth by 2022 due to this program would amount to about $2 billion, or 0.1 per cent of a $2 trillion GDP. The Parliamentary Budget Officer's revised analysis, published on May 22, 2018, says it is broadly in line with the ECCC's analysis from 2016.

Specific forecasts of the cost to households of this program depend greatly on how provinces and territories choose to recycle carbon pricing revenues. Alberta's experience, however, is instructive. That province's carbon levy is estimated to cost a couple with two children $508 in 2018; however, families receiving the full rebate under the Alberta program will receive $540 in return, so would actually have a net benefit.

For farmers, the government has specified two exemptions from carbon pricing for anywhere the federal backstop is implemented: First, non-combustion emissions such as those from cattle, tillage and fertilizer applications will be exempted; and second, gasoline and diesel fuels for on-farm use will be exempted.

Our Agriculture Committee has raised two concerns. The first is with the definition of farming. To address this, Senator Harder has just tabled a Senate delayed answer today in which the government has clarified that the definition used in the greenhouse gas pollution pricing act is the same as that applied in the Income Tax Act, and thus the CRA interpretation to which witnesses referred will be the same in practice.

Secondly, the Agriculture Committee raised a concern that the exemptions for agriculture were insufficient. I would like to address this concern by raising a few points.

The decision to provide some exemptions and not others to farmers is based on the current B.C. carbon pricing model. Research shows that this has not had a negative effect on farmers in that province.

Canada is committed to 232 million tonnes of GHG reductions by 2030. Broadening exemptions for one sector, in this case the farm sector, will mean that these reductions that would otherwise have been achieved in the agricultural sector will have to be found elsewhere. This begs an important question: Where will these reductions be found? Or, put another way, which small businesses, for example, will be tapped to make up these reductions despite not having the kind of exemptions already given to the agricultural sector?

Nor is this carbon pricing system all cost. There are real economic opportunities in carbon pricing systems for farmers to create and sell carbon credits. This is actually very exciting. Alberta has long had a carbon credit regime for farmers. They have developed a number of ways — last time I checked, about 21 — in which farmers can reduce their carbon emissions and receive carbon offset credits for having done so, which they can then sell through a structured market to other emitters to offset their emissions. This is real money paid to farmers — a new source of revenue going into Alberta farms — and it can be replicated across the country.

In addition, the federal government has made significant investments that will help farmers reduce emissions and adapt to the effects of climate change. These include over $11 billion available for emissions reduction, green agricultural research and development, and green agriculture jobs through various programs. And, of course, with the revenue generated by carbon pricing systems, provincial and territorial governments that have their own programs can subsidize farmers if it becomes apparent they are in duress; so can the federal government where the regime in this bill applies.

Canadians have historically risen to great challenges and have worked together, supported each other in overcoming them, winning two world wars, building the railroad, developing resources, creating this amazing and remarkable country together. Climate change is yet another challenge that Canadians can and will confront and will help lead the world to overcome.

This bill will authorize banks to collaborate with and invest in fintechs. Fintechs are enterprises that have arisen largely out of the Internet app-based digital economy. They offer a wide range of financial services at competitive rates and with convenient access. Many of us will have heard of Mint, WealthSimple and SecureKey, for example. To some extent, they are disruptors of the banking industry.

If our banks cannot access these kinds of modern enterprises, they run the risk of losing competitiveness and not meeting clients' service expectations. A stable and secure banking industry is an essential condition of a strong economy. It is important that this industry be allowed to develop with the times to keep up with the times, so as not to jeopardize this strength.

The Senate Banking Committee reported concerns about the possibility of banks contravening privacy principles when sharing customers' personal information with fintechs and perhaps circumventing the existing regulated wall between banks and insurance providers.

However, none of the provisions in Bill C-74 related to fintechs make any changes to Canada's privacy framework, which is established by the Personal Information Protection and Electronic Documents Act known as PIPEDA. All existing requirements of Canada's privacy legislation will, in fact, continue to apply.

PIPEDA overrides other pieces of legislation, such as the Bank Act, by way of its section 4(3) which reads as follows:

> Every provision of this Part applies despite any provision, enacted after this subsection comes into force, of any other Act of Parliament, unless the other Act expressly declares that that provision operates despite the provision of this Part.

Bill C-74 does not do that.

Financial institutions must have policies under this act and practices in place that meet PIPEDA's principles. And the Privacy Commissioner of Canada, who is an independent agent of Parliament, oversees compliance with both the Privacy Act and PIPEDA.

The Office of the Privacy Commissioner confirmed in a ruling in July 2017 that PIPEDA obligations apply to fintech firms.

To the extent that some are concerned the banks might back their way into sharing data with fintechs that sell insurance, the Bank Act is clear: The banks cannot even share data with the insurance companies they own outright today. It follows that they are prohibited from sharing data through any fintech relationship that might involve the sale of insurance.

The Privacy Commissioner has also said that if changes were required regarding privacy concerns, they would appropriately be made to PIPEDA. This question, and the broader concerns about privacy laws that have been raised by the Banking Committee, may indeed be worthy of future study by the government.

It is worth noting that absolutely fundamental to a bank's success is keeping client information confidential. Who would deal with a bank that did not honour that confidentiality? The risk to a bank's reputation in contravening that principle is simply so high as to beg the question as to why they would ever do it.

The third category of initiatives in this bill address what I am referring to as processes of government.

First, income splitting and passive investment and Canadian-controlled private corporations. Bill C-74 will enact changes to the taxation of passive investment income in these businesses and to the splitting of income taken out of them. The changes are designed to do two things: First, they ensure that income can be split only with people who truly work for the business or have contributed to its development with sweat equity or capital investment. And the changes limit the sheltering of passive income in corporations in order to reassert an underlying public policy objective of encouraging that sheltered earnings be invested back in the business, to grow it, and in turn to create jobs and economic prosperity.

There was a good deal of controversy when these ideas were originally proposed in July of 2017. By December, the government had responded with critical changes to its initial proposals. It outright cancelled proposed changes to the lifetime capital gains exemption which were of particular concern to farmers and fishers. It introduced bright-line tests to clarify concerns about uncertainty in the application of income splitting rules. At the same time, to the extent that no such list can anticipate all the possibilities, the reasonableness test will still apply.

• (1850)

As well, the government allowed for a specified level of passive investment income before the $500,000 preferential small business tax begins to be phased out.

Cybersecurity: Another important change contemplated by this bill is the creation of the Canadian centre for cyber security. This centre will concentrate the federal government's significant cybersecurity expertise by consolidating 750 personnel in a special unit in the Communications Security Establishment. This unit will serve as a source of advice, guidance, services and support on cybersecurity for governments and critical infrastructure owners and operators in the private sector. The centre will enable faster, better-coordinated and more coherent government responses to cyber-threats.

Cannabis taxation: Bill C-74 will establish a regime for taxing cannabis. This issue has been fully and ably explored and debated by the Senate over the last number of months, and particularly intensely over the past several days. By way of a brief summary, as part of the excise tax framework, the federal government will receive 25 per cent of revenue, and 75 per cent will go to the provinces. The federal government will limit its take to $100 million for the first two years.

In conclusion, I hope I have given you some sense of how Bill C-74 supports families with children, veterans and low-income Canadians; how it contains initiatives that will contribute to the strength of the economy now and into the future; and how it addresses various matters critical to the management of the tax system and other government roles and processes. This is a budget for now and a budget for tomorrow.

Hon. Yonah Martin (Deputy Leader of the Opposition): I have a few questions for Senator Mitchell. I listened intently regarding the measures that are in the budget for small business.

We live near a Costco. Once a big-box store like that goes into an area, I know what happens in the 100-mile radius; it devastates small businesses.

We have heard from small business owners, whether they are farmers or people in urban centres. We always talk about how they are the engine of our economy, yet I don't see the kinds of tax measures and incentives for small businesses that we absolutely should focus on. They are struggling, and every level of government takes its share from what small businesses make.

My question, senator, is this: Would you please explain how toughening the rules on passive income and income sprinkling, while restricting hard-working small business owners from being qualified for the small business tax rate, helps Canadian businesses to create jobs and helps the middle class, which your government claims to help with this bill? I feel that we need to safeguard and protect and include more measures.

You mentioned lowering the small business tax rate to 9 per cent effective next year, but that's actually very delayed. We had promised to do that as a government, and the incoming Liberal government took that back. The small measure that you announced is actually a very delayed measure.

I would like to hear your explanation of the toughening of the rules on passive income and income sprinkling.

Senator Mitchell: Thank you, Senator Martin. I appreciate it. I would analyze the way in which the small business tax was reduced differently than you did. In fact, it has gone from 11 per cent to 9 per cent in two years. It's quite significant.

First of all, I'm with you; I'm very concerned about small business. The average small business in Canada has an income of about $108,000 a year. So it's not huge, and we have to be considerate of that.

However, the provisions in Bill C-74 will affect only 3 per cent of all of the businesses we're talking about — CCPCs — and 90 per cent of the tax impact will be on 1 per cent of the highest earners of that class. So the government has been very careful about how it has targeted where it puts that.

Your second point is interesting, and that is the role that small businesses play in creating jobs. You have linked that somehow to passive investment, but passive investments don't create jobs. That's exactly the point. There were many ways that CCPC owners could put money into passive investments; they were saving for other reasons, but they weren't investing in their business to create jobs, stimulate the economy and grow their business. That's exactly what is at the root of these provisions.

I will say that the government listened and responded after the July 17 announcement and actually provided for $50,000 worth of passive investments before there was any reduction in the pool of earnings that could be subjected to the small business tax. However, the fact of the matter is that these changes are all about focusing on the original public policy intention for these corporations, and that wasn't to become a parallel RRSP. It was, in fact, to take the money that you're making and, after paying yourself reasonably, or better, investing that money back into your business so you can create jobs. That's exactly what this does.

Senator Martin: I was thinking about the pressures on small business with the increase in minimum wages. I do support people making a fair wage, but I know that the small business people with whom I have spoken are quite concerned about their small margin of profit — the smallest of margins. We talk about 1 per cent and 2 per cent. These numbers mean a lot when it comes to a small business.

My second question is this: Canadians expected the Trudeau government to lower our general corporate tax rate to that of the United States. However, the government did not do so. Instead, they lowered the small business tax, making it harder for small businesses to qualify for it.

Can you tell me what measures the government is planning to implement to ensure that Canada remains competitive to foreign investors, in light of what is happening in the U.S.?

Senator Mitchell: To answer your second question first, actually, we have a lower small business tax rate — if not right now, we will certainly after these changes, the 9 per cent and so on — than the U.S. We have the third-lowest small business tax rate in the OECD. The U.S. is in the OECD, and the two countries ahead of us are Ireland and it might be Switzerland, but it isn't the U.S. We're ahead of them right now, absolutely.

Second, to your point that small businesses are right on the edge, they are, and therefore they don't have any money to invest in passive investments. So that isn't affecting them. The ones that are on the edge are the ones that will hopefully benefit from the lowering of tax and other stimulus policies that have occurred in this country and in its economic policy. We have growth now averaging 2.7 per cent per year. That's up almost 50 per cent over previous years. We have created 600,000 jobs in this country in the last two years. It's unprecedented. They are very good jobs.

I'm deeply concerned. A lot of Alberta's economy is driven by small businesses. However, it isn't the small businesses that are on the edge that will be affected by passive investment, because they don't have the money to make the investments.

Senator Martin: Thank you. I think that whatever we can do to support small businesses, we should do, in addition to what is being done. I will take the adjournment of the debate in the name of Senator Mockler.

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

CRIMINAL CODE

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boniface, seconded by the Honourable Senator Sinclair, for the third reading of Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts, as amended.
>
> And on the motion in amendment of the Honourable Senator Gold, seconded by the Honourable Senator Pate:
>
> That Bill C-46, as amended, be not now read a third time, but that it be further amended in clause 15,
>
> (*a*) on page 23, by replacing line 35 (as replaced by decision of the Senate on June 4, 2018) with the following:
>
> "**320.27 (1)** If a peace officer has reasonable grounds to";
>
> (*b*) on page 24, by adding the following after line 17:
>
> "**(2)** If a peace officer has in his or her possession an approved screening device, the peace officer may, in the course of the lawful exercise of powers under an Act of Parliament or an Act of a provincial legislature or arising at common law, by demand, require the person who is operating a motor vehicle to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of that device and to accompany the peace officer for that purpose."; and
>
> (*c*) on page 34, by replacing line 18 (as replaced by decision of the Senate on June 4, 2018) with the following:
>
> "conducted under paragraph 320.27(1)(a); and".

Hon. Mobina S.B. Jaffer: Honourable senators, I rise today to speak on Bill C-46 and on the amendment introduced at the Standing Senate Committee on Legal and Constitutional Affairs that removes a provision allowing police to conduct roadside Breathalyzer tests when they suspect that a driver may be impaired by alcohol. I would like to thank Senator Gold, Senator Pratte and Senator Boniface for their work on this amendment.

I begin by saying that we must be pragmatic as we go forward in considering whether we should include mandatory screening in Bill C-46.

• (1900)

When I hear the debate on mandatory screening, I can't help but think about when I was a young lawyer and we had, for the first time, very strict alcohol impaired driving legislation. Those strict laws, then education, led to cultural change. And then we had further stricter laws, education and a cultural change. We went from people not being offended to see people driving while impaired to now we absolutely don't accept it.

I speak on this bill because I believe it's really important that we look at what mandatory screening will do. I support this amendment as I believe that we have a crisis in Canada. Right now, Canada has a serious impaired driving problem. According to the U.S. Centers for Disease Control, Canada ranks the highest out of 19 countries for impaired driving deaths. On average, three to four Canadians die every day due to impaired drivers. As we go forward to legalize recreational cannabis, we need to make sure that this number does not increase. Right now, drugs are already involved twice as often as alcohol in fatal crashes. Once Bill C-45 is passed, this number could easily rise.

Honourable senators, Canada's current system of breath testing is one of selective breath testing. Only drivers reasonably suspected of driving while impaired can be tested. Studies have shown that such programs miss a significant portion of legally impaired drivers. They miss 60 per cent of drivers with blood alcohol concentrations over the criminal limit of 0.08. When impaired drivers are permitted to drive on our roads, they continue to present a threat to themselves and to Canadians. In other words, when we fail to detect impaired drivers, we are putting countless Canadians at risk.

This has to stop. Evidence shows that mandatory screening works and that it plays an important role in preventing road deaths and injuries. For example, in Ireland, road fatalities dropped by almost 40 per cent four years after mandatory screening was adopted. If we experience similar success in Canada, that would save 510 lives per year.

I also share a concern held by several senators here about how the mandatory testing system will impact Canada's minorities. Our history shows that minorities are often the people who are hurt most by these types of mandatory stops. As you will remember, I asked Senator Gold this question as I was very concerned about people being stopped. In my community, we call it driving while Black. Between carding and mandatory traffic stops, there are many instances where our police forces have targeted visible minorities and our Aboriginal people. In fact, law enforcement has a responsibility to ensure fair, equal and appropriate application of the law.

I am not saying that our police forces are racist. However, there is strong data showing that across Canada, detention powers like those granted under those mandatory screening provisions have resulted in racial discrimination against vulnerable groups and Aboriginal people.

Honourable senators, for that reason, my support for this provision comes with a condition. If we are going to implement mandatory screening for impaired driving, we must also have strong accountability measures in place that can hold our police forces accountable for their actions. We are giving them tremendous powers, but we expect them to use them responsibly and we expect them to not treat one group of people differently from another.

We have already recognized the need for our police forces to be answerable when we give them unprecedented powers. When we voted on this bill at second reading, it already contained a mandatory review of its overall impact after three years. When Bill C-46 came before the Standing Senate Committee on Legal and Constitutional Affairs, we also agreed that this review should include a specific disposition to monitor its impacts on minorities and Aboriginal people. These are both important first steps, which will ensure that our police forces know that they cannot use Bill C-46 as an excuse to engage in racial profiling. We have found it unacceptable before, and we'll continue to find it unacceptable in the days to come.

Honourable senators, I know you will agree with me that our Canadian values do not have a place for racial profiling. I'm worried that these reviews will not have the information that they need to truly keep track of racial profiling.

When representatives from the Department of Justice came before us, they told us that no records are kept of stops that do not lead to criminal consequences. In other words, if a person is stopped and subjected to a frivolous drug or alcohol test and then sent on their way, there is a very high chance that we may never hear about it. It would be left up to the individual police officer's discretion whether they wanted to record the incident and keep track of racial data.

When this was brought up for the issues of carding and mandatory traffic stops, the police showed great reluctance to do so. We cannot expect it to happen here. There have to be records kept.

Simply put, even with these reviews in place, there is very little chance that we will have data that can accurately tell us what is happening across the country. Worse yet, we cannot even rely on our police forces to keep good data on this important subject. This is unacceptable. If we are serious about reviewing how this bill will impact minorities, we need accurate data to track it. If we cannot rely on our police forces to keep track of this data, then we need to take action and ensure that it is tracked elsewhere.

Honourable senators, I believe that this problem can be solved without an amendment to Bill C-46. Public Safety Canada has the power to create a complaint-based independent civilian framework that can track and record incidences of racial profiling related to these roadside tests, and I strongly urge Minister Goodale to do so once this bill is passed. This would not be an unprecedented step.

We already have several complaint systems in place to monitor our police forces whenever they act in a way that violates the rights of Canadians. For example, the RCMP has the Civilian Review and Complaints Commission. British Columbia also has the Office of the Police Complaint Commissioner and the Independent Investigation Office. If our government is serious about protecting our visible minorities and Aboriginal people from racial profiling, then it must ensure Canadians have somewhere to go when they are subjected to these mandatory tests in a frivolous way.

Honourable senators, I would like to stress that I am not opposing the provisions of Bill C-46 that would allow for mandatory screening. This is something we need. I believe this is something we need because it will save lives. There is simply no denying that Canada has an impaired driving problem, and this provision could easily save hundreds of lives every year. It's simply too important of a measure not to implement.

However, I also understand that tremendous powers, like those granted by Bill C-46, must be balanced with accountability for the police forces that will wield them. We all agree that Canadians deserve a fair review process that can track Bill C-46's impact on our most vulnerable people. Let us ensure that this review process is supported with strong data.

That is why I urge all of you to join me in calling for a complaints-based independent civilian framework that can track racial profiling. We must preserve the balance between the safety of Canadians and their constitutional rights.

Honourable senators, I would humbly ask our Human Rights Committee to do a study on this to make sure when the three-year review happens, we will have already done the work to be able to review this bill carefully.

Honourable senators, I'm urging Prime Minister Trudeau, Minister Goodale and Minister Jody Wilson-Raybould that with the tremendous powers we may be giving to the police forces, they are going be held accountable to protect minorities. By giving police the authority, I am challenging the police commissioners and the chiefs of police right across the country that we will be watching. With these powers, you will have to give accountability.

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

Senator Jaffer: Yes.

Hon. Marc Gold: Thank you very much for your speech. I welcome your support for the three-year review, and I support your call for a complaints-based independent civilian framework to track and record incidences of racial profiling related to roadside tests. That is a salutary recommendation.

• (1910)

Do I understand correctly that you nonetheless support my amendment to reintroduce mandatory alcohol screening into Bill C-46?

Senator Jaffer: Yes, Senator Gold, I support the amendment, because I listened to you, spoke to Senator Pratte and to Senator Boniface, and it really struck me how important it was to have mandatory screening.

The day you spoke, if I can share something personal, I was sitting here and thought I may have the power to persuade some people about how important mandatory screening is. I couldn't think of anything but my grandchildren. Today, I have an opportunity to maybe make a difference in the lives of our grandchildren and our children. That's why I support this amendment.

Hon. Jane Cordy: I listened carefully to your speech, because I have been really thinking about whether I would support the amendment. I will be supporting the amendment, Senator Gold, before you ask. In fact, I went to dinner last night with my husband, and this is what we were discussing. I'm not sure he liked that's how we spent our time together, but that's what we did nonetheless.

You're right: We do have screening of impaired drivers, but there has to be reasonable probability that the driver is impaired. From what you have said, and from what I've read particularly over the last week, many lives are lost because they are skipping a lot of the cars on the highway. I've read that mandatory alcohol testing will indeed save lives. I didn't hear the figure "510 a year" until you spoke, but I had read that it will save a number of lives.

The Hon. the Speaker *pro tempore*: Is there a question?

Senator Cordy: Yes, there is.

I was wondering about this framework for accountability. In Nova Scotia, we also refer to it as "driving while Black." That's of great concern to me. How would this framework function? You talked about a three-year review and about the Human Rights Committee, of which I'm a member, dealing with the whole issue of racial profiling.

Senator Jaffer: Thank you very much for your question. Our Human Rights Committee is looking at many issues. I'm not a member, so I humbly ask that you look at this issue and help set up a framework.

There already is the understanding around a provision for Minister Goodale to set up a complaints process. I'm saying let's set up a complaints process for three years. It would give people who are affected by this the power to say, "You're not going to do this. If you do, I will complain." It will hold our police accountable. By having both sides feel empowered, we will save lives.

The Hon. the Speaker *pro tempore*: Senator Jaffer, you have one minute left.

Hon. Paul J. Massicotte: Very quickly, how tight is the research between the test you are proposing and the actual benefits, in your mind, and the research shared with many of us? How good is that information?

Senator Jaffer: I'm not a researcher, and I don't know how good the research is, but I do know I can look in the eyes of my brothers and sisters and say, "I did not forget you." It's important to save lives, but I am also trying to protect rights.

Senator Massicotte: Having said that, as you know, the courts will have to interpret all of this to consider if the infringement upon personal freedom is offset by the benefits to society. You have to look at the information available to us and say whether it's significant.

There is a lot of experience in New Zealand and Australia, but it isn't clear in my mind, because there are a lot of factors that are varying constantly. Can you comment on that?

Senator Jaffer: That's why I'm saying do it for three years and then review it. After three years, we will know how effective it is, and we will be able to set aside some money for research and have more information.

The Hon. the Speaker *pro tempore*: Your time is up, Senator Jaffer.

Senator Pratte, on debate.

Hon. André Pratte: Marie was in the driver's seat, her husband Yves at her side. Their three lovely girls — Émilie, 10; Virginie, 6; and Rosalie, 3 — were sleeping in the back. They were on Highway 20, south of Montreal, driving back home after dinner at Marie's sister's. Suddenly, Marie saw white headlights in front of her, coming fast toward them. A car had entered the highway in the wrong direction. The driver of that car was so drunk he had not realized his mistake.

The impact was horribly violent. Marie woke up. Yves was motionless, his head slumped backwards. Marie looked at their daughters in the rear. Rosalie was screaming, Émilie was crying and Virginie, unbelievably, was still asleep. Marie managed to get out of the car. Her body was aching. She spit crushed glass from her mouth.

After she arrived at the local hospital, she was told that Virginie had been transported to a trauma centre. She had not been asleep; she was in a deep coma.

Then a doctor came to see Marie. He spoke softly. Yves, the love of her life, was dead. Marie's world fell apart.

At Sainte-Justine children's hospital in Montreal, family members and friends took turns at Virginie's bedside, hoping against all hope that she would wake up.

Honourable senators, at least 600 Canadians die each year in a road accident involving a driver intoxicated by alcohol. We've had some success in improving these tragic statistics. Ten years ago, that number was closer to 1,000. Still, 600 persons killed on the road is equivalent to two Boeing 767 crashes in Canada every single year.

The Government of Canada's interest in taking additional measures to face this situation predates the tabling of Bill C-46. Three years ago, the previous government tabled Bill C-73, which contained some of the measures that we find today in Bill C-46. Bill C-73 died on the Order Paper when the 2015 elections were called. After the elections, Conservative MP Steven Blaney tabled a private member's bill, Bill C-226, which proposed mandatory alcohol screening, MAS. It would later become part of Bill C-46 before being removed by the Conservatives at the Legal Affairs Committee.

Here's what Mr. Blaney had to say about mandatory alcohol screening on April 13, 2016:

> Studies have shown that roadblocks do not work in over 50% of cases because drivers manage to hide any signs of intoxication. . . . As legislators, we have the unique opportunity to put an end to the harm drunk driving causes.

Appearing at committee on February 6, 2017, Mr. Blaney was asked by Mr. Nicola Di Iorio:

> Did you ask your caucus for its support on this bill, and if so, did you get it?
>
> **Hon. Steven Blaney:** Yes.
>
> **Mr. Nicola Di Iorio:** Your caucus supports your bill, then.
>
> **Hon. Steven Blaney:** When my bill was introduced, our justice critic, Mr. Nicholson, gave it his full support.

Therefore, less than two years ago, the Conservative caucus supported mandatory alcohol screening. What has changed since then? Why did our Conservative friends on the Legal Affairs Committee vote to remove mandatory alcohol screening? Have the life-shattering consequences of impaired driving diminished in recent months? Of course not.

Three reasons are given: One, the measure could be deemed unconstitutional by our courts; two, it will lead to what one senator called "a huge number of court challenges that will exacerbate Canada's court delay crisis"; and three, it could lead to increased racial profiling.

I will leave the constitutionality issue to the highly qualified lawyers who sit in this chamber. Allow me, however, to remark that in 2009, the House of Commons Justice Committee, formed by a majority of Conservative members, recommended the introduction of mandatory alcohol screening, believing it would pass the Charter test. They said:

• (1920)

> Rights are impaired as little as possible since the stop and request for breath is brief and non-invasive . . . . [I]n terms of proportionality between the objective and the limitations, the goal of reducing the many types of damage related to impaired drivers is significant and the effort required by drivers to contribute to a solution is minimal.

Today, as was the case then, academics that examine the constitutionality of mandatory alcohol screening arrive at differing conclusions. In such circumstances, I don't believe we senators should try to guess how the Supreme Court would rule. Rather, we should make what we think are good policy choices, ensuring as best we can that these choices respect the Charter. In other words, we should act as legislators, not would-be judges.

In my view, here are some of the facts that should enter into our analysis.

First, the still unacceptably high number of deaths caused by alcohol-impaired drivers warrants the taking of further measures.

Second, in the many countries where it has been put in place, MAS has led to a significant reduction in the number of alcohol-related road fatalities. The studies and data on that count are both rigorous and overwhelming.

Third, while there is no doubt that, as the Ontario Court of Appeal has ruled in *R. v. Wills* in 1992, "The state capture . . . of the very breath one breathes constitutes a significant state intrusion into one's personal privacy," the violation of privacy involved in breath testing is limited if you compare it to other infringements. I'm thinking, for instance, of screening at Canadian airports and border crossings, where the belongings and bodies of millions of travellers are frisked, X-rayed and searched, procedures which have been validated by our courts.

Fourth, the Supreme Court has asserted that the expectation of privacy is lower when one drives a car than in other circumstances.

Taking these facts into account, my own conclusion as a legislator is that the infringement of drivers' privacy rights involved in mandatory alcohol screening is justified by the high probability that mandatory alcohol screening will save numerous lives.

Mothers Against Drunk Driving, or MADD, which is known to publish serious statistical work, estimates that MAS could save up to 200 lives and 12,000 injuries each year in Canada. Let's say they are much too optimistic and mandatory alcohol screening is only half as effective as they predict. Still, that would be 100 lives saved each year in Canada. Can you think of many legislative measures within our purview that have this kind of life-saving potential?

[*Translation*]

Senators who voted to remove mandatory screening from Bill C-46 fear the policy will give rise to so many constitutional challenges that they will clog up the courts. Naturally, there will be challenges. Given the massive delays undermining the efficiency of our justice system, this is a legitimate concern. However, we also need to consider the fact that, if what happened elsewhere is any indication, we should see a decrease in the number of impaired drivers and the number of fatal accidents and injuries they cause. That means there should be a decrease in the number of potential court cases.

[*English*]

I note in passing that our friends opposite were not always so sensitive to concerns expressed that new laws would be challenged in court. For instance, when they were in government, they were repeatedly warned that mandatory minimum sentences would be ruled unconstitutional.

When Bill C-2 was being debated a few years ago, the Canadian Bar Association asserted: "The Bill is constitutionally suspect. It will tie up the criminal justice system for years in procedural confusion." The Criminal Lawyers Association said, ". . . this will foster a cottage industry of litigation."

Such concerns did not stop the government of the day from pushing the bill through. The then Minister of Justice, Rob Nicholson, dismissed the worries, stating:

> Any time you change the Criminal Code in this country, you are always open to the possibility that someone can challenge it.

[*Translation*]

The third reason given for removing mandatory alcohol screening is the fear that it could open the door to racial profiling of certain minorities. I share that fear. We absolutely need to ensure that mandatory screening doesn't magnify the problem of profiling. However, the solution isn't to eliminate mandatory screening. Rather, it is to keep a close eye on the situation in order to prevent the problem from happening, measure its severity if it does, and take appropriate steps if it seems to be getting worse.

That is why the Standing Senate Committee on Legal and Constitutional Affairs adopted an amendment to guarantee that profiling is expressly included in the issues that the government is required to report on, with supporting statistics, in its review of the implementation of the act three years after Royal Assent.

[*English*]

Therefore, in my opinion, the three reasons advanced to remove mandatory alcohol screening from this bill do not resist close scrutiny.

First, a robust case can be made that mandatory alcohol screening is constitutional and that it is a reasonable limit to drivers' privacy rights, considering its benefits.

Second, it is not at all certain that it will lead to an increase in the number of impairment cases in our courts; in fact, the opposite may well happen.

Third, the Legal Affairs Committee has adopted a reasonable amendment that addresses the important concerns regarding profiling.

Virginie's eyes were open, but it was as if she did not see what was in front of her. She had been like this for days.

And then, one morning as I was at her bedside, she turned her head towards me and said, as if nothing had happened, "Hello!" Overjoyed, I replied, "Hello!" But she had already plunged back into her secret world.

This was the first indication that Virginie would, at some point, come out of her coma. And thankfully, she did.

It has been 22 years since Yves' death. I can report that Marie has successfully rebuilt her life and that she and the three girls, all adults now, of course, are doing well.

However, the first years were extremely difficult. It required a great deal of courage and determination for Marie not only to find the will to live, but also to raise her children as a single mother, deprived of her partner not by fate but by an irresponsible, drunk driver.

Alcohol-impaired driving wreaks havoc in hundreds of Canadian families' lives each year, families like Marie's. We owe it to the victims of those tragedies, the ones who are killed and the ones who survive, to do our utmost to address what former Justice Minister Peter MacKay called a "scourge . . . that is causing carnage on Canadian highways."

Honourable senators, there is one very simple, non-partisan reason to support this amendment, which would put mandatory alcohol screening back in Bill C-46. It is the same reason invoked by the House of Commons Justice Committee when it recommended mandatory alcohol screening in 2009, the same reason given by Mr. Blaney in 2015 when he introduced Bill C-226, which included MAS and the same reason supporting the minimal infringement of drivers' privacy rights it would involve.

The reason is — and there is absolutely no doubt about this — mandatory alcohol screening will save lives.

Thank you.

[*Translation*]

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

Senator Pratte: Yes, of course.

[*English*]

Hon. Art Eggleton: You make a very compelling case, senator, with a very compelling story, as well, about an actual case.

Regarding this whole question of Charter rights, I understand there was a media report yesterday that says a woman arrested and charged with drinking and driving near Yorkton, Saskatchewan, has been found not guilty after a Provincial Court judge ruled her Charter rights were violated in the arrest. The defence argued the officer arbitrarily detained the 28-year-old woman and did not have reasonable suspicion, et cetera.

Quite aside from that, in terms of a practical situation and how these lives would be saved, in Ontario we have what is called the R.I.D.E. Program, where people are pulled over routinely. If there is a reasonable suspicion then, in fact, they can be —

• (1930)

The Hon. the Speaker *pro tempore*: Senator Pratte, do you require five more minutes to answer the question?

Senator Pratte: Yes, please.

The Hon. the Speaker *pro tempore*: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Eggleton: So reasonable suspicion is what is used now in those cases. In other words, everyone that is stopped would have to go through the test whether they had had any alcohol or no suspicion or whatever.

Is there reason enough to believe, do you think, that that many lives would be saved versus the violation of the Charter of Rights here, which a judge has already found in this particular case? Can you comment on that situation?

Senator Pratte: Yes, Senator Eggleton, it has been demonstrated by research that officers very often miss cases of impaired drivers who are very good, I suppose, at hiding that they are intoxicated; therefore, the officer cannot form a reasonable suspicion because he simply misses that the driver is impaired. Some research shows that in 50 per cent of cases they actually miss the signs of impairment. The whole reasoning behind mandatory alcohol screening is that it prevents missed signals and that you catch more drivers who are impaired in this manner than under reasonable suspicion.

Hon. Frances Lankin: Senator Pratte, thank you for your intervention in this, and I appreciated your thoughts. I am struggling with how I'm going to vote on this bill. I have had lengthy conversations with Senator Gold, and I have spoken with Senator Wetston. I have had a short conversation with Senator Batters, understanding the reason behind her moving the amendment.

I have four questions. I wasn't on the committee so I have not seen all of the research. I have read some, but I haven't gotten through it all yet. I'm concerned about this estimate of 50 per cent are not caught and what the validity behind that is.

What does it take to catch more people? I understand some statistics were presented to the committee that said you would have to stop 250,000 people to get 250 people who are impaired. Now, that's a lot of people to get off the road, but 250,000 is an impossible number to stop in this sense. That's a 1 per cent efficiency rate. Is that a good use of police resources?

Certainly we have accomplished a lot by the work of advocacy groups like MADD and others who support them, and strong public messaging, involvement of liquor marketers, distribution outlets. In those other jurisdictions, were they doing that sort of thing, too, or was the change absolutely related to the introduction of mandatory screening? I don't know the answer to that, whether there were other factors at play.

Lastly, is this potentially a placeholder for use with respect to cannabis screening, which a lot of people believe is what is happening? If so, shouldn't we be looking at what we do around cannabis screening quite separately from this and not use alcohol as a backdoor in?

I'm quite concerned. It's not about arguing the constitutionality. I don't have the knowledge here enough except to say I am convinced that it probably would withstand a Charter challenge. I don't know that for sure, but I am very concerned about increasing police powers in the area of search and seizure without the right kind of balances.

I'm not sure that the cost-benefit analysis that you and other speakers are providing holds when you dig away at the statistics.

Senator Pratte: As you said, there are many questions there. The studies that I have looked at have controlled for all other possible factors. I am quite convinced they have pinpointed the impact of MAS that has now been compounded with other factors.

It is true it takes an intensive effort to get an impact. Of course it depends on how this will be applied. A jurisdiction that does not apply mandatory alcohol screening with some intensity would not get as much result. So I guess, yes, it takes some intensity in police effort. It is true.

As for being a placeholder for cannabis, the technology for cannabis is nowhere near what it is for alcohol. That would be a very long-term perspective, anyway, so I don't see it for the moment. We have a problem with alcohol. It's a very important problem.

Hon. Howard Wetston: I have heard comments this evening on the amendment that Senator Gold has brought to the chamber, and I'm benefiting from the fact that a lot of detail and discussion around a number of factors has been addressed and brought to the attention of the chamber. I'm not going to speak to those matters. I'm going to take a slightly different approach in dealing with Bill C-46 and the proposed amendment. If I may, I think you'll soon understand the approach that I'm taking and why I believe this approach may be worthwhile to consider by the chamber.

The provisions were proposed in the version of the bill passed by the other place, and if this amendment that is being proposed is not adopted by the Senate, the current regime will continue to prevail, where our law enforcement officers need to have a reasonable suspicion that an operator of a motor vehicle has consumed alcohol before they can demand a breath sample at the roadside. Now, honourable senators, as you know, there was a deep difference of opinion among the members of the Legal and Constitutional Affairs Committee as well as the legal experts regarding the constitutionality of the MAS regime.

Honourable senators, I am not a member of the Legal and Constitutional Affairs Committee, nor am I a member of the Standing Committee on Social Affairs, Science and Technology. However, I have spent much of my career in public service, and the first part of my career was as a Crown attorney, both in Nova Scotia — in Dartmouth, primarily — and in Ottawa, down the street at Kent and Wellington. I have had some experience in thinking about these issues personally from the point of view of acting as a Crown and being in the courts for those years.

In addition, as some of you know, I was honoured to serve as a trial judge of the Federal Court of Canada for six years. Now, why am I saying that? The reason why is because I have lived the experience of constitutional cases both as a Crown and as a judge on the Federal Court. It's not an easy job, by any means. Of course, you're all aware of that.

Honourable senators, the current standard of suspicion for detaining a driver, denying the right to counsel and demanding a breath sample has been found to infringe legal rights under the Charter. There is no question about that. However, these infringements have been found, on a balance of probabilities — I want to underline that — to be reasonable limits that can be demonstrably justified in the free and democratic society under section 1 of the Charter.

That balance is one the courts need to strike in all Charter cases, particularly when section 1 is argued. But it's also important when it's not argued, for example, the reasonableness of a search and seizure where a section 1 analysis is not undertaken.

Now, governments often propose, as you know, legislation that may, at first blush, be prima facie unconstitutional — at first blush. It's not an intuitive reaction, but it can be felt to be that way. That uncertainty is often resolved on the basis of the section 1 analysis by the courts. If you had an opportunity to review all the cases involving search and seizure, you would not find many that have been resolved under a section 1 analysis. Most of them have been involved on the reasonableness of the search and seizure. The most recent well-known case in that area is *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*. It is more a matter of pointing the case out to you rather than getting into an analysis of the comparison of that case to what we have here. That was a regulatory offence. This is criminal law that we're looking at with respect to this provision.

• (1940)

A section 1 analysis is unfailingly complex, it's legally intense and invariably contextual. What do I mean by it's invariably contextual? It is never hypothetical. It's a fact-driven exercise not only based on expert opinion and evidence that you might hear in a committee. Most importantly, all witnesses, expert or otherwise, are subject to the most valuable tool in litigation, and that is cross-examination. That is the most valuable tool. That's important even in Charter cases. That was also important in the *Goodwin* case I just mentioned.

Honourable senators, the Senate and its committees have a responsibility to ensure that proposed legislation respects the Charter and its values. There can be no doubt about that. I don't question the authority to make amendments. I have no doubt about that. I agree with Senator Pratte. It's important to distinguish between the legislative role and the judicial role, and I'm going to get to that point.

In this instance, your committee considered evidence from a number of witnesses who differed in their opinions as to whether the mandatory alcohol screening regime could withstand scrutiny and be saved as a reasonable limit under section 1 of the Charter if it gets to a section 1 analysis.

As you know, the central task in the interpretation of legislation, guaranteeing fundamental rights, legal or otherwise, and freedoms, is to reconcile the individual rights with the interests of the public at large. The individual's rights versus society's. The effect of the Charter has been to shift an important share of the responsibility for this test from Parliament to the judiciary. Let me emphasize that again: to shift from Parliament to the judiciary.

In my opinion, the determination as to the constitutionality of the mandatory alcohol screening regime should be left to the courts. It should be left to the courts for this reason: The courts are independent, they are objective and have the expertise to deal with matters of liberty, including search and seizure, right to counsel and detention. I don't think anyone in this chamber could disagree with that point. That is their role. That is their expertise.

Colleagues, I would ask for your indulgence to mention briefly, if I may, three Charter cases that I had the privilege of deciding when I was on the Federal Court. A number of cases went up to the Supreme Court. I will mention three. Forgive me for mentioning these cases, but I can tell you they were challenging. It was hard work. The decisions were extremely trying and very difficult. I think you would all appreciate that, particularly the lawyers who were in this chamber.

All three cases were appealed to the Supreme Court of Canada. I'll mention them briefly.

The first was a search and seizure case where an alleged violation of section 8 of the Charter was argued. I decided that there was a section 8 violation. There was no section 1 analysis and no legislation involved. It was a letter of request to Swiss authorities. That decision was upheld by the Federal Court of Appeal. However, the Supreme Court of Canada, in a 5-2 decision, overturned my decision. I hold no grudges about that. I did in the beginning, but no longer. But here is my point: Two judges dissented. Senator Pratte was more or less getting at this point.

The second case involved another Charter violation of section 3 concerning the voting rights of inmates serving a sentence in federal prisons of two years or longer. I found the denial of voting rights to these inmates was overwrought and failed the section 1 minimal impairment test. There was a lot of evidence in that case from criminologists, philosophers, lawyers and opinion evidence. It was a long time ago, but I still remember it.

In this instance, my decision was overturned by the Federal Court of Appeal. I got over that as well. Maybe that's the reason I left. I can't quite remember.

However, the Supreme Court, in a 5-4 decision, overturned the Court of Appeal's decision. My point, once again, is four judges dissented.

The third case involved an alleged violation of the equality section, section 15.(1) of the Charter, regarding the application of a section of the Public Service Employment Act during open competitions for various positions within the public service. I found a violation of section 15.(1), but I held that the legislation could be justified under section 1 of the Charter. I did a section 1 analysis.

The Federal Court of Appeal dismissed the appeal as did the Supreme Court of Canada in a 6-3 decision. I was pleased about that. Senator Dalphond, I put my pleasure aside. The point, once again, is three judges dissented. In each of these cases were dissenting judgments. What is the point here?

The reason I have referred to these cases is not to relive my past; it's to underscore the point that deciding constitutional cases is challenging and complex, but also the outcomes are highly unpredictable. In all three cases, there were dissenting opinions, much like the Standing Senate Committee on Legal and Constitutional Affairs experienced when it amended clause 5 of Bill C-46. If clause 5 was not amended, it is possible that mandatory alcohol screening could be justified under section 1 of the Charter. That should be clear from what I am suggesting about these constitutional cases.

Of course if Bill C-46 passes without mandatory alcohol screening, the courts will have no opportunity to determine its constitutionality, and it should be given that opportunity. That is its role.

Charter cases are rarely clear-cut. Reasonably informed people will disagree as these judges have even at the Supreme Court of Canada. Moreover, even if the court finds that the MAS is not a reasonable limit that can be demonstrably justified, the court often will provide time to amend, in some cases, and certainly provide sufficient opinion that might guide the government on what might survive and can be demonstrably justified and is less of an impairment on the legal rights and freedoms of individuals. They should be given that opportunity.

So whether the trial court declares rightly or wrongly will only be determined by later judgments. The safety net in our democratic legal system is that another set of judges will have an opportunity on appeal. Interpretation is important, but the application of the law may be even more critical. That's an important point that I must emphasize. One can interpret the Charter, but its application is what is critical. In my opinion, that's where we get dissenting opinions.

So it is likely MAS will be attacked. It is very likely if the legislation is enacted with MAS provided. In this regard, as you know, the courts often consider the detailed, high-quality Senate reports and other materials to inform their judgment regarding Charter cases. The courts will review what the Senate has done. They will review the reports for guidance as to the interpretation that has led to this point and the amendment proposed by Senator Gold. That likelihood should not be lost on honourable senators.

Honourable senators, where the government has brought forward legislation in good faith and on a prima facie basis impinges upon the Charter and it is clear that there are questions of minimal impairment and proportionality to consider, I believe it is preferable. As a matter of fact, I believe it is democratic because that is the nature of our legal system. My point being that it's preferable to allow the courts make that determination.

• (1950)

We often say the courts should defer to Parliament. This is a situation in which Parliament should defer to the courts because they have the constitutional capacity. They can hear the case. They can receive the evidence. They can put witnesses under cross-examination by counsel. Much of the court's debate about the treatment of section 1 of the Charter revolved around the issue of deference, but it was deference the other way.

When should the courts intervene? When should the courts leave it to the legislatures? That is not what we were asked to consider here. In this case, the courts may not be asked to draw the line, if MAS is not introduced, between the protection of individual rights and respect for the legislature to govern in the broad public interest. That opportunity will be taken away, and it should not be. So if the courts had the opportunity to consider minimal impairment and proportionality, they could find a legitimate purpose to the law. If not, the legislation will be struck down.

As I have suggested, the court demands an extensive factual record. This is important because it's always contextual. In the past, the Supreme Court —

The Hon. the Speaker: Sorry for interrupting you, Senator Wetston, but are you asking for five more minutes?

Senator Wetston: Yes.

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

Hon. Senators: Agreed.

Senator Wetston: In the past, the Supreme Court has made it clear that the context of a particular case is of fundamental importance in the application of the section 1 of the Charter.

Honourable senators, does the Senate have the factual context? In this regard, rather than the courts deferring to the legislature, as I said, the legislature should defer to the courts. As such, I will vote to support Senator Gold's amendment.

The Hon. the Speaker: Senator Wetston, will you take a question?

[*Translation*]

Hon. Claude Carignan: In a 2017 report prepared by the Transportation Safety Board of Canada following a crash involving a Carson Air aircraft, the board recommended extending random drug and alcohol testing to airline pilots. The Criminal Code impaired driving offences could also apply to airline pilots, train engineers and ship operators. Do you believe that random testing should be extended to people working in those positions?

[*English*]

Senator Wetston: That's a difficult question in the context of what is being suggested here. I mean, I think we're discussing a very specific fact dealing with drivers of automobiles, and we all recognize that automobiles can be weapons, as Senator Pratte has pointed out. So to extend your suggestion would require, I think, a fuller understanding of what exists today. My bottom line would be that any individual operating in the circumstances that you describe should be subject to the opportunity to ensure that they are not functioning in an impaired capacity.

I think the point I was trying to make here, Senator Carignan, is that, simply put, there's such compelling evidence associated with motor vehicles and deaths on our highways. Other senators have referred to this. The courts have constantly referred to this in R.I.D.E. programs, and, if you review the *Goodwin* decision, you'll see once again the compelling evidence associated with this.

Now, in *Goodwin*, there was a majority and a dissent. Chief Justice McLachlin dissented and didn't get to a section 1 analysis. The point here is that is the trade-off. That's the analysis that needs to be made. There may be circumstances that come before the courts if the courts have an opportunity to suggest that there is a circumstance in which the minimum impairment test has not been met. I go back to what I was suggesting before. In the circumstances that we're discussing with respect to this amendment, I think it makes absolute sense to me that public safety is the key, but other senators have recognized and pointed out the importance of other necessary oversight to ensure that other unfortunate matters do not take place.

(On motion of Senator Mercer, for Senator Joyal, debate adjourned.)

ENDING THE CAPTIVITY OF WHALES AND DOLPHINS BILL

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Gold, for the third reading of Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), as amended.

Hon. Dan Christmas: Honourable senators, I rise today to speak briefly in respect of our colleague former Senator Wilfred Moore's Senate public bill, Bill S-203, which seeks to end the captivity of whales and dolphins.

I also want to recognize and thank our honourable colleague Senator Murray Sinclair for taking on the sponsorship of this legislation following the retirement of Senator Moore.

This bill has significance for me in a number of ways. Bill S-203 was the first piece of legislation I studied upon arriving in the Senate early last year.

I've learned the ropes of legislative review and working in committee during the consideration of this bill by the Standing Senate Committee on Fisheries and Oceans, and, for this, I am quite grateful.

Second, Bill S-203 is a piece of legislation that had unintended consequences that impact the Indigenous community, that, until dealt with by means of an amendment enabling the addition of a non-derogation clause, threatened Aboriginal harvesting rights otherwise protected under section 35 of the Constitution.

Third, and perhaps most important, our committee's study of Bill S-203 unwittingly unearthed the reality that private member's bills, both here and in the other place, are not subject to any form of application of the duty to consult with Indigenous peoples.

I view this as a large gap in relation to Parliament's respecting and committing to the duty to consult. I noted particularly the unwillingness of DFO officials to urge the undertaking of such consultation around any matters other than government business.

I wish to put it on the record that, as we struggle to understand and determine how the Senate can and will deal with Indigenous reconciliation, willingly embracing the duty to consult with Indigenous peoples is something that must absolutely occur across Parliament and throughout the whole of government.

So, honourable colleagues, the review of this bill has been extremely enlightening to me. If I may enlighten this chamber further this day, I suggest that the study of Bill S-203 has been nothing short of historic.

In consultation with the Library of Parliament, we have learned that the standing committee held 18 meetings and heard from 34 witnesses in its study of Bill S-203, which were the most

meetings and witnesses heard for the study of a Senate public bill by the Standing Senate Committee on Fisheries and Oceans since the Thirty-fifth Parliament over 20 years ago.

What's more, the study of this bill and its progress through the Senate has been laboriously slow, over 29 months to get us this far, as Senator Sinclair reminded us earlier.

Now, I do not claim to be, as yet, a seasoned parliamentarian, but I know that constructive debate, both at the committee table and in the Senate Chamber is absolutely fundamental to the effective understanding of parliamentary affairs, in keeping with our constitutionally mandated duties.

For this reason, I am pleased that the bill is in motion, and I'm thankful to be speaking to its provisions this evening.

• (2000)

It's no secret that despite the Herculean efforts shown in hearing from as many witnesses as we did, there was no clear and absolute consensus reached by the committee as to whether captivity in and of itself leads to harm.

However, please allow me to share with you my position from my Indigenous perspective. In my Aboriginal upbringing, we were always taught that animals are our brothers and sisters. They are living beings, like us. They have their own spirits. They have their own families. They have their own language. When I think of it that way, I see cetaceans as equals.

Given this, as I listened to the questions and to witness after witness testifying, I was trying to decide in my own mind what the criteria are for judging this issue. A lot of the arguments talked about the human need to research the species. And yet, given my history steeped in my own culture, the other side of the question I wrestle with is that I wish it were possible to get the testimony of a cetacean.

If we could talk to a cetacean and ask these questions, we would know for sure. There would be no need to ask scientists and witnesses. But when I see it the other way, when I see cetaceans as objects, as things that we would have our will over, we would dictate how they would live and how they would be.

When I think of them as objects then, yes, it does make sense that we should put them in pens and use them for research and education, but something tells me in my mind and heart that that is the wrong approach. We really have to see cetaceans as our equals, as living beings. If I had the opportunity to ask a beluga, I think I would ask, "What is best for your family?" I would be interested to find out what the answer would be, but obviously that is unanswerable.

Albert Einstein once said:

> Our task must be to free ourselves by widening our circle of compassion to embrace all living creatures and the whole of nature and its beauty.

Regarding compassion and returning for a moment to the Aboriginal perspective, some at committee have mentioned Aboriginal harvesting of whales. I would agree there is suffering involved in harvesting of animals, but in the Aboriginal culture, harvesting was always done with respect and sometimes with tradition and ceremony. In our communities, we would be grateful that a creature had given its life for the sustenance of our people. We understand harvesting involves suffering and, unfortunately, it also involves death.

In my mind, then, an animal giving itself for that reason is one thing, but to have an animal in confinement over an extended period of time with its only purpose filling a human need for research and education doesn't seem to balance with the overall dignity and respect for the animal and its freedom.

These thoughts were echoed in the final report of the Truth and Reconciliation Commission, which notes that:

> Reconciliation between Aboriginal and non-Aboriginal Canadians, from an Aboriginal perspective, also requires reconciliation with the natural world. If human beings resolve problems between themselves but continue to destroy the natural world, then reconciliation remains incomplete. This is a perspective that we as Commissioners have repeatedly heard: that reconciliation will never occur unless we are also reconciled with the earth. Mi'kmaq and other Indigenous laws stress that humans must journey through life in conversation and negotiation with all creation. Reciprocity and mutual respect help sustain our survival.

As I close, I will remind you of the wisdom of Mahatma Gandhi, who said:

> The greatness of a nation and its moral progress can be judged by the way its animals are treated.

I urge you to let us demonstrate a hopefully shared commitment to greatness and moral progress by adopting Bill S-203 and ending the captivity of whales and dolphins without any further delay.

Honourable colleagues, on behalf of Senator Sinclair, I would respectfully ask that together we attend to this legislation as soon as possible and seek to do so by means of a vote in this place by the end of the day tomorrow. *Wela'lioq*. Thank you.

(On motion of Senator Martin, for Senator Sinclair, debate adjourned.)

SCRUTINY OF REGULATIONS

FOURTH REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report, as modified, of the Standing Joint Committee for the Scrutiny of Regulations, entitled *Accessibility of Documents Incorporated by Reference in Federal Regulations — Reply to the Government Response to the Committee's 2nd Report*, presented in the Senate on May 22, 2018.

Hon. Joseph A. Day (Leader of the Senate Liberals) moved the adoption of the report.

He said: Honourable colleagues, this is a matter concerning the scrutiny of regulations, and it has been ongoing for some time. Those of us who serve on the Standing Joint Committee for the Scrutiny of Regulations — I see a number of colleagues here who will be familiar with this matter — know that these matters seem to drag on for some considerable period of time, an inexcusable period of time. This particular report is asking you to consider adopting its conclusions and requiring the responsible minister to provide us with a substantial answer to matters that are of serious importance and consequence to the public.

Let me give you some background in an area that we don't deal with that often, the area of regulations as opposed to legislation.

Early in our lives, we all learned that ignorance of the law is no excuse. The legal maxim dates back to Roman law, in fact. It's even contained in our own statutes. For example, section 19 of the Criminal Code states: "Ignorance of the law by a person who commits an offence is not an excuse for committing that offence."

• (2010)

This principle applies not only to the laws found in the statutes of Canada, which have all been debated and adopted by both houses; it also applies with equal force to regulations adopted by various government departments. Those regulations are enacted by the government under the authority we give in the individual bills we pass here in Parliament. For instance, we have been dealing at length with Bill C-45, the cannabis legislation. It contains a number of schedules that may be modified by the government through the regulatory power we give the government in the bill.

For example, subclause 151(1) of Bill C-45 states:

> The Governor in Council may, by order, amend Schedule 1 or 2 by adding or by deleting from it any item or portion of an item.

These two schedules list what is and what is not considered as cannabis. These schedules or lists of items can be modified by the government without needing to come back to Parliament for us to agree to the change.

Canadians are presumed to know what is contained in these schedules, even when they are quietly changed by regulation. Ignorance of the law is no excuse for breaching a regulatory provision. This was made clear in the 1980 decision of the Supreme Court of Canada in *R. v. Molis*. Molis and a partner, owned a private company that operated a laboratory. In 1975 they started producing a drug known as MDMA. At the time, the drug was not listed as a restricted substance in Schedule H of the Food and Drugs Act, but in June of the following year it was added to the schedule by way of regulation, and the change was published in the *Canada Gazette*. Two months later, Mr. Molis was arrested, charged and then convicted of trafficking in a restricted drug.

At trial he claimed he had not known that the drug had been added to Schedule H. He tried to give evidence that he had been as duly diligent as he could be expected in his attempts to ascertain whether it was legal to manufacture the product MDMA. The trial judge refused to allow him to present such evidence. The judge said:

> . . . ignorance of the accused as to the state of the statute and the regulations . . . provides no defence, and that evidence proposed to be introduced to prove such ignorance and any steps taken by the accused to obtain knowledge of the law, is inadmissible.

Mr. Molis appealed his conviction, but the Court of Appeal for Ontario found that, "The trial judge did not err in refusing to submit to the jury ignorance of the law as a defence." Mr. Molis appealed that ruling to the Supreme Court of Canada but his appeal was dismissed.

Speaking for a unanimous court, Justice Lamer reviewed the facts of the case. When he considered the possibility of ignorance of the law being a legitimate defence to the charge, he simply said, "I am of the opinion that the defence does not exist."

Colleagues, all Canadians, therefore, are presumed to know the law, and that includes regulations as well as the statutes we pass in this chamber. They are punished if they break that law, and it stands to reason, therefore, that they should have ready access to the law. They should have ready access to whatever documentation exists or publications exist that help ascertain what the law is that they are expected to follow.

For some years now, the Standing Joint Committee for the Scrutiny of Regulations has been examining whether Canadians have a reasonable opportunity to learn of all the federal laws that are enacted through the regulatory process. In particular, the committee has been looking at regulations that are put in place through a process known as incorporation by reference. This is a technique where a particular document or a list that is not in the text of the regulation itself is nevertheless made part of that regulation. That document or list was created by some other entity and exists somewhere outside of government.

Let me give you an example. Transport Canada has detailed regulations concerning the transportation of dangerous goods. These regulations include rules for propane cylinders and a special section for propane cylinders used in hot air balloons. Section 1.50 of these regulations provide that the normal transportation rules for propane cylinders do not apply if the cylinders are being used for hot air balloons, as long as they are, "manufactured, selected and used in accordance with CSA B340, except clause 5.3.1.4 of that standard." This is a regulation that the citizens of Canada are expected to follow.

So the citizen would say, "Well, what is CSA B340 and what does clause 5.3.1.4 say?" CSA stands for the Canadian Standards Association. This association develops standards in 57 different areas and is made up of representatives from industry, government and consumer groups. CSA B340 is a 70-page document entitled "Selection and Use of Cylinders, Spheres, Tubes and Other Containers for the Transportation of Dangerous Goods."

This entire document has been incorporated into the Transportation of Dangerous Goods Regulations. It has the force of law and we're all expected to follow it. It must be followed,

but it's not available from the government. Even online it's not available. The only place one can obtain it is on the Canadian Standards Association website, and that costs the person making the inquiry $157. Unless I'm prepared to pay $157, I cannot even tell you what is in this document.

Other government regulations refer to documents other associations and groups have created. For instance, Transport Canada also has regulations concerning sound level metres. They have to meet the specifications contained in a document entitled "International Standard IEC 61672-1:2002." It is available from the International Electrotechnical Commission based in Geneva, Switzerland. It is available on their website for US$240. Is that a reasonable price for a citizen of our country to pay to a foreign-based organization in order to comply with Canadian law? That's the question you should be posing.

Other problems the Standing Joint Committee for the Scrutiny of Regulations has discovered is that many of these documents that are incorporated in the regulations are not in both official languages.

• (2020)

For example, Environment and Climate Change Canada has regulations for testing petroleum products. These regulations incorporate by reference document D3231-13, entitled "Standard Test Method for Phosphorus in Gasoline." It is available from ASTM International, located in Pennsylvania, United States of America, for US$46, but it is available in English only.

This report of the Standing Joint Committee for the Scrutiny of Regulations questions whether documents incorporated into our regulations by reference are truly accessible to all Canadians when they are available in only one language, and asks whether the costs Canadians must pay to determine what is the law are reasonable. Your committee was unable to identify any criteria that various government departments apply in order to answer those questions: Is a document bilingual, or can we translate it? What about costs? Should someone have to pay $1,000 or $200? There seems to be no standard.

Colleagues, I urge you to take a look at this report, which will tell you the history of this matter. This is the second time we've gone to the Minister of Justice. The first time, the minister didn't seem to be moved by our concerns. We brought representatives to our committee and generated a report as a result of that, which is before you. The recommendations appear in this fourth report. More important — or equally important — is that we're asking the Minister of Justice to give us a substantial answer in relation to these issues.

For example, one of the recommendations is that the government examine means of minimizing the incorporation by reference in federal regulations of unilingual documents and of documents available only at a cost; that the standard should be to reduce that to an absolute minimum; and that the government develop a directive applicable to all regulation-making authorities that outlines the various requirements I've made mention of. One of these requirements is that a regulation-making authority provide justification in the Regulatory Impact Analysis Statement accompanying a regulation for the incorporation of any document that is not in Canada's two official languages and that is available only at a cost.

Those are the kinds of recommendations we're making. I spent some time explaining to you why we have come up with these recommendations, so that you can understand this area of the law that is not as extensively canvassed — certainly not in this chamber or otherwise. We do have a number of honourable colleagues who serve on this committee, and it is an important part of the work that should be done by Parliament. When we pass a bill here, you often see the various clauses in the bill that say the Governor-in-Council, minister and cabinet can determine, by reference or otherwise, certain regulations. That continues to be an important part of the scrutiny that we should be applying.

Honourable senators, I hope that you can support the committee in relation to this particular report. As part of the report, we're asking the minister to reply with meaningful action in the time provided by our Rules. Thank you, honourable senators.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

ABORIGINAL PEOPLES

BUDGET—STUDY ON A NEW RELATIONSHIP BETWEEN CANADA AND FIRST NATIONS, INUIT AND METIS PEOPLES—THIRTEENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirteenth report of the Standing Senate Committee on Aboriginal Peoples (*Supplementary budget—study on the new relationship between Canada and First Nations, Inuit and Métis peoples*), presented in the Senate on June 6, 2018.

Hon. Lillian Eva Dyck moved the adoption of the report.

She said: Honourable senators, this report is a budget application. It's for fact-finding and public hearings to the western Arctic that our committee is intending to do in early September, before we resume our sitting. It's a continuation of our study on what a new nation-to-nation relationship between First Nations, Inuit and Metis peoples of Canada could look like.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

THE SENATE

POLICIES AND MECHANISMS FOR RESPONDING TO HARASSMENT COMPLAINTS AGAINST SENATORS—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator McPhedran, calling the attention of the Senate to the important opportunity we have to review our principles and procedures with a view to ensuring that the Senate has the strongest most effective policies and mechanisms possible to respond to complaints against senators of sexual or other kinds of harassment.

Hon. Rosa Galvez: Honourable colleagues, I rise to speak to Inquiry No. 26, on policies and mechanisms for responding to harassment complaints.

On too many occasions I have been asked if my successful career as a female engineer and researcher was smooth sailing or like a quiet river swim. I hope you already know that it was neither. The challenges of learning difficult and abstract concepts and math tools were nothing compared to the challenges of surviving in a male-dominated field.

Sadly, throughout my engineering studies and professional career, I witnessed cases of harassment, bullying, intimidation and denigration towards young women and men by people in positions of authority. I witnessed physical and psychological abuse by bullies and narcissists. I witnessed mocking and racist comments from superiors towards foreigners. I witnessed cases of questionable ethics and morals.

While I moved forward with my career, I experienced intimidation and threats by my peers who feared being in intellectual competition with me. I refused to yield; I defended myself and my own space as if it was a ritual passage in the jungle that I had to conquer.

The issue of harassment is, unfortunately, endemic in some institutions, particularly in relationships where a power imbalance exists. In these situations, those who have the power may, knowingly or unknowingly, abuse it. This may occur through bullying, inappropriate comments or threats. It may be explicit or subtle. In the workplace, this creates a hostile and unproductive working environment. Moreover, these situations end up costing great sums of money to society, as they induce psychological stress, create conflicts and lead to the loss of competent and skilled workers in the workplace.

Honourable senators, it does not need to be like this. It is wrong to perpetuate this model.

Senators, we are due for a paradigm shift. We need to change existing mindsets and transform the organizational structure in our workplaces. We know that the work environment must undergo modernization.

• (2030)

We must move from profit seeking and success at all costs to purpose and mission, from a hierarchal organizational structure to networking, from control-based progress to progress by empowering workers, from exhaustive planning to experimentation, from secrecy and private decision making to open and transparent debates.

Research has demonstrated that the workplace is a more efficient and enjoyable space when individuals are empowered and treated equally and when they can find their mission, vocation, sense of purpose and social value.

Changing workplace culture starts with the leadership. Effective leaders know how to get the most of their staff, how to encourage them to work efficiently and how to support them in their professional growth. Effective leaders know how to manage their employees and how to recognize and address issues of harassment. Moreover, effective leaders know how to manage their employees without bullying, histrionics, browbeating or intimidation. Recognizing certain behaviours in ourselves and our colleagues is the first step to addressing the root of harassment.

Preventing harassment in the workplace is the first step to eliminating it from our entire society. And while workplace culture is changing, behaviours which have persisted for decades as "acceptable" continue to happen. They must stop.

Therefore, I support Inquiry No. 26 and hope you will do so as well. Thank you very much.

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

(On motion of Senator Gold, for Senator Coyle, debate adjourned.)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF THE EFFECTS OF TRANSITIONING TO A LOW CARBON ECONOMY

Hon. Rosa Galvez, pursuant to notice of June 5, 2018, moved:

> That, notwithstanding the orders of the Senate adopted on Thursday, March 10, 2016 and Tuesday, September 26, 2017, the date for the final report of the Standing Senate Committee on Energy, the Environment and Natural Resources in relation to its study on the transition to a low carbon economy be extended from June 30, 2018 to December 31, 2018.

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

Hon. Senators: Agreed.

(Motion agreed to.)

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF EMERGING ISSUES RELATED TO ITS MANDATE AND MINISTERIAL MANDATE LETTERS

Hon. David Tkachuk, pursuant to notice of June 6, 2018, moved:

> That, notwithstanding the order of the Senate adopted on Tuesday, October 31, 2017, the date for the final report of the Standing Senate Committee on Transport and Communications in relation to its study on emerging issues related to its mandate and ministerial mandate letters be extended from June 30, 2018 to June 28, 2019.

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

Hon. Senators: Agreed.

(Motion agreed to.)

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO DEPOSIT REPORT ON STUDY OF ISSUES RELATING TO CREATING A DEFINED, PROFESSIONAL AND CONSISTENT SYSTEM FOR VETERANS AS THEY LEAVE THE CANADIAN ARMED FORCES WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Yonah Martin (Deputy Leader of the Opposition), pursuant to notice of June 6, 2018, moved:

> That the Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate, no later than June 22, 2018, a report relating to its study on issues relating to creating a defined, professional and consistent system for veterans as they leave the Canadian Armed Forces, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

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

Hon. Senators: Agreed.

(Motion agreed to.)

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO HOLD OCCASIONAL IN CAMERA MEETINGS ON STUDY OF BILL C-65

Hon. Wanda Elaine Thomas Bernard, pursuant to notice of earlier this day, moved:

> That, notwithstanding rule 12-15(2), the Standing Senate Committee on Human Rights be empowered to hold occasional meetings in camera for the purpose of hearing witnesses and gathering specialized or sensitive information in relation to its study on Bill C-65, An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, as authorized by the Senate on June 7, 2018.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(*At 8:35 p.m., the Senate was continued until tomorrow at 2 p.m.*)

CONTENTS

Monday, June 11, 2018

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY

CONTENTS

Monday, June 11, 2018