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(HANSARD)

Tuesday, September 25, 2018

The Honourable GEORGE J. FUREY,
Speaker

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

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THE SENATE

Tuesday, September 25, 2018

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

Prayers.

SPEAKER'S STATEMENT

OTTAWA-GATINEAU—TORNADO DAMAGE

The Hon. the Speaker: Honourable senators, as you know, Ottawa and Gatineau were hit by three tornadoes last Friday during a major storm. The entire country has been saddened to hear of the injuries and to see the extensive damage inflicted on homes and businesses.

As we slowly return to our normal business, let us remember that the adjustment has not been easy for many residents of the National Capital Region.

Colleagues, I know that all of you will wish to join with me in expressing our sympathies and support to the residents of the affected region, including some of our own Senate staff, as they are dealing with the aftereffects of this disaster.

Let me also take this opportunity to acknowledge the great efforts of first responders and hydro workers, who worked around the clock to restore power, maintain order and ensure the safety of those affected. I would be remiss if I did not thank the dedicated employees within the Parliamentary Precinct, whose collective efforts over the weekend enabled us to continue our important work today.

Finally, I wish to recognize our municipal, provincial and federal officials; community organizations; local charities and businesses; countless volunteers who stepped up to help those in need; as well as the kindness of neighbours and friends, all of whom have come together to aid in the extensive recovery efforts and show the true Canadian way.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

RURAL MUSEUMS

Hon. Carolyn Stewart Olsen: Honourable senators, I rise today to bring your attention not to the New Brunswick election, although I really would like to, but to Canada's wonderful rural museums.

A 2016 documentary called *End of Our Memories* said, "When a small rural museum closes, Canada loses a window into the country's . . . past."

I couldn't agree more.

The history of our small towns is very often preserved by dedicated volunteers operating museums in heritage homes or other unique historical structures.

Unlike those in big-city museums, the artifacts in small rural museums are directly connected to local families in the community. An example of this is that many legions in rural communities operate small museums that contain possessions of active members who served in the wars of our past.

During the summer adjournment, I took the opportunity to visit a new rural museum — it's not new, but it was new for me — located in Hillsborough, New Brunswick. The Steeves House Museum is set in the historic dwelling of one of Canada's founding fathers. The structure dates back to 1812 and is the birthplace of William Henry Steeves, who, aside from being a founding father of our country, was later a senator in this place — or rather, before it burned down.

During the summer, locals in period costumes provide guided tours of this impressive property. Were it not for the efforts of the Hillsborough community, this history would be lost or shuffled off to some dusty room in an archive.

The rural identity is woven into the fabric of our country. It is part and parcel of what it means to be a Canadian. Small museums like the one I mentioned are guardians of the inherited knowledge our ancestors passed down to us.

To say that rural museums run on a shoestring budget is an understatement. And as senators, we should all do that we can to keep the doors open in these places.

When I received my allotment of Senate 150 medals, I chose to distribute them, in part, to these small museums and heritage organizations across the region I represent.

Volunteers for the Keillor House Museum, the Boultenhouse Heritage Centre, the Petitcodiac War Museum and the R. B. Bennett Centre in Albert County were recognized for their role in preserving this knowledge for generations to come.

I challenge all senators to make a point of identifying a rural museum in their region and visiting it. As I noted before, when these windows close, a bit of ourselves goes dark. Thank you.

[*Translation*]

FRANCO-ONTARIAN DAY

Hon. Lucie Moncion: Honourable senators, today, September 25, we are celebrating Franco-Ontarian pride. This is a very important day for Ontario's francophone community.

Historically speaking, the French presence in Ontario dates back to 1615, which means that we have over 400 years of history. The first francophones who came to Ontario settled in the eastern part of the province along the Ottawa River. Later, others settled in the northeastern part of Ontario between

Cochrane and Hearst, a region that began to be colonized in 1910. Development in the Nipissing region began in the second half of the 19th century. Thanks to the considerable contributions of religious communities, Ontario began to develop as a French-speaking province. Between 1848 and 1968, 26 communities of priests, monks and nuns worked to promote the development, colonization, education and health of French-speaking communities in Ontario. Drawn by the fur trade, railways, logging, mining and agriculture, francophones from Quebec and France settled in each of the regions and populated French Ontario.

Franco-Ontarians are Canadians who live in Ontario and speak French at home. They may come from other provinces or countries. Their Franco-Ontarian identity is associated with the place they live and the language they speak at home.

In June 2001, the Ontario government officially recognized the Franco-Ontarian flag as a visible symbol of the community's solidarity and its irrevocable determination to take its rightful place in Ontario's economic and political spheres. The flag's two colours symbolize the two major seasons in Ontario: green for summer and white for winter. The fleur-de-lys stands for our membership in the francophonie, and the trillium, Ontario's official flower, symbolizes our belonging in whole to the province of Ontario. Besides being a symbol of our identity, the flag represents who we are and the values we share. It's a source of inspiration.

In April 2010, the Government of Ontario officially recognized September 25 as Franco-Ontarian Day, thus marking its acceptance of the Franco-Ontarian community's language rights and cultural identity.

French is recognized as an official language in Ontario's legislature, courts and education system. Today's Franco-Ontarians, including newcomers, are contributing to the cultural heritage of their native or adopted province, as proclaimed loud and clear in the preamble to the French Language Services Act.

September 25 is the perfect time to salute Ontario's francophones for their resilience and pride and to pay tribute to the outstanding contribution this community has made to the past and future of our province.

Thank you, and long live the francophonie!

• (1410)

GENDER EQUALITY WEEK

Hon. Dennis Dawson: Honourable senators, this week, we are celebrating the first ever Gender Equality Week, the result of a bill this chamber adopted in June. I would like to congratulate and thank the member for Mississauga—Lakeshore, Sven Spengemann, for his hard work and dedication in bringing this initiative forward.

[*English*]

I welcome you all to come and celebrate Gender Equality Week at tonight's reception from 5:30 to 7:30 in the Commonwealth Room in Centre Block and to also join the panel being held on Thursday from 11:30 to 1 p.m. at the National Arts Centre.

We are celebrating progress, and although I believe that there are many more changes to be made, I am proud of the work and progress that has been made over the years and to have the privilege to stand in this chamber and speak about this important matter.

[*Translation*]

Gender equality, especially women's equality with men, is not yet universally recognized. It is important to raise awareness of the many significant contributions that Canadian women have made and continue to make to Canada's growth, development and identity. This week is a much-needed reminder that pay inequity still exists and that we must keep working to fix it.

This is also an opportunity to learn more about how gender equality benefits everyone, to reflect on the obstacles that men, women and gender-diverse individuals still encounter, and to take stock of the tremendous work being done in Canada and around the world to further this cause.

Have a great Gender Equality Week. I hope to see you all at the reception.

NATIONAL COACHES WEEK

Hon. Chantal Petitclerc: Honourable senators, this week, across Canada, it's time to say #ThankYouCoach.

[*English*]

September 22 to 30 is the fourth annual National Coaches Week, giving our coaches the recognition they deserve for the time they devote to ensuring Canadians live an active and healthy lifestyle.

So here we go: To all our high-performance coaches, your expertise goes way beyond understanding periodization and writing programs. You have the unique ability to understand each athlete, believe in them, support their dream and help them turn it into a reality. Thank you, coach.

[*Translation*]

To all our women coaches, you continue to break down doors, although there are not nearly enough of you. But your presence, expertise and passion are vitally important.

Thank you, coach.

[*English*]

To all the coaches in our Indigenous communities, you know firsthand how sport is a powerful tool to change life, and sometimes even to save lives. Thank you, coach.

[*Translation*]

Last, to all the coaches working with little kids, often on a volunteer basis, you are the first to inspire them to move, to push themselves and to be active. Rain or shine, you are on the ice, in the pool or on the soccer field first thing in the morning. You teach them how to play sports, but more importantly, you instill values in them, always with passion and good cheer, even when you're telling them for the twentieth time to chase the ball, not the other kids.

You are helping to create a healthier Canada.

Thank you, coach.

[*English*]

To all our amazing coaches in Canada, from the playground to the podium, you truly make a difference. Thank you, coach.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mrs. Irene Ruckenstein and Mr. Tony Odze. They are accompanied by Mrs. Nancy Cummings Gold, the spouse of the Honourable Senator Gold.

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

Hon. Senators: Hear, hear!

SENATOR JOYCE FAIRBAIRN MIDDLE SCHOOL

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to share with you my heartfelt experience at the grand opening of Senator Joyce Fairbairn Middle School.

Senator Tannas, Senator Hays and I attended on all of your behalf. Senator Tannas spoke from the heart about Senator Fairbairn, and I can sincerely say his words describing our friend and former colleague were heart-rending. Senator Tannas truly represented our chamber's love for Senator Joyce aptly.

The Honourable David Eggen, Minister of Education of Alberta, also spoke beautifully about Senator Joyce Fairbairn's contribution to Alberta. Each student was wearing a red t-shirt with Senator Joyce's name on it. This sea of red would have made her — our lady in red — very happy.

I would like to quote Bill Bartlett, Principal of Senator Joyce Fairbairn Middle School:

> There are so many examples of how our namesake worked, never for herself or for the spotlight, simply to support a just cause. We are off to a great start. As a school, we have been given a gift with Joyce's legacy to guide us. We have a solid foundation on which we can build.

Honourable senators, I want to share with you the unconditional love the community has for Senator Fairbairn. Many people have stood by her, from Senator Munson, Len Kuchar, Glenn Miller and her loyal former assistant, Mary Ellen Shaffer.

Mr. Miller and Ms. Shaffer organized everything, down to every detail, to assure a beautiful display of Joyce's memorabilia. Their love for Joyce knows no bounds.

I have known Joyce for many years. She used to stay at my home in Vancouver. One morning, she said that she had the weirdest dream. She said she heard terrible bagpipe music and was puzzled by this strange dream. I had to break it to her that my 10-year-old son Azool was learning how to play the bagpipes. She found it both strange and impressive that a young East Indian boy was learning to play the pipes.

Many years later when she heard my son Azool professionally play the bagpipes at a Liberal Party convention, she came up to me and said:

> Now I understand. This is the true essence and strength of Canada.

Honourable senators, building the essence and strength of Alberta and Canada is what Senator Joyce Fairbairn dedicated her whole life to.

My dearest friend Senator Joyce, may your legacy continue to guide students to learn and thrive as this new community grows. It is a great privilege and honour to call you my friend. Your light shall never stop shining as bright in this chamber, but mostly for every student at Senator Joyce Fairbairn Middle School and for every Canadian. Your achievements are truly an inspiration to us all, especially to me. You will forever be remembered by Canadians. The naming of the school is just one of the many legacies you will leave.

[*Translation*]

ROUTINE PROCEEDINGS

CRIMINAL CODE
DEPARTMENT OF JUSTICE ACT

TWENTY-SEVENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Serge Joyal, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, September 25, 2018

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWENTY-SEVENTH REPORT

Your committee, to which was referred Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act, has, in obedience to the order of reference of May 10, 2018, examined the said bill and now reports the same without amendment.

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

SERGE JOYAL
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 3795.*)

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

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

• (1420)

[*English*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

CANADIAN/AMERICAN BORDER TRADE ALLIANCE CONFERENCE, MAY 6-8, 2018—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the Canadian/American Border Trade Alliance Conference, held in Ottawa, Ontario, from May 6 to 8, 2018.

U.S. CONGRESSIONAL MEETINGS, MAY 15-17, 2018—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at United States Congressional Meetings, held in Washington, D.C., United States of America, from May 15 to 17, 2018.

ANNUAL CONFERENCE OF THE SOUTHEASTERN UNITED STATES —CANADIAN PROVINCES ALLIANCE, JUNE 3-5, 2018—REPORT TABLED

Hon. Michael L. MacDonald: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Canada-United States Inter-Parliamentary Group respecting its participation at the 11th annual conference of the Southeastern United States—Canadian Provinces Alliance, held in Mobile, Alabama, United States of America, from June 3 to 5, 2018.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the motion adopted in this chamber, Thursday, September 20, 2018, Question Period will take place at 3:30 p.m.

[*Translation*]

ORDERS OF THE DAY

EXPORT AND IMPORT PERMITS ACT
CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Raymonde Saint-Germain moved second reading of Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments).

She said: Honourable senators, I rise to present Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments).

Bill C-47 seeks to enhance the way Canada regulates arms exports in order to allow it to accede to the Arms Trade Treaty, or ATT. Although we already have a robust arms trade control system, some legislative changes are needed in order to satisfy all the requirements of the ATT.

In a nutshell, Canada has to comply with two provisions. First, there is Article 7 of the treaty, which lists criteria for assessing arms exports, including criteria on human rights, gender-based

violence, and peace and security. Second, there is Article 10 of the treaty, which requires the state parties to regulate the brokering of arms between two foreign countries. I will come back to that a little later in my speech. For now, I would like to provide some background on the purpose and scope of the Arms Trade Treaty.

The evidence is clear: irresponsible, unregulated arms transfers are intensifying and prolonging conflicts that claim many victims, contribute to regional instability, facilitate human rights abuses and hinder social and economic development.

After several years of negotiations, the Arms Trade Treaty was adopted by the United Nations General Assembly in 2013. That treaty is the first international agreement whose purpose is to establish common standards to curb the illicit transfer of conventional arms. It also aims to promote accountability and transparency in the global arms trade.

Although the ATT went into effect on December 2014, Canada remains the only one of NATO'S 29 member countries and the only G7 country yet to sign the treaty. Of our NATO and G7 allies, only the United States and Turkey did not ratify the treaty after signing it. Bill C-47 would essentially allow Canada to stand with its international partners by having it to join a treaty that now has 96 member states. On November 12, there will be 97 member states, as Brazil ratified the treaty a few weeks ago and will become a member after 90 days. I am not sure if there is a connection to my speech at second reading, but today Lebanon passed legislation that will lead to the treaty's ratification.

According to Amnesty International, the transfer of conventional weapons is valued at US$100 billion a year, making it a major international industry. But this trade is not without negative repercussions: armed violence is responsible for more than 500,000 deaths a year around the world, not to mention the injuries inflicted and other collateral damage.

A country like Canada faces a dilemma. Few domestic deaths are caused by the arms trade, and the defence and security industry has a lot of economic clout. This industry accounted for more than $6.2 billion of Canada's GDP in 2016, according to the latest data, and generated 59,800 well-paying jobs. These jobs have a national impact, when you take regional specializations into account. For example, Ontario and Quebec have land conveyances and aerospace, and the West and the Atlantic provinces have the shipping industry.

The challenge we face with Bill C-47 and, globally, with foreign arms sales is how to reconcile some potentially conflicting interests. We must strike a balance between the economy and the safety of individuals in our sober second thought, without forgetting that this bill strengthens what is already one of the world's most stringent arms export control regimes. We must therefore consider the industry's contribution to keeping our economy strong, in addition to defence, security and geopolitical interests, while assuring that Canadian exports are not used to commit or facilitate a serious violation of international human rights or humanitarian law. At the end of the day, Bill C-47 is designed to increase the rigour and transparency of export controls, without unduly undermining other inherent strategic considerations.

[*English*]

I would like to outline some of the key features of the ATT to give you a better understanding of the ins and outs of Bill C-47.

It must be clearly and unequivocally stated that this multilateral instrument has no impact on the sovereignty of each member state over arms control within their borders. The ATT does not establish an international conventional arms control registry and does not require the member states to create a national firearms registry. Moreover, the treaty's preamble clearly acknowledges the right to own weapons for legitimate purposes, including, ". . . for recreational, cultural, historical and sporting activities."

The ATT seeks to ensure that member states act responsibly in the arms trade. In this way, it helps lessen the suffering of thousands of civilians who are affected or threatened by armed conflict and violence. To this end, it covers a wide range of conventional weapons, including combat vehicles, armoured vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and small arms.

Under Article 7 of the treaty, the member states must assess the possibility that these arms or ammunition could contribute to or undermine peace and security or could be used to commit one, a terrorist act; two, an act related to organized crime, international organized crime; three, a serious violation of human rights; or four, a serious violation of international humanitarian law.

A member state is required to refuse an export only when it considers that, despite its planned mitigation measures, there is an overriding risk of one of the aforementioned consequences.

• (1430)

The use of this criterion is the result of a compromise intended to give member states greater flexibility in determining the level of risk beyond which an export permit application must be refused.

In its fourteenth report entitled *Promoting Human Rights - Canada's Approach to its Export Sector* tabled last June, the Standing Senate Committee on Human Rights notes:

> . . . the term "serious violations of international humanitarian law" includes grave breaches of the four Geneva Conventions of 1949, serious breaches of Common Article 3 to those conventions and Additional Protocol I to those conventions, the war crimes prohibited under the Rome Statute of the International Criminal Court and other war crimes defined under customary international law.

> What constitutes a serious violation (or abuse) of international human rights law is constantly evolving. The scope, the consequences for victims, the intent, and the shocking effect of the potential violation or abuse in question could be relevant to determining the seriousness of a violation or abuse.

The regulation of conventional arms brokering activities between two countries is another important aspect of accession to the treaty. Bill C-47 would ensure that Canada is compliant with Article 10 of the ATT, which requires member states to regulate the international brokering of arms. At present, Canada does not regulate brokering under the Export and Import Permits Act. Bill C-47 addresses this gap, paving the way for collaboration with most of our international partners.

In this regard, Bill C-47 is not limited to meeting the minimum requirements set out in the ATT. It would make it mandatory to assess the risk stipulated in the ATT for both export permits and brokering permit applications. Instead of the terminology used in the treaty, clause 8 of the bill would require an assessment of substantial risk. This is a well-established concept in Canadian jurisprudence and is also recognized by the international community as meeting the requirements of the ATT. Following that assessment, an export or brokering permit application would be denied if the risk of any of the negative consequences listed is substantial enough to outweigh all other considerations, despite the available mitigation measures to reduce the identified risk.

Including the assessment criteria for substantial risk directly in the act exceeds the requirements of the ATT. Initially, the government had planned to include them in regulations, but committee discussions in the other chamber, along with pressure from civil society, led the Minister of Foreign Affairs to introduce an amendment to this effect. This codification in legislation would be unprecedented for Canada in relation to its main allies and would also clarify the status of the law and provide greater rigour and transparency in the issuing of export permits. I must point out, however, that Canada's current export control policy, based on cabinet guidelines dated from 1986, is exhaustive and restrictive. Jurisprudence has nonetheless shown that these guidelines would be insufficient to restrict the minister's discretionary power since they do not have the force of law.

The most innovative aspect of Bill C-47 is that it would create a legal duty for the minister to consider the negative consequences listed, and prohibits him or her from issuing a permit if it is determined that a serious risk exists, despite the planned mitigation measures.

Although the minister would retain discretionary power in evaluating the relevant factors for issuing export permits for controlled goods, that power would be explicitly and expressly set out in legislation. In other words, by increasing the applicable legal standards, Bill C-47 would make it possible for the courts to intervene more effectively in cases of non-compliance with the relevant legislative provisions.

Bill C-47 also includes a number of other measures to strengthen Canada's export control system. Specifically, the criterion of substantial risk would apply to the risk assessment of gender-based violence or violence against women and children. This criterion is more stringent than what is set out in the ATT.

Moreover, the bill would provide predictability by requiring the minister to table two separate reports in both houses of Parliament no later than May 31 of each year, one pertaining to the application of the Export and Import Permits Act and the other to military goods exported under a permit.

[*Translation*]

I also want to draw your attention to an issue that came up during the debate on this bill in the other place. That issue is national firearms regulation. Bill C-47 would not change the conditions governing the use of firearms or the regulation of firearms at the national level. It is strictly about firearms exports and imports. These regulations have been in place for decades and would not change after ATT accession. That means no new obligations would be imposed on responsible, legitimate firearms importers.

Our current, long-standing record-keeping system meets the treaty standards and would not change with the passage of Bill C-47. I want to make it very clear that the ATT and Bill C-47 will not create a national or international gun registry. The two instruments have a common goal: to end the carnage being fuelled by the unmonitored international arms trade, without detracting in any way from the use of guns for legitimate purposes, such as hunting and target shooting.

Please know that ATT accession will complement Canada's long-standing participation in four multilateral export control regimes, namely, the Wasenaar Arrangement, an international agreement on export controls for conventional arms and dual-use goods and technologies, meaning those for civil and military use; the Missile Technology Control Regime; the Nuclear Suppliers Group; and the Australia Group, which controls the export of chemical and biological technologies that could be used as weapons.

Furthermore, Canada will continue to allow most items covered by the Arms Trade Treaty to be exported to the United States without a permit. As you know, the two countries have a very integrated market. The free flow of goods is a competitive advantage and a fundamental characteristic of the Canada-U.S. defence industry. This bilateral cooperation was established a long time ago with the signing of the Defence Production Sharing Agreement in 1956. These exports are very important in defending our country and supporting North America's defence industry infrastructure on both sides of our border. In these unstable times, let's not lose sight of the fact that the United States are an ally in NORAD and NATO.

North American integration of the military industrial complex is in compliance with international law because the Arms Trade Treaty does not state how countries are to set up their export controls. Other states party to the treaty have expedited procedures for low-risk countries. For example, the Netherlands, Belgium, and Luxembourg do not require export permits for arms

transfers to each other. France, Germany and the United Kingdom have simplified procedures such as general authorizations. The same logic applies to Canadian arms exports to the United States and vice versa, both countries being considered low-risk because of the rigorous American export control system. It is worth noting that, when controlled goods go through the United States to a final destination in some other country, an export permit must be issued before the shipment leaves Canada. A Canadian export permit must be issued for all arms transfers going through the United States to a third country.

• (1440)

A parallel can be drawn between a scenario where a licence would be needed for arms exports to the United States and the threat of tariffs as high as 25 per cent on auto sector exports to the U.S. As many stakeholders pointed out in the context of the recent controversy, some auto parts cross the border several times before the final product is fully assembled. In other words, a part can go back and forth several times before final assembly. Such restrictions on the free movement of goods would hinder our mutual economic development and seriously threaten the growth of Canada's defence industry, which, may I remind you, supports nearly 60,000 jobs.

Lastly, let's not forget the objectives of the Arms Trade Treaty: to create an international standard to curb the illicit trade of conventional weapons, encourage countries with weak controls to strengthen their systems, and stop illegal arms shipments to conflict regions.

I will repeat that essentially, the challenge we face with Bill C-47 is to weigh multiple interests that appear to be contradictory. Striking a balance based on the evidence and the facts is vital in this context. It would not be prudent to base the risk assessment for arms exports solely on Canada's economic, defence and security interests. That's why Bill C-47 would make it illegal to ignore a substantial risk of a serious violation of international humanitarian law or international human rights law. In principle, the current assessment process considers all of Canada's strategic interests. Enshrining this duty in law would add consistency, rigour and transparency to export controls.

Honourable senators, I urge you to speak to the principle of Bill C-47 as soon as possible so that we may refer the bill to a committee. We could then study it in depth and make our contribution to a piece of legislation that is vital to ensuring Canada's arms exports are responsible in the current context.

Thank you.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Senator Saint-Germain, would you take some questions?

Senator Saint-Germain: Certainly.

Hon. Serge Joyal: Thank you for your comments, Senator Saint-Germain. If I understood correctly, when you talked about arms that may be sent to a third country or arms that may be traded between the United States and Canada, these are not part of the sector that U.S. President Donald Trump alleges is a threat to American security.

Senator Saint-Germain: Senator, thank you for your question, which touches on one of the most important aspects of this treaty.

Right now, the system for transferring and exporting arms between Canada and the United States is expedited because the United States is considered to be a low-risk country. You are correct that the United States is not the highest-risk country in Canada's view, in light of how intertwined our economies are.

That being said, if it is passed, Bill C-47 will cover offshore brokering, meaning the transfer and export of arms by Canadian companies from Canada or a foreign country to another country. That is an important requirement of the Arms Trade Treaty. Until now, this sort of activity was not covered by the Export and Import Permits Act. As a result, if the bill is passed, the Ministers of Global Affairs, and thus the Government of Canada, will be in a better position to ensure the responsible export of arms by individuals, companies, and even the Canadian Crown. The Minister of Foreign Affairs could even make use of the powers granted to him or her under the act to intervene if a situation involving the United States should arise, even though the risk of that happening is very low. As we know, trade between the two countries is very fluid right now. The Minister of Foreign Affairs already has discretionary powers, but they will now be set out in legislation.

Senator Joyal: Is there a provision in the bill that would allow the Canadian government to publicly disclose all of its transactions with the American government in relation to the sale of arms to our neighbours to the south, so that Canadians are aware of the extent of the arms trade between the two countries?

Senator Saint-Germain: Thanks again, senator.

The bill provides for greater transparency in the form of two annual reports to be tabled by May 31 every year in both houses of Parliament. The first report must pertain to the nature of the permits and the countries receiving the exports, as well as the types of arms exported. The second must pertain to Canada's military exports.

Both reports must respect trade secrets, which is an extremely important aspect of international trade in general, be it of arms or other goods.

With respect to the United States, you raise a question that has been on my mind and that I intend to bring to the attention of the committee that will be studying the bill after second reading. Since no permit currently exists, data to provide a more detailed accounting — again with respect to the imperatives I just mentioned — are not available. For example, there are no forms or copies of the clearance processes. This issue was studied in the other place, but ultimately the bill passed as is. However, I still believe it's worth looking at how far we can go, within the

confines of certain restrictions and imperatives, in stating or sharing information deemed to be in the public interest, both for exporters and in the context of defence and security issues.

Senator Joyal: I would like to ask one last question and I thank Senator Saint-Germain for her very practical and specific answers.

Are you suggesting that the witnesses who will be heard by the committee will be able to specifically explain the implications of obtaining this information and making it public so that Canadians can generally understand the importance of the arms trade between the two countries and that Canada certainly does not represent a threat to U.S. security?

Senator Saint-Germain: Thank you again.

Indeed, the committee, like all committees, is interested in hearing from the various stakeholders that have concerns. This also affects businesses that import and export arms. I want to emphasize that the legal and responsible arms trade is extremely important and that it protects people and maintains peace. We must not forget that. Indeed, witnesses could be both businesses that have something to say and that, in some cases, could help us delve deeper into the matter, while respecting the need to protect trade secrets, and organizations, such as public institutions, that are involved in security and national defence.

Global Affairs officials could tell us what the issues are and how they make decisions about the permits. The department receives 7,000 applications a year. It would be interesting to hear what issues and challenges it faces. In addition, representatives of civil society also made important contributions in terms of comments and recommendations for this bill.

• (1450)

[*English*]

The Hon. the Speaker: Senator Martin, do you wish to ask a question? Are you taking the adjournment or asking a question?

Senator Martin: I have questions.

The Hon. the Speaker: Very well. First, though, is Senator Dupuis.

[*Translation*]

Hon. Renée Dupuis: Senator Saint-Germain, am I to understand that, as the bill now stands, exports to countries other than the United States require a permit as well as annual reports containing specific information on the transactions and the countries in question, while for exports to the United States there seems to be an expedited process, without a permit, and those transactions do not have to be included in a report?

Senator Saint-Germain: Thank you for your question, senator. Your explanation is correct. Exports to countries other than the United States must follow a procedure that requires a permit to be issued, which means that the Canadian government is accountable in a more detailed annual report to Parliament, always in keeping with security constraints and trade secrets.

When it comes to the United States, since the process is expedited and given the context of our integrated economies and shared concerns, our security and national defence industries are also integrated. Since details are not needed when these materials are being exported, it is harder to ensure accountability. The annual report to Parliament therefore contains only very general information.

I also wanted to emphasize the fact that greater transparency is one of the benefits of Bill C-47. The Government of Canada would issue permits to regulate brokering activities, that is, exports by an individual, business or Canadian organization from a country other than Canada to any country other than Canada. Thus, with respect to brokering, an activity that would be regulated for the first time under this legislation, that same level of accountability would be required in the annual report.

[*English*]

Hon. Yonah Martin (Deputy Leader of the Opposition): I just have a couple of questions for Senator Saint-Germain.

I am curious about the consultation process for this bill. There are concerns on record from industry, Indigenous groups and other stakeholders that Bill C-47 might catch sport shooters, hunters and recreational users within its confines. As you may be aware, in the house an amendment was proposed to specifically carve out a provision for lawful firearm use, and it was rejected.

Senator, are you aware of that amendment, and is that something perhaps our Senate committee could look at? What assurances do these stakeholders have that, although consultation wasn't done, they will be consulted in the second half of the process in the Senate?

Senator Saint-Germain: Thank you, senator, for your question. It is a very important question. I was very preoccupied by it during my study of the bill, but the bill and the treaty reassured me that there is no way for the Aboriginal people and for legal firearm users in Canada to be concerned by that. I will tell you why.

[*Translation*]

The preamble to the Arms Trade Treaty specifically states the following:

> *Reaffirming* the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

On page 2, the treaty reads as follows:

> *Mindful of* the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Third, with respect to principles, we must consider the principle of non-intervention "in matters which are essentially within the domestic jurisdiction of any state," as set out in Article 2, paragraph 7 of the United Nations Charter.

The treaty provides assurance that there will be no impact on a state's laws governing the legitimate use of firearms for recreational purposes.

Moreover, an amendment to Bill C-47 clearly indicates that the bill covers only arms trade to foreign countries, which includes imports, exports and brokering. If a hunter is not an importer in his private life, Bill C-47 and the Arms Trade Treaty will have no impact on his or her lawful activities. I think we must reassure Canadians who are active in this area, including Indigenous peoples to whom hunting is very important and a matter of survival. The United Kingdom acceded to the Arms Trade Treaty, and I imagine there are many hunters in the United Kingdom.

[*English*]

Senator Martin: I just have one more question. Given the fact they weren't consulted in the drafting of the legislation, do you believe it would be important to hear at committee stage from all these stakeholders, because they are expressing concern?

Senator Saint-Germain: Thank you, senator. The most important thing is to reassure them that in no way is the Arms Trade Treaty or Bill C-47 aimed at preventing them from being hunters and doing what they like to do and what they need to do. I don't believe it would be relevant for us to ask them to come here to Ottawa for, let's say, nothing, because there is nothing in this bill or, again, in the Arms Trade Treaty that impedes their being hunters, having recreational issues and using firearms legitimately for these purposes.

Hon. David Tkachuk: So we should just take your word and the government's word for it?

Senator Saint-Germain: Senators, I believe I have referred to many articles and the preamble of Bill C-47. You don't take my words; take the words that are in writing in both Bill C-47 and the Arms Trade Treaty.

We have a duty to give Canadians very factual and substantiated information.

As I said, I was also concerned by that possibility. I've studied the bill, I've studied all the debates in the other chamber, I've spoken with both the administration of Foreign Affairs and some members of industry, and I'm reassured about it.

It is important that we concentrate on the main issues covered by the bill and the treaty, and that we make sure, especially for the industry, that they are assured that our import and export permit-control system is a fair, rigorous and transparent one, and that under the system, they are helped to not import and especially not export to countries who will use their equipment for criminal purposes — for international terrorism, discriminatory issues and even killing civilians. This is the most important part, but in no way are Canadian hunters being impacted by Bill C-47 and by the Arms Trade Treaty.

• (1500)

Senator Tkachuk: I know it's difficult for the government to believe that Canadians might actually disagree with them, but don't you think the Canadian people have a right to be heard about a bill that they disagree with?

Senator Saint-Germain: Canadians have the right to get the right information on bills, and we will decide at the Foreign Affairs and International Trade Committee about the witnesses we deem appropriate to receive. Along with my colleagues from all groups and caucuses in the Senate and with the excellent chair of our committee, Senator Andreychuk, we will do everything necessary to hear from all witnesses who have something to say directly link to the bill. For those who need to be reassured, we will be there to reassure them; I can tell you that frankly, senator.

Senator Tkachuk: By listening to them or simply reassuring them without listening to them?

Senator Saint-Germain: With my colleagues on the Standing Senate Committee on Foreign Affairs and International Trade, we will make the proper decisions. The important thing for me as a senator is to have Canadian citizens well informed on the impact or the absence of impact of every bill we are studying.

Hon. Ratna Omidvar: Thank you, Senator Saint-Germain, for your presentation on Bill C-47.

I want to hark back to the sale in 2014, I think, of the light armoured vehicles to Saudi Arabia. I'm remembering my time at the Senate Human Rights Committee, which did a fairly extensive study on the impact on human rights of the sale of arms overseas and their potential for being used for criminal activities, as you say.

Retrospectively, if you would apply this bill to that sale — and it was in fact demonstrated that Saudi Arabia has used these light armoured vehicles in their war against the people of Yemen as well — how would this bill have dealt with securing our interests, not just in sales and business, but also in the protection of human rights?

[*Translation*]

Senator Saint-Germain: I thank the senator for the question.

In this particular case, a permit was granted in April 2006 to export armoured vehicles to Saudi Arabia. In the summer of 2017, Amnesty International, a reputable international organization, reported to the media that Canadian-made vehicles might have been used in a violent security crackdown in eastern Saudi Arabia.

An independent investigation by Global Affairs Canada found that the Minister of Foreign Affairs was right to issue the permit at the time because there was no compelling reason not to.

Since then, there have been two court rulings, one by the Federal Court in January 2017, which was upheld by the Federal Court of Appeal in July 2018, to the effect that the minister had acted in accordance with the law in this context.

Now, to answer your question, assuming Canada accedes to the Arms Trade Treaty today by passing Bill C-47 into law, we cannot make such guarantees. However, we can say that the conditions that Bill C-47 will impose and the accession to the Arms Trade Treaty will allow every Minister of Foreign Affairs from now on to be better equipped to have access to sensitive strategic information.

The minister already has, and will retain, discretionary power. If, after a permit is awarded, the minister becomes aware of specific, documented information showing that the permit conditions were violated and that the arms were exported to an unauthorized recipient or used for unauthorized purposes, the minister may suspend, or even revoke, the permit.

I want to stress that a number of the Canadian companies I spoke to feel that this is very important. No Canadian company wants to export arms that could be used to commit crimes against humanity. Furthermore, Canadian companies want Global Affairs Canada, a department that receives 7,000 applications a year, to conduct adequate risk assessments.

The prudent answer is that there is no such thing as zero risk. However, it is clear that adopting Bill C-47 and acceding to the arms trade treaty will strengthen Canada's system and lower the chances that Canadian arms will be used to commit crimes against humanity.

The Hon. the Speaker: Senator Saint-Germain, your time is up, and other senators want to ask questions. Are you asking for five more minutes?

Senator Saint-Germain: Yes.

[*English*]

Hon. Leo Housakos: Thank you, colleagues, and thank you, Senator Saint-Germain, for your speech today.

My question is a brief one. When it comes to the arms trade import-export regulations, Canada has had for the longest time some of the most rigid laws on the books. We've had a wonderful track record of success when it comes to making sure that offensive weapons don't fall into the wrong hands. We have a much better track record than some of our NATO and European allies.

What is the government trying to mitigate here? Where is the problem that we've had? What is the objective of the bill if we haven't had a track record of problems?

[*Translation*]

Senator Saint-Germain: I thank the senator for his very important question.

The world has changed, and those changes bring with them more international risks. The trade and export of illegal weapons, as practised by various international organizations connected with the drug trade and globalization, are very different from what they used to be.

You are absolutely right in saying that we have one of the most robust systems. I said the same thing. However, we need to improve this system in order to adapt it to today's reality. First, we need to consider the fact that Canada does not issue any sort of permit for arms brokering abroad. The world has changed, and networks have been established. It is therefore clear that there is a significant risk there.

Bill C-47 must address that risk, and I believe it does so effectively. We will have the opportunity to discuss that further in committee, but the bill does address that issue.

Second, we need to consider the fact that the Minister of Foreign Affairs retains discretionary power in certain situations where Parliament can't be consulted. The minister has the discretionary power to make decisions after consulting the Minister of National Defence.

At the same time, it is important that the criteria used by Foreign Affairs staff to make recommendations to the minister be incorporated into legislation in order to assure Canadians, civil society and industries that these criteria are always respected, that they are robust and fair, and that they ensure transparent accountability. I think that is the main improvement.

• (1510)

As for the other part of the question, there will soon be nearly 100 member countries; in just a few weeks, there will be 98. If major exporters, some of Canada's major partners, such as the United Kingdom, France, Germany, all of the G7 countries, and the NATO countries are members, they must have good reasons. To make sure we understand the international implications, honourable senators, you know that treaty membership provides access to important strategic information and an opportunity to influence certain other countries. Canada has always sought to be a responsible exporter while helping to ensure that other countries become responsible exporters too. Every crime against humanity has negative consequences for all countries and all people.

I think that, taken together, these are all reasons why we should adopt the bill, which will be studied clause by clause in committee. It may be necessary to make certain improvements or take certain measures, as Senator Tkachuk suggested, to reassure Canadians that this treaty will in no way restrict legal hunting activities and also to reassure businesses and hear what they have to say about important issues that affect them, as well as civil society representatives.

For all these reasons, I think this is an important bill.

The Hon. the Speaker: Senator Saint-Germain, your time is up again, but another senator has a question for you.

Senator Saint-Germain: I would be pleased to answer, as always.

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

Hon. Senators: Agreed.

[*English*]

Senator Plett: No.

The Hon. the Speaker: Did I hear a "no"? I'm sorry, I hear a "no."

(On motion of Senator Housakos, debate adjourned.)

[*Translation*]

NATIONAL SECURITY BILL, 2017

SECOND READING—DEBATE

Hon. Marc Gold moved second reading of Bill C-59, An Act respecting national security matters.

He said: Honourable senators, I am pleased to lead off the debate on Bill C-59, An Act respecting national security matters.

I agreed to sponsor Bill C-59 only after carefully examining the text of the bill itself, its objectives and purpose, and the impact it will have on our national security. As a constitutional expert, considering my interest in and long-time commitment to matters of national security and the fight against terrorism, and particularly as a senator, I have a duty to ensure that the bill respects our fundamental rights and freedoms, while also keeping us safe.

In my view, Bill C-59 is a reasonable, responsible and necessary response to genuine threats to Canada's national security. It represents a major step forward in terms of transparency and accountability, which will improve the operational effectiveness of our security agencies while also respecting the constitutional rights and freedoms of Canadians.

Bill C-59 is based on the broadest public consultation ever held regarding Canada's national security framework, as well as on a major study on this framework conducted by the House of Commons Standing Committee on Public Safety and National Security. The bill also follows up on many recommendations made by three judicial inquiries and reports prepared by the Security Intelligence Review Committee, which is responsible for overseeing the activities of the Canadian Security Intelligence Service, or CSIS. The bill was studied for more than 35 hours by a committee in the other place, which heard nearly 100 witnesses, and it was amended in several key respects. We now have the opportunity and responsibility to analyze and study it even further.

Bill C-59 is a complex and lengthy bill that will overhaul the legal and political framework of our national security infrastructure. Today, I do not intend to summarize the bill or to launch into a detailed analysis of its many parts.

[*English*]

Instead, I will organize my remarks around three themes: the major problems that the bill addresses, the solutions to those problems proposed by the bill and the most important issues that we need to focus on in our study of the bill.

Bill C-59 addresses three major problems. The first is the changing nature of the threats to our national security and the need to provide our security and intelligence agencies with clear mandates and the necessary tools to do their job. The second is the lack of system-wide review and accountability of our security and intelligence agencies. The third is the need to ensure that the powers granted to our agencies rest on a solid legal and constitutional footing, one that enhances democratic accountability and transparency. Let me begin with the changing nature of the threats to our national security.

The last time we had a major overhaul of our national security framework was in 1984 with the creation of the Canadian Security Intelligence Service, or CSIS. To be sure, the Anti-terrorism Act of 2015, which we know as Bill C-51, expanded some of the powers of our agencies, but the basic framework has not been amended in any substantive way since 1984. In 1984 the fax machine was still a relatively new invention. Personal computers were only beginning to penetrate the market. The Internet? Dial-up at best. The World Wide Web, smartphones? Years away.

Now, add to this the growing emergence of non-state actors in the security landscape, and it's undeniable that we're living in a far more complicated security environment than we were a generation ago when our security and intelligence agencies were first created. In 1984, suicide attacks perpetrated to cause mayhem and destruction were virtually unheard of. Much has changed.

Today, along with continued violence, some of the greatest threats to our national security arise in the cyber area, whether in the form of attempts to compromise our institutions and infrastructure, or indirectly, through the recruitment and empowerment of individuals and groups to carry out terrorist attacks.

Until very recently, Canadians knew very little about the government agency with primary responsibility to protect us in the cyber era. The Communications Security Establishment, or CSE, was created 72 years ago after the Second World War. Up until now, its governing legal instrument was a short section tucked away in the National Defence Act. Bill C-59 brings CSE out of the shadows and provides it with its own legislative framework to ensure the agency has the legal authorities needed to deliver on its mandate and to respond to the changing nature of the national security threats we face. It also provides for increased oversight of its intelligence-gathering activities by creating the office of the intelligence commissioner, about which I will have more to say in a moment.

• (1520)

Under the current law, CSE has a three-part mandate: the collection of foreign intelligence; cyber defence and the protection of important government infrastructure; and providing operational assistance to federal law enforcement and security agencies performing their lawful duties.

Bill C-59 adds an additional mandate for CSE to conduct offensive cyber operations abroad. Democratic accountability is ensured by requiring that such operations must be authorized by both the Minister of Defence and the Minister of Foreign Affairs.

Moreover, Bill C-59 puts important limits on the exercise of CSE's offensive cyber powers by ensuring they do not trigger international law obligations regarding the use of force or infringing upon another nation's sovereignty. In this way, Bill C-59 provides our agency with the tools to respond to the 21st century threat environment while reinforcing democratic oversight and accountability.

Honourable senators, I know this is a controversial area and some may argue this new mandate is not necessary to protect our national security. I strongly disagree. Although I do believe the mandate is necessary, I readily acknowledge that there are serious questions around when and how CSE should exercise it. This is an important area that needs to be studied carefully in committee, taking advantage of the expert witnesses whose analysis can be brought to bear on these issues.

The second problem that the bill addresses is the lack of a system-wide structure to review the activities of our security and intelligence agencies and the related problem of communications and information disclosure between them.

To put it bluntly, our agencies operate largely in silos, with different review and oversight structures for each. This has long been identified as a problem for both transparency and accountability as it compromises the ability of officials and parliamentarians to review and assess the performance of our agencies.

Bill C-59 responds to this problem by creating the national security intelligence review agency, or NSIRA, a single review body with the mandate to examine any federal agency that deals with national security matters. It will be able to follow the thread from CSIS to the RCMP, the Canada Border Services Agency, Global Affairs Canada or any other agency of the government that gets involved with a national security file.

In addition, Bill C-59 creates the office of the intelligence commissioner to be housed within the new NSIRA. The intelligence commissioner, to be a retired Superior Court judge, will provide an oversight role including prior quasi-judicial authorization for CSE to collect intelligence outside of Canada. Importantly, the intelligence commissioner will have to give reasons for his or her decisions in approving or denying such intelligence-gathering activities, thereby enhancing the ability of NSIRA to perform its review functions.

The creation of NSIRA and the office of the intelligence commissioner are major steps forward in reinforcing both the transparency and accountability of our security and intelligence infrastructure. This indeed will complement the National Security and Intelligence Committee of Parliamentarians — Bill C-22 — and bring us into line with our democratic allies.

The problem of our agencies working in silos also has serious operational implications.

[*Translation*]

For a national security regime to be effective, the use and communication of information to those most likely to deal with the threat must also be effective. Indeed, honourable senators, one of the main findings of the Air India investigation was that the federal departments and agencies were not sharing the information that they needed to detect and possibly prevent the tragedy.

The response of the previous Parliament was to pass the Security of Canada Information Sharing Act in Bill C-51, the Anti-Terrorism Act, 2015. Unfortunately, that poorly drafted, very broad piece of legislation raised concerns among privacy advocates who felt that the legislation created unprecedented powers to gather information and that all sorts of personal information about Canadians would be communicated at the government level.

Bill C-59 addresses those concerns in several ways.

The former legislation sought to ensure that only information related to national security threats would be communicated to departments on a need-to-know basis. Bill C-59 reorganizes and renames the Security of Canada Information Sharing Act and clearly states — something far more important than a name change which is mostly cosmetic — that it does not create any new authority for gathering information.

[*English*]

Second, the new SCIDA creates a robust framework for ensuring that departments track when they disclose information, when they receive information from another department and why the information was shared. It also requires the receiving department to evaluate whether they do, in fact, require the information, and it creates an obligation for these disclosures to be reviewed by the review agency, NSIRA.

Finally, the new act clearly states that "activities that undermine the security of Canada," which is the trigger for information sharing, do not include advocacy, lawful protest and dissent or artistic expression unless carried out in a manner with an activity that, in fact, undermines the security of Canada.

These changes represent important improvements over our current law. However, several issues remain of concern. The most significant is the retention of the threshold that I just mentioned for triggering the sharing of information; that is, "activities that undermine the security of Canada." This is the broadest threshold in our national security regime and one which raises important concerns about both our rights to privacy and our right to engage in legitimate protest. This is a matter that needs to be scrutinized very carefully in committee.

We come now to the third major problem that Bill C-59 tackles: ensuring that the powers granted to our agencies rest on a solid legal and constitutional footing, one that enhances democratic accountability and transparency and which our agencies can apply with confidence that the law actually supports what they do.

Let me begin with one of the most complicated and controversial areas in our national security law: the collection, retention and use of data about Canadians or people living in Canada.

Few, I hope, would deny that our intelligence agencies must be able to collect, retain and analyze intelligence. The real issue, as it is in so many areas of national security law, is putting in place the appropriate checks and balances on this activity to ensure that our constitutional rights and freedoms are respected. In this regard, sadly, our current laws have simply not proved adequate.

Bill C-59 responds to this problem in several different ways. Let's begin with the issue of data collection.

A core mandate of CSE is the monitoring and analysis of information from the Internet for foreign intelligence. At present, however, the current law only requires that the Minister of National Defence authorize the interception and bulk collection of this Internet traffic. Although the law prohibits CSE from directing these activities against Canadians, Canadian data is inevitably swept up in these operations. This is inherent in the nature of the Internet.

BUSINESS OF THE SENATE

The Hon. the Speaker: I'm sorry to interrupt you, Senator Gold. It is now 3:30 and we have to move to Question Period. However, following Question Period, you will be given the balance of your time.

QUESTION PERIOD

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, today we have with us for Question Period the Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada.

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, appeared before honourable senators during Question Period.

MINISTRY OF JUSTICE

ORAL FLUID DRUG SCREEN DEVICES

Hon. Larry W. Smith (Leader of the Opposition): Good afternoon, minister, and welcome.

• (1530)

Minister, my question for you today concerns one particular aspect of the legalization of marijuana, and it's the issue that has been discussed many times in the chamber: the drug detection devices for law enforcement. Just a month ago, your department announced the approval of the first and only oral fluid drug screening equipment for law enforcement.

As you know, many of the largest police forces in Canada have not ordered this device because of concerns over its accuracy in the cold, its high number of false readings and its cost of about $6,000 per device. There are legitimate concerns that the inaccuracy of this device could lead to the dismissal of charges.

Minister, could you tell us about the decision-making process to approval only one piece of equipment to date, and could you please provide us with the departmental assessment regarding the pros and cons or the inadequacies of the device that has been approved?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question.

I appreciate the question as we proceed to October 17 and the legalization and strict regulation of cannabis, and also speaking about the regime that we're proud to put in place in terms of alcohol and drug-impaired driving. As we know, impaired driving has severe consequences on the road, and we're pleased to put in an incredibly strong regime to do as much as we can to detect drivers that are impaired by alcohol or drugs.

With respect to the senator's specific question about the oral fluid screening device that I certified, the Dräger, we have the benefit of extensive expertise from the Canadian Society of Forensic Science and the Drugs and Driving Committee experts

who examined the evidence around the Dräger in advance of my certification. We put it out to the public for 30 days to receive feedback.

This is the first device I have approved to provide additional tools to law enforcement officers to assist them in the detection of drug-impaired driving. It is a saliva test, and it registers a pass or a fail. It is not the only tool that law enforcement officers have. It's an additional tool.

In addition to this tool, we have provided a significant amount of resources to law enforcement officers to get training in drug recognition, evaluations and the Standardized Field Sobriety Test. We will continue to work with the Canadian Society of Forensic Science and the committee to look at additional devices for law enforcement officers as we move forward with the legalization of cannabis.

Senator Smith: As a follow-up to that question, there are probably people who would ask you, with three weeks before the legislation comes into effect and with only one device approved, whether there are other devices in the mix that will lead you forward to having more than just one device that's available, especially because of the questions that are involved. Of course, that ties into the number of drug enforcement officers who have been trained to date, and I think somebody else may ask that question.

Could you give us a sense of where you're going? If there was any opposition to this particular part of the bill, it was that people wanted to make sure the proper tools were in place when it started or when it was implemented, and I wonder what your thoughts are on that.

Ms. Wilson-Raybould: Thank you, senator, for the follow-up question. It gives me an opportunity to answer something you asked the first time. I would be happy to provide you and all honourable members in this house the background with respect to the Dräger. That was available online, but I would be happy to provide it to you.

In terms of devices, there is a potential that in the future I will certify additional devices. Certainly the work of the committee continues, and our battery of experts and forensic scientists are continuing to do their work. I will say, however, that we are ready for October 17. Impaired driving has been part of the Criminal Code since the 1920s. We have law enforcement officers that are trained in drug recognition, evaluation, and the Standardized Field Sobriety Test. Again, this device, the Dräger, is one additional tool to assist law enforcement officers in determining whether an individual is under the influence of drugs while they're driving.

LEGALIZATION OF CANNABIS—INTERNATIONAL CONVENTIONS

Hon. Denise Batters: Minister, the day that your government celebrated Royal Assent of your marijuana legalization scheme, the United Nations Office on Drugs and Crime was not in a celebratory mood. This UN body issued a major statement slamming your government for legalizing marijuana and violating three drug conventions in the process. You kept this international embarrassment out of the media, but legalization looms just as Prime Minister Trudeau strolls UN hallways this week looking to score votes for that Security Council seat.

He shouldn't be surprised when foreign leaders express their shock and dismay about your government's careless actions. Being publicly chastised by the UNODC does not lend itself well to winning Security Council votes. We in the Conservative caucus warned you about this, yet your government brushed it off as no big deal. With three weeks to go, so many consequences are apparent in your ill-conceived and poorly executed marijuana scheme. It's a little hard not to say we told you so.

Minister, when introducing this sea change in Canadian society, why didn't you heed our warnings, and how will you reverse this epic failure?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you to the senator for her comments. I will say at the top that I completely disagree with how she characterized our cannabis legislation in Bill C-45. We introduced it, and I'm very pleased that it received Royal Assent. We are doing everything we can to address the status quo wherein individuals, particularly young people, have the highest rates of use of cannabis in the country. That is not acceptable. We want to ensure — and this is why we introduced the legislation and why we're pleased that it passed — that we do everything we can to keep cannabis out of the hands of children and keep the proceeds out of the hands of criminals.

As the senator indicated, we have been very open with our intentions with respect to Bill C-45 and the legalization of cannabis. My colleagues, the Minister of Public Safety, now Minister of Border Security, the Minister of Foreign Affairs and the Minister of Health, have been very open in forums such as the UN and other places about our plans to do this and the rationale as to why we're doing this. We have been very open with the international community. In fact, many within the international community have come to us and asked how we are proceeding on this.

We had a task force that engaged with Canadians and internationally, and it provided us with significant recommendations. Most of those recommendations provided the basis for the legislation.

The honourable senator mentioned Security Council seats. I'm incredibly proud of the Government of Canada. I'm incredibly proud of our Prime Minister and Canada's place in the international community. I'm pleased that the Prime Minister is in New York right now engaging with international leaders.

CHARITABLE AND NON-PROFIT SECTORS—REGULATORY FRAMEWORK

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Thank you, minister, for being here. We here in the Senate have a Special Senate Committee on the Charitable Sector, and I happen to chair that committee. It's my privilege to do that.

When reviewing your mandate letter from the Prime Minister, I noticed there is a reference to the charitable and non-profit sectors requiring you to "Work with the Ministers of Finance and National Revenue to develop a modernized regulatory and legal framework governing the Charitable and Not-for-Profit sectors."

Our committee and the many thousands of groups across the country are eager to move forward with a new framework for how charities and non-profits achieve their goals. Could you expand upon that part of your mandate and update us on what is being done to achieve that goal?

• (1540)

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, senator, for your question. I recognize that is one of the tasks that is on my mandate letter, and to your point, I am and have been supporting the Minister of Finance as well as the Minister of National Revenue in terms of updating a framework with respect to charitable organizations. This is something that the two ministers are working on.

I would say to you, honourable senator, and to the committee that I can provide you with an update. I can engage with my colleagues to give you the public update, and I'm certain that the ministers would be very happy to respond to you directly.

NOTWITHSTANDING CLAUSE

Hon. Howard Wetston: Minister, it's not my intention to ask you to comment extensively on the relationship between parliamentary sovereignty and the Charter-entrenched guarantees enforced by the courts. Rather, have you had an opportunity, minister, to consider developing criteria for the use of the notwithstanding clause in section 33 of the Charter?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question. It provides me, as the Minister of Justice and the Attorney General, with the opportunity to say a few words about section 33, the notwithstanding clause. As the honourable senator very well knows, this is a section that has not been used with great frequency. This is a section that the federal government has never used. In terms of my role, I pride myself as somewhat of an ambassador of the Charter, and for our part, for our government, we will always uphold the Charter of Rights and Freedoms. The issue of section 33 has become one that is talked about in the news and the media of late because of actions taken by the Premier of Ontario.

As a government, we feel it is greatly unfortunate that the notwithstanding clause was brought up in this context.

In terms of criteria around how the notwithstanding clause should be used, we have considered its usage and the frequency of its usage. The notwithstanding clause should be used in extraordinary circumstances, as a last resort, under well-considered, sober second thought.

There are provisions that describe how this section can be used and with respect to which charter rights it can be used for.

I am sure that discussions about this will continue but, for our part, in terms of criteria, the criteria for the use of the notwithstanding clause should be applied only in very exceptional circumstances.

[*Translation*]

EXPUNGEMENT OF HISTORICALLY UNJUST CONVICTIONS

Hon. René Cormier: Good afternoon, minister, and welcome to the Senate. On March 29, 2018, you introduced Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts.

On November 28, 2017, when Bill C-66, An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts, was introduced, the Prime Minister of Canada apologized to the LGBTQ2+ community and committed to consulting this community in order to right these wrongs and rebuild this community's trust in a system free from hateful practices. The Prime Minister created some big expectations for this community, as we can see by the demands made today by the Canadian Centre for Gender and Sexual Diversity. Minister, how did the Government of Canada consult the LGBTQ2+ community about Bill C-75, and how did the Government of Canada try to meet the expectations it created within the LGBTQ2+ community with respect to the expungement of the offences that are still in the Criminal Code and are enforced in a discriminatory manner?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question with respect to LGBTQ2 persons and Bill C-75, which, as the honourable senator knows, brought in a number of other pieces of legislation that I had previously introduced, including the one to remove section 159 from the Criminal Code.

I look forward to seeing this bill move through the parliamentary process as expeditiously as possible. In terms of consultation around section 159 and around other issues that the senator mentions with respect to potential expungement of records, this has been an ongoing conversation, certainly one that our government takes very seriously in wanting to address.

The Prime Minister some time ago appointed a special representative on LGBTQ2 issues, Randy Boissonnault, who has undertaken extensive consultations across the country with LGBTQ2 people, communities and advocates, and we will be having further conversations with respect to the potential of expungement of records.

Our government recognizes and respects every individual's right to be free and to be who they are. We have entered into and passed legislation that looks to change the Criminal Code and the Canadian Human Rights Code to recognize gender identity and expression as a prohibited grounds under the Canadian Human Rights Code. So we are continuing to, on many fronts, recognize

and acknowledge the injustices that the LGBTQ2 community has faced in our past and are doing everything we can to ensure that we remedy those as we move forward.

I will be very pleased to update this honourable Senate on activities as we move forward, but I'm sure that those activities will be discussed very publicly.

[*Translation*]

OMBUDSMAN FOR VICTIMS OF CRIME

Hon. Pierre-Hugues Boisvenu: Good afternoon, minister. It took your government nearly a year to fill the position of Federal Ombudsman for Victims of Crime, although it took only a few weeks for you to fill the position of ombudsman for federal offenders. As you know, the Correctional Investigator position falls directly under the Corrections and Conditional Release Act, while the Federal Ombudsman for Victims of Crime position is a program. That position is therefore very vulnerable within a government that sees victims' rights as secondary.

The position of Federal Ombudsman for Victims of Crime is not an officer of Parliament, although the Correctional Investigator is. Why did you not use your time this year to make the position of Federal Ombudsman for Victims of Crime an officer of Parliament rather than a government program?

My second question is this: Since your government says that it cares about victims of crime, why has it not recognized the right to equal treatment for victims' rights and offenders' rights by making those two positions equal within the federal government?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: I thank the honourable senator for his question. I know that we've had this discussion in this chamber before, and as the honourable senator points out, I was incredibly pleased yesterday to announce the appointment of our victims ombudsperson for a three-year term. I am very pleased to have appointed Heidi Illingworth to this position. She has an incredible background in terms of advocating for victims' rights. I know we will benefit from her experience and advocacy in terms of victims' rights and in terms of the balance that we place on recognizing the rights of victims as well as the accused, without question, in the work that we do and looking towards comprehensive reform of the criminal justice system.

We have engaged very extensively across the country with many individuals, lawyers, judges, as well as victim advocacy groups and victims themselves to ensure that we recognize and protect victims' rights. We understand and recognize the rights of the accused and ensure that in everything we do, we hold public safety in the foremost of our mind, as well as the Charter of Rights and Freedoms.

• (1550)

The senator has been a very staunch advocate for victims' rights. I know that through the office of the ombudsperson, through my office and with our genuine overall commitment to ensuring victims' rights are upheld, we can make some great strides.

[*Translation*]

ORAL FLUID DRUG SCREEN DEVICES

Hon. Jean-Guy Dagenais: Minister, from day one, you have ignored all warnings about the consequences of bringing the Cannabis Act into force. Despite all recommendations, you are determined to endanger the lives of Canadians with this law. The device you are asking police officers to use does not work. It will be challenged in court and will end up costing public services, police services and municipal and provincial governments a lot of money. Who will pay for that? The public, as always.

Are you prepared to pay for or reimburse the legal fees that will result from your stubbornness? Do you at least acknowledge that a questionable device that has already been proven ineffective will cause nothing but legal problems?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you for the comments.

I would respectfully disagree with your comments and the characterization of Bill C-45 and Bill C-46, the legalization of cannabis and our impaired driving legislation, which I am incredibly proud has received Royal Assent. Also, a legalized regime that is strictly regulated in this country will come into force on October 17 to keep cannabis out of the hands of children and the proceeds out of the hands of criminals. At the same time, I am proud of the legislation that has received Royal Assent, Bill C-46, which will be among the strongest impaired driving laws in the world.

If there is anything I am stubborn about, it is to ensure that, in my capacity as minister, I do what I can in terms of the laws, our policies, tools I can provide for law enforcement officers to ensure that the number of lives lost on the roads is decreased. That is why we have done this. The intent, to ensure that we provide law enforcement officers with the necessary tools they require, has led us to invest significant dollars into their training and in support of their training in terms of drug recognition, Standardized Field Sobriety Testing and the usage of devices, as well as providing dollars to the provinces and territories.

The oral fluid screening device, the Dräger, that I certified is one of those additional tools. Again, there are a number of tools for law enforcement officers.

We are entering into this legalized regime. We are embracing the new impaired driving laws because we will do everything we can to keep our roads safe. The status quo with respect to cannabis usage in this country is unacceptable, and we will do everything we can to reduce those numbers.

INDIGENOUS RIGHTS FRAMEWORK

Hon. Marilou McPhedran: Minister, in July 2017, you released 10 principles respecting Canada's relationship with Indigenous peoples as a starting point to end Canada's denial of Indigenous rights. The Government of Canada posted the proposed overview of a recognition and implementation of Indigenous rights framework, stating that the Minister of Justice and Attorney General of Canada will also engage with Aboriginal law and Indigenous governance experts for the development of this framework.

In light of the recent Assembly of First Nations meeting, September 11 to 12, the proposed framework and the range of concerns heard at that meeting about both implementation and scope, how will you ensure Indigenous leaders' concerns about the proposed framework are addressed?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for the question on Indigenous peoples and Indigenous people's rightful place within Confederation. This is a longer discussion that I would love to have with you, but in as concise a way as I can regarding where the government is at on a recognition of rights framework, as the honourable senator may know, this is directly within the responsibility of my colleague, Minister Bennett, the Minister of Crown-Indigenous Relations and Northern Affairs.

I am very aware of the Assembly of First Nations' resolution. I am also aware of concerns that have been expressed broadly by Indigenous leaders across the country. For my part, in terms of the Recognition and Implementation of Rights Framework, I believe that properly done, such a framework will create the space for Indigenous peoples to be self-determining based on what they view and the priorities they set in terms of rebuilding their nations.

The principles that were released by our government back in July 2017 that you referenced are to instruct or provide a framework for the interaction of the federal government with Indigenous peoples. For my part, again in terms of commentary I've made around the rights recognition framework, I believe there are fundamental elements that must be contained within such a framework, but the basis or the premise of any rights recognition framework must be the recognition of rights, and it must have a legislated, binding standard that would apply to all federal officials. It must embrace and recognize the right to self-determination, which includes the inherit right of self-government. There are many other essential elements. Again, I would be happy to have that conversation and provide you with what I believe are other essential elements.

We are in a time when the conversation and dialogue among Canadians is very high with respect to Indigenous peoples. We have an incredible opportunity to get it right and to ensure that our Recognition and Implementation of Rights Framework is premised on what Indigenous peoples have been asking for decades, and that is fundamentally on the recognition of rights.

I will continue to advocate for that. I will continue to challenge for a proper recognition of rights framework, both internally and externally. Without question, any movement forward on the Recognition and Implementation of Rights Framework has to ensure that we are engaging and getting direction from our Indigenous partners.

[*Translation*]

ORAL FLUID DRUG SCREEN DEVICES

Hon. Claude Carignan: Minister, I listened carefully to the answers that you gave Senators Smith and Dagenais regarding the devices for detecting impaired driving. You have good intentions, but the problem is that your answers are out of sync with the situation on the ground.

You promised approximately 3,000 drug recognition experts to meet the needs of police, but there are currently no more than 700, and no one new has been hired since last winter. I'll acknowledge that the police have been given an additional tool, and that is the Dräger device that you spoke about earlier. It is the only device you have approved, but the police do not want it because they find it lacking and they are waiting to see what other devices will be approved before making a choice.

Last week, I attended the conference of the Fédération québécoise des municipalités, where the legalization of cannabis was discussed. A representative of the Sûreté du Québec told us that he did not want to use that device because he did not think it was effective. He is waiting for the federal government to approve other devices and, once that happens, he will set up a committee to examine them and choose one. That will not happen before 2019.

No additional drug recognition experts have been hired and no drug screening devices are being used on the ground. Your answers may seem to make sense from the top of your tall tower, but if you were to venture out onto the ground, you would see that things aren't working.

• (1600)

My question is the following: Are you working with police forces? Are you working with the provinces to ensure they obtain the equipment and tools that will prevent impaired driving as of October 17? Right now the earliest we see that happening is from about mid- to late 2019. In the meantime, we will possibly see more cases, as we did last week in Quebec, where people accused of impaired driving are acquitted because a drug recognition expert could not be brought in within a reasonable period of time as required by the charter.

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you for the question again on impaired driving and the devices. From the senator's question, I will speak simply to the oral fluid screening device with respect to drug-impaired driving and try to answer some of the senator's points.

In terms of police forces and this device in particular, while I work very closely with the Minister of Public Safety, we went through extensive testing on the devices. Police forces across the country successfully completed testing on the device.

Again, I'll go back to the Canadian Society of Forensic Science and the drug-impaired driving committee on whose expertise we rely. Some of those experts are law enforcement officers who provide us advice with respect to potential devices. As I said to another senator, having one device doesn't preclude eventually having an additional device. I can't put myself in the place of law enforcement to determine why they're not going to buy this particular device, but I will say with certainty, based on the scientific expertise that we received, I certified the Dräger device to assist law enforcement officers as one additional tool — and these aren't lines; these are facts. This is not in an ivory tower. This is on-the-ground evidence and knowledge from experts that an additional tool in terms of an oral fluid screening device that takes saliva, that registers a pass or a fail, passed the testing. This is an additional tool. It's not the only tool that law enforcement officers have to use in terms of determining whether a driver is impaired by drugs.

Again, we have invested significant amounts of dollars to train drug recognition experts. There is the Standardized Field Sobriety Test. There are the additional tools in a somewhat laddered approach that law enforcement officers can take advantage of to ensure that they, as much as they can, identify a driver while the driver is impaired.

Again, broadly speaking with respect to our impaired driving laws, whether we're talking about the mandatory alcohol screening or about the oral fluid screening device, these are tools that are going to assist us in ensuring that we get as many individuals off the road or that we detect these individuals who are driving under the influence of alcohol or drugs with the intent to ensure that we protect the lives of Canadians.

MANDATORY MINIMUM PENALTIES

Hon. Kim Pate: Thank you for joining us today, minister.

This morning *The Globe and Mail* published an op-ed by Professor Debra Parkes calling on the government to abolish mandatory minimum penalties.

Your government was elected on a platform that promised to restore judges' discretion regarding mandatory minimum penalties. Bill C-75, the product of the review of the criminal justice process that you were mandated to carry out, does not address mandatory minimum penalties. In fact, Bill C-75, although it also promises to significantly reduce the number of Indigenous peoples in the criminal justice system, does not heed the Truth and Reconciliation Commission Call to Action No. 32, which called on the government to depart from mandatory minimum penalties because they are a primary contributor to the over-representation of Indigenous peoples in Canadian prisons.

I'm curious, minister, and I'd appreciate your interventions here in terms of what steps the government is taking and planning to take to address mandatory minimum penalties in light of the July 2018 finding of your own department that 9 out of 10 Canadians in fact want your government to consider giving judges the flexibility to not impose mandatory minimum penalties.

When will your government attempt to implement some provisions to ensure judges have the discretion not to impose mandatory minimum penalties?

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thanks to the honourable senator for her question and her decades of advocacy in terms of the criminal justice system and marginalized individuals. Certainly, I recognize the work the honourable senator has done specifically with respect to mandatory minimum penalties in her public member's bill.

With respect to where the government is in terms of mandatory minimum penalties, I will say from the outset that I believe I've been very clear as minister in terms of my position or approach to mandatory minimum penalties. I'll reiterate — and this has been raised by other honourable senators in this place — that I believe mandatory minimum penalties are appropriate for the most serious of crimes, but there are many other mandatory minimum penalties in the Criminal Code and the Controlled Drugs and Substances Act, around 72.

I believe that, with respect to many of the mandatory minimum penalties, we need to continue to do work on them. We are continuing to engage across the board with Canadians and all actors in the criminal justice system. I'm committed to sentencing reform. I recognize that it is in my mandate letter, and I want to ensure that when we move forward with reforms to mandatory minimum penalties, that we get it right, that we make changes in terms of sentencing that will stand the test of time.

I can assure this honourable place that when we do make changes with respect to mandatory minimum penalties, it will be because of the recognition of the necessity for judges to have the necessary discretion to impose the most appropriate sentence based on the individual that presents themselves before that judge.

I have benefited from the expertise of many individuals across the country in terms of the timing around making changes to mandatory minimum penalties. This is something that we're committed to continuing to do work around and to move forward on. Certainly, there are moments when we would like things to move a little bit quicker, but the honourable senator in this place has my commitment that it is something I'm committed to doing.

There are potentially other tools that could assist in looking at sentencing reform, broadly looking at the principles of sentencing in the Criminal Code and ensuring when we actually do make changes to mandatory minimum penalties that we understand the impacts and the data that comes from those changes to make sure that sentencing is appropriate, balanced and does a service to the criminal justice system.

[*Translation*]

COURT CHALLENGES PROGRAM

Hon. Raymonde Gagné: Minister, welcome once again to the Senate. My question concerns the Court Challenges Program, which supports court cases of national interest dealing with the rights of official language minority communities and other vulnerable groups, and which we are still waiting for.

This program is no longer mentioned in the mandate letters for the new Minister of Canadian Heritage, the Honourable Pablo Rodriguez, and the new Minister of Tourism, Official Languages and La Francophonie, Mélanie Joly, released this summer.

Is this program now under your exclusive jurisdiction? Can you explain the delay in implementing it and when the program will be up and running? When will litigants be able to access the Court Challenges Program for the promised financial support?

[*English*]

Hon. Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada: Thank you, honourable senator, for a very important question about a very important program, the Court Challenges Program, which our government was very pleased to bring back. I worked with the then minister of Canadian heritage to announce the return of the Court Challenges Program.

To assure the honourable senator, the Court Challenges Program is still under the auspices of the Minister of Canadian Heritage.

• (1610)

As to the specific timing, I don't know the answer to that question. I know when last I spoke to my colleague prior to the new minister coming in, who I know is very committed to ensuring this program gets up and running, it was intended to come into operation, both in terms of languages and in terms of the other rights for individuals to benefit from being provided with financial resources to engage in litigation.

I will endeavour to get a specific answer regarding the timing for the honourable senator, but I want to assure her and other members in this house that this is still a priority of the government, and we will move forward with it.

The Hon. the Speaker: Honourable senators, the time for Question Period has expired. I'm sure all honourable senators wish to join me in thanking Minister Wilson-Raybould for being with us today. Thank you, minister.

Hon. Senators: Hear, hear!

[*Translation*]

ORDERS OF THE DAY

BILL TO AMEND CERTAIN ACTS AND REGULATIONS IN RELATION TO FIREARMS

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-71, An Act to amend certain Acts and Regulations in relation to firearms.

(Bill read first time.)

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

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

[*English*]

NATIONAL SECURITY BILL, 2017

SECOND READING—DEBATE ADJOURNED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, seconded by the Honourable Senator Moncion, for the second reading of Bill C-59, An Act respecting national security matters.

The Hon. the Speaker: Senator Gold, I apologize for having to interrupt you during the middle of your speech.

Hon. Marc Gold: Thank you, Your Honour. Just to bring us back into the picture, I began by noting how Bill C-59 represented a modern, 21st century response to the changing nature of the security threats that confront us as a nation. I went on to sketch how Bill C-59 provides a system-wide, government-wide structure of oversight and review, responding to long-standing recommendations from many quarters, academic, judicial and otherwise.

I was just beginning to talk about how the bill responds to the third major problem, which is to ensure that the powers, mandates and tools that we give to our agencies rest on a solid constitutional footing so that they can be used to protect our security. I began with what perhaps is the most controversial area and the one that's been the subject of lawsuits and email campaigns, of which we're all aware, and that is the collection, retention and disclosure of data. Here's where we left off.

The CSE has a mandate for monitoring and analyzing information from the Internet for foreign intelligence. It's not allowed to target Canadians, but the nature of data in this digital world and in the Internet makes it inevitable that data on Canadians is swept up in these activities.

Here's the policy and legal dilemma: The current law as it is may be unconstitutional, violating our Charter rights to be secure against unreasonable search and seizure.

Bill C-59 offers an elegant, indeed novel, solution to this dilemma, through the creation of a robust oversight role for the intelligence commissioner.

Among other responsibilities, the intelligence commissioner will oversee cybersecurity and foreign intelligence authorizations issued by the minister and either approve them or deny them in advance. Should the intelligence commissioner find that an authorization issued by the minister is unreasonable, then CSE simply cannot act.

Furthermore, a very important amendment that was introduced in the other place clarified that the same degree of oversight would apply to publicly available information, which includes information that might have been hacked or improperly or inappropriately publicized, information where Canadians have a reasonable expectation of privacy in that data. Honourable senators, this ensures that the CSE simply can't do an end run around the Charter.

This is Bill C-59's attempt at resolving this constitutional dilemma that was created inevitably by the modern techniques of bulk intelligence gathering. For the first time there will be prior, quasi-judicial oversight of these operations by a retired Superior Court judge. This is a novel solution, but it's one of the very few ways to bring CSE's existing surveillance capacities in line with the Canadian Charter of Rights and Freedoms. It's an example of how Bill C-59 seeks to put our agencies' powers on a solid constitutional footing, enabling them to fulfil their mandates.

Bill C-59 also addresses some of the problems with CSIS collecting and retaining information on Canadians. As you know, CSIS is charged with investigating threats to the security of Canada, both foreign and domestic. CSIS investigations collect data on Canadians by targeted means, such as wiretaps, authorizations for which are granted by warrants obtained from the Federal Court.

However, in collecting information about targeted individuals specified in the warrant, CSIS captures a great deal of information about related persons and non-related third parties. According to the terms of the warrants issued by the Federal Court, information that's not threat-related should be destroyed. So far so good.

But what about the metadata that is collected? For example, the time of call, the length of call, the IP address and so on? In 2016, a Federal Court case revealed that CSIS had been retaining and analyzing this metadata for many years and that this went beyond CSIS's mandate under the current law.

The policy dilemma is this: The metadata can be very useful from an intelligence and security perspective, but again, its collection and retention may very well infringe our privacy rights protected by the Charter. Even if individual pieces of metadata do not contain personal information, the analysis and piecing together of such data through computerized means can provide a fairly detailed image of a person's personal life.

Bill C-59 addresses this problem by creating a rigorous pre-approval process for the collection and retention of collected data, allowing CSIS to analyze data and trends in a manner that protects the privacy of Canadians. This regime is detailed and comprehensive, involving oversight by the Minister of Public Safety, the intelligence commissioner and the courts. Indeed, the structure is so robust that some in the other place have questioned whether this will get in the way of our agencies doing their jobs. Is it too much oversight? I don't think so, but let's concede that it's a legitimate concern and one that should be examined seriously in committee.

Finally, a brief word about the sharing of information among our allies and foreign entities.

The sharing of security intelligence information among allies is necessary to protect our national security. This is true for all countries, and it's especially true for Canada because we're a net importer of foreign intelligence.

During the fall of 2017, the Minister of Public Safety issued new ministerial directives to CSIS, the RCMP and the Canada Border Services Agency that relate to the sharing and receiving of information that may have been obtained through or lead to torture. Other government departments dealing with national security followed suit with directives from their respective ministers. These directives prohibit the sharing of information if there's a substantial risk that such sharing could lead to torture and these risks cannot be mitigated. The same is true for Canada requesting such information from a foreign entity. The ministerial directives also provide that federal agencies should not use information from foreign entities that was likely obtained through torture.

• (1620)

These were a substantial improvement over the previous directives that only applied to CSIS and the RCMP and were only available to the public through an access to information request. Importantly, Bill C-59 was amended in the other place to require that the federal government make public such directives.

This introduces an important element of accountability and transparency to the process while bolstering the protection of our fundamental rights. The bill could have gone further and embedded these directives in the legislation itself. This is a question that I hope will be considered when the bill gets to committee.

Honourable senators, the collection, retention and disclosure of data raise important questions of constitutional rights and democratic accountability. I have no doubt that Bill C-59 represents a major improvement over the current law, but I also have no doubt that this is an area where reasonable people can and will disagree. We have a duty to ensure that the appropriate checks and balances are in place and that we get it right. I expect this will be a major focus at committee, as well it should be.

Let me briefly review some of the other legal and constitutional problems that Bill C-59 seeks to remedy, starting with changes to the legal framework governing CSIS.

In broad terms, Bill C-59 updates the CSIS Act by giving CSIS clear and transparent legal authorities to undertake its intelligence-gathering activities in a 21st century context. As you know, Bill C-51, the Anti-terrorism Act, 2015, increased the powers of CSIS significantly but did so with minimal legal limits on their exercise. This created both constitutional problems and a dangerous degree of operational uncertainty. Let me give you just one example to illustrate the point.

The Anti-terrorism Act, 2015 granted CSIS new threat-reduction powers. These powers are potentially very useful, especially where the threat has not materialized to engage law enforcement or criminal prosecution — it's the intelligence to evidence problem that academics are fond of talking about — or where disclosing the information would compromise ongoing intelligence efforts. Indeed, the Special Senate Committee on Anti-terrorism, chaired by former Senator Hugh Segal, recommended that lawful disruption be included in the arsenal of legal options available to our security and intelligence agencies. I agree.

Nevertheless, Bill C-51 seriously overshot its mark. Not only did it appear to grant CSIS seemingly unlimited powers, the bill also explicitly provided that a judge could authorize CSIS to use those powers to violate the Canadian Charter of Rights and Freedoms.

As Professors Forcese and Roach wrote, "Bill C-51's CSIS warrant is an astonishing rupture with foundational expectations about both the rule of law and the role of the judiciary."

In fact, CSIS never applied to a court to take such action, and that's a testament to their respect for the law. But it also illustrates, honourable senators, that when a mandate is constitutionally suspect, our national security agencies might shy away from exercising powers we need to protect us for fear that their actions will be challenged in court, that a constitutional train will be barrelling down on them.

Bill C-59 addresses the shortcomings in the current law by making it clear that all threat reduction actions are subject to the Charter, *point final*. In addition, the bill contains a closed list of activities that can be undertaken to reduce national security threats and embeds them into law. This provides both transparency and clearly prescribed legal limits to the actions that CSIS can take in the exercise of its powers.

I should add as well that the bill provides similar clarity and similar prescribed limits with respect to agents who are engaged in covert activities. These changes will allow the service to act when it needs to with the assurance that they're complying with the law.

Honourable senators, one of the most controversial aspects of former Bill C-51 was the creation of a new offence in the Criminal Code of advocating or promoting the commission of terrorism offences in general. The intent was to catch forms of advocacy that, while not sufficiently detailed to envisage the commission of a specific terrorism offence, advocated generally for the commission of a terrorism offence listed in section 2 of the Criminal Code. However, this represented a significant departure from the concept of counselling the commission of an offence that police forces and public prosecutors are used to.

Bill C-59 redefines the offence to that of counselling the commission of a terrorist offence. It doesn't use the term terrorist offence in general, a term unknown in law until it was introduced by Bill C-51. In this respect, the bill reflects a campaign promise that the current government made, but more importantly, it responds to input received during the public consultations preceding the introduction of the bill.

Not everybody is happy with this change. Critics of the bill, and not only partisan critics, suggest Bill C-59 may have gone too far in this area, and they argue that the current offence is needed and would perhaps withstand constitutional challenge. I don't know. I have no doubt, in any event, we're going to hear more of this when it gets to committee if not before, here in the chamber.

Before I conclude, I acknowledge there are many aspects of this bill that I haven't mentioned. It's a complex, multi-faceted bill. It's a system, really. We'll have time in committee to dig, as we must, deep into it. Prominent among the issues I haven't discussed are amendments to the Secure Air Travel Act that address the issue of the no-fly list, both with respect to its secrecy and the recourse available to people wrongly placed on the list. I know this is an issue of concern to many, and I fully expect that this will be scrutinized rigorously in committee.

Honourable senators, let me conclude where I began. In my view, Bill C-59 is a reasonable, responsible and necessary response to the very real security threats that we face as a country. It represents a major step forward in transparency and accountability, one that will improve the operational effectiveness of our security agencies while protecting the constitutional rights and freedoms of Canadians. Although the bill was the product of extensive public and stakeholder consultation and benefited from extensive study and amendment in the other place, our work here is just beginning.

The Senate deserves its reputation for seriously reviewing government legislation and for providing thoughtful suggestions for its improvement. I have every confidence we will do our best to give this important bill the rigorous and principled scrutiny that it deserves. Canadians deserve no less.

Thank you for your kind attention.

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

• (1630)

CONSTITUTION ACT, 1867
PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
ORDER RESET

On Other Business, Senate Public Bills, Third Reading, Order No. 2, by the Honourable Terry M. Mercer:

> Third reading of Bill S-213, An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, I note that this item is at day 15. I do intend to speak to it, therefore, with leave of the Senate, I ask the consideration of this item be postponed until the next sitting of the Senate.

The Hon. the Speaker *pro tempore*: Colleagues, is leave granted?

Hon. Senators: Agreed.

(Debate postponed until the next sitting of the Senate.)

KINDNESS WEEK BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Munson, seconded by the Honourable Senator Dawson, for the second reading of Bill S-244, An Act respecting Kindness Week.

Hon. Mary Coyle: Honourable senators, I rise to speak in support of Bill S-244, An Act respecting Kindness Week.

Author Henry James said:

> Three things in human life are important: the first is to be kind; the second is to be kind; and the third is to be kind.

The Dalai Lama says:

> My religion is very simple. My religion is kindness.

Our esteemed colleagues Senators Munson, Plett and Martin have already weighed in on this debate, extolling the importance of remembering to be kind, compassionate and generous to each other. It is good for our well-being and good for Canadian society.

Senator Plett cautioned us to be aware of overuse of tools of remembrance and celebration. We wouldn't want to risk taking away significance from other nationally observed days and events, but what could be more important than encouraging and reinforcing kind behaviour among Canadians?

This past weekend in Ottawa, many acts of kindness were essential to surviving the aftermath of the three tornadoes that hit the city, including offers of shelter, meals, neighbours refrigerating insulin, checking in on the elderly and infirm. Down on George Street in the market area, I noticed there is a kindness meter, fashioned like a parking meter, where you can contribute to support services for people living on the streets of Ottawa. The meter isn't intended to replace direct contributions to people in need.

Imagine if kindness week was built into school curricula and young Canadians were encouraged to express and demonstrate kindness to their peers, families and neighbours. This could become a year-round habit.

Only last week, Metis elder Elsie Yanik was honoured by having a school in Fort McMurray named for her. A beneficiary of kindness when she was a child and she had lost her mother, Elsie Yanik went on to spend the rest of her life demonstrating kindness in many ways in her community. Honouring Elsie Yanik's legacy, the school has placed the sign "kindness is contagious" in a prominent location welcoming the students as they enter the school each day.

Before this debate, Senator Hartling's statement on the power of one and the #BeccaToldMeTo campaign initiated by the late, brave and inspirationally kind New Brunswicker, Rebecca Schofield really kicked off this discussion on the importance of kindness and therefore the worthiness of setting aside special time every year to celebrate and encourage kind behaviour and actions.

My intention today is to add to the case for support of this bill by telling you a couple of short stories about kindness, citing some research and recent articles on the topic and then concluding with some final arguments.

The first short story about kindness that I'm going to tell you is actually my own.

A year ago I was bald. I had no eyelashes or eyebrows, and no fingernails or toenails. Like others in this chamber, I had come through a harrowing year of dealing with cancer, in my case breast cancer. It was a year of surgery, chemo treatments, radiation and the physical, emotional and spiritual toll that comes with that. A year later, I feel like I'm qualified to write a PhD dissertation on creative expressions of kindness and the positive impacts thereof.

I honestly believe that, along with the top calibre medical care I received, that the kindness administered ever so generously by family, friends, neighbours and strangers aided tremendously in my recovery and contributed to my ability to reclaim my wellness and to be here with you today.

Picture this: About two weeks after I had my first chemo treatment, my hair, formerly thick and very straight, was falling out by the handful. I went to see the wonderful Darlene Hart, the local hairstylist and special minister to chemo-affected bald women like me. I removed my hat for Darlene to see my mostly bare pate with its few stubborn remaining strands of hair. Darlene suggested she shave my head to even things up before she installed my wig.

What Darlene did next was a real gesture of compassion and kindness for this woman, for me, who had just lost a large slice of her right breast and was feeling sick, weak, terrified and very vulnerable. She asked me if I wanted to face towards or away from the mirror as she removed my final strands of pre-chemo hair while she placed and styled the new wig. Darlene knew how much trauma I and others like me with cancer go through, and she was ready to find a way to minimize the trauma. With that simple, thoughtful kind gesture, she took away some of the sting.

I experienced hundreds of moments like that over my period of treatment and recovery: daughters, brothers and sisters who flew in, and the dear friends who ministered to me over the months; the flowers from my siblings and mom that arrived like clockwork every time I came home from chemo; friends offering statues of Ganesh, prayer flags, flags of hope, Celtic crosses, oil from St. Joseph's Oratory, tears of Mary from Egypt, prayers, songs for me in the hospital chapel while I was undergoing surgery; the meals; the weekly card — for months — from

friends in England; daily offerings of cards, fruit and other tokens on my doorstep; my neighbour removing every flake of snow from my walk and driveway in the morning before I could even open my eyes. There were my morning hiking and snowshoeing buddies who accommodated my slow pace as I was re-emerging from my latest chemo challenge; friends who housed me and joined me in ringing the bell at the end of my radiation treatments in Halifax.

I could go on. These generous and creative expressions of kindness were restorative.

In May, I attended the Dalhousie Medical School convocation as my cousin was receiving her doctorate in breast cancer research, of all things. At the convocation, the medical graduates all recited the Hippocratic Oath. One line of that oath really struck me:

> I will remember that there is art to medicine as well as science, and that warmth, sympathy, and understanding may outweigh the surgeon's knife or the chemist's drug.

My doctors, nurses, radiation technologists and other health care professionals were all well-versed in the art of kindness and the science of medicine.

Coming to the Senate, I have also experienced kindness including being invited to dinner; Senator Marshall showing me the location of the women's washroom; Senator Saint-Germain encouraging me to choose a date for my swearing in when my family could be present. But that is enough about me.

My second story on the importance of kindness is one shared by someone in my hometown of Antigonish, Tareq Hadhad.

Tareq was our first community sponsored Syrian refugee. We now have seven Syrian families in our town of 5,000. He and his family are the people behind the remarkable Peace by Chocolate business.

Tareq recently posted this little story on Facebook:

> Late December 2015, I got my first Canadian phone number and the first call I got after two hours was from a woman in her sixties from Newfoundland but living in Nova Scotia. She dialed my number and she thought she had called her daughter.
>
> She said, "Hey Catherine whaddayet".
>
> Me - Tareq "Sorry Ma'am could you repeat what you said because I couldn't get it.
>
> She was trying to call her daughter.
>
> Even though the number was wrong, our phone conversation lasted for 15 minutes, then she asked me "oh yeah how is the weather up there in Antigonish." "How long you been here" etc.
>
> The story is, after she knew I was a newcomer to the country, she kept calling me every second month to check-in how I am doing and if I needed anything.
>
> After our last conversation last month, she invited me to her son's wedding in the fall.

• (1640)

Tareq concludes with:

> Now trust me, the Maritimers are the kindest, most humble and sweetest people you will ever meet.

Just imagine what this woman's simple expression of kindness meant to this young refugee man who had lost everything in Damascus. He'd lost his home, the family chocolate factory, his community and his career path.

David R. Hamilton's article, *The Five Side Effects of Kindness*, asserts that although we shouldn't be kind for personal benefit, there are five main side effects of kindness. First — and we've heard a little bit about this — is the helper's high, that feel-good state we get by elevated levels of dopamine in the brain. The second is healthier hearts. With emotional warmth, our bodies produce oxytocin, a cardiovascular protective hormone. The third is that kindness can slow aging, reduce inflammation related to the vagus nerve and, again, produce oxytocin. The fourth is that kindness expressed makes for better relationships. It can reduce emotional distance between people, so we feel more bonded and connected. Finally, the fifth side effect is that kindness is contagious. It can foster imitation and have a ripple effect in society. Remember the #BeccaToldMeTo campaign?

In her Saturday, May 26, *Globe and Mail* article about "How not to be a jerk," Wency Leung cites Sally Kohn's *The Opposite of Hate: A Field Guide to Repairing Our Humanity* and Dr. Brian Goldman's *The Power of Kindness: Why Empathy is Essential in Everyday Life*. Dr. Goldman, after some self-reflection and wide-ranging research, concludes, "Kindness and empathy are a choice — a choice between your own needs and your instinct to help others." He goes on to speak about what it would take to create a kinder society:

> It is important to first create the conditions for kindness and empathy to flourish by reducing the amount of stress in our society — making sure people have enough to eat, a sense of purpose, better education, better access to education, clean air, clean water, safe neighbourhoods — the basic building blocks of society.

Dr. Goldman concludes by saying that "it helps to have leadership which models kind behaviour."

I would add that true kindness, the kind that we as Canadian parliamentarians would promote and engage in, would be kindness based on an understanding and an expression of a shared humanity informed by a sense of what is right and just.

Fellow senators, here is our chance. The preamble to Bill S-244 states:

> Whereas kindness encourages values such as empathy, respect, gratitude and compassion;
>
> Whereas kind acts lead to the improved health and well-being of Canadians;
>
> Whereas Kindness Week is already celebrated in some Canadian cities;
>
> Whereas designating and celebrating a Kindness Week throughout Canada will encourage acts of kindness, volunteerism and charitable giving to the benefit of all Canadians;
>
> Whereas Kindness Week will connect individuals and organizations to share resources, information and tools to foster more acts of kindness;
>
> And whereas Parliament envisions that Kindness Week might encourage a culture of kindness in Canada throughout the year;

Let's send this bill to committee so that we can develop more tools and opportunities to advance kindness in our land and in our world. Wouldn't it be great if Canada became known as a nation of kind and generous people? It could add a potent dimension to our much-touted status as polite people.

As the prominent French-born American Quaker Stephen Grellet is said to have uttered:

> I shall pass through this world but once. If, therefore, there be any kindness I can show, or any good thing I can do, let me do it now; let me not defer it or neglect it, for I shall not pass this way again.

Colleagues, we are given this senatorial opportunity for impact just once. Let's make the most of it and advance this bill. Thank you. *Welalioq*.

The Hon. the Speaker *pro tempore*: Senator Omidvar, do you have a question?

Hon. Ratna Omidvar: If the senator will take a question.

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

Senator Coyle: Yes.

Senator Omidvar: Before I get to my question, I want to congratulate you on a compelling speech, Senator Coyle. Thank you for sharing your own personal story.

At the Charities Committee, in which we have been very engaged over the last two weeks, we've heard a lot about kindness. We have heard that, in fact, patterns of kindness are shifting. People are attaching themselves less and less to institutional kindness and more and more to private acts of giving, whether that be giving of their time or of their money. Young people in particular seem to prefer GoFundMe campaigns to send an individual to Africa as opposed to donating money to a charity.

Will this national day of kindness be an opportunity for us to re-engage with the institutions that are the glue of our society and benefit all of us, not just those who very fortunately, like you, seem to have an extended social capital network?

The Hon. the Speaker *pro tempore*: Senator Coyle, your time is up.

Senator Coyle: Could I have five minutes to answer this question?

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Five minutes.

Senator Coyle: Thank you, Senator Omidvar. I, like you, have similar concerns. If we institute this annual week of kindness, and if it gets embedded institutionally, particularly in the school system, this will provide an opportunity — and I believe Senator Martin also mentioned this — and I believe it will be incumbent on many charitable organizations in Canada to think through how they can feed into curriculums and other ways of getting across that there are very many ways to demonstrate kindness.

It's not just for privileged people like me. I am a very privileged person, as you can tell. I stand here because of the privilege I have in my life. However, if this kindness week can advance at least to committee, it can take some greater shape at committee.

I'm just speaking today in support of the principle of kindness week. The actual enactment of how that comes about and how we as senators want to help shape this — that's something I believe we would love to hear more about from external witnesses. There could be some cross-connection between the Charities Committee and the study that's going on there, and the work the committee will do in reflecting on, examining and hopefully moving this particular bill forward. Thank you.

(On motion of Senator Frum, debate adjourned.)

[*Translation*]

BORROWING AUTHORITY ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill S-246, An Act to amend the Borrowing Authority Act.

Hon. Lucie Moncion: I move the adjournment of the debate in my name.

(On motion of Senator Moncion, debate adjourned.)

• (1650)

[*English*]

BANKRUPTCY AND INSOLVENCY ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Art Eggleton moved second reading of Bill S-253, An Act to amend the Bankruptcy and Insolvency Act and other Acts and Regulations (pension plans).

He said: Colleagues, it was almost 10 years ago that Canadian telecommunications giant Nortel filed for bankruptcy. As the country watched the company collapse in real time, it became readily apparent that its nearly 20,000 pensioners were at risk of losing the pensions that they had been promised. This fostered a mood for change. Canadians wanted to see laws passed that would better protect pensioners in future bankruptcy proceedings.

Yet nothing was done. The federal government never moved to protect these private pension plans. Now, almost a decade later, we are witnessing it all over again. When Sears filed for bankruptcy protection last year, it left in question the futures of nearly 16,000 pensioners who had worked for the company.

Court proceedings are still ongoing. However, if we use the Nortel case as an example, it could be years before these individuals receive any kind of settlement. We can be sure of one thing, however, that the pensions they end up receiving will not be the pensions that they were promised.

That is why I have introduced Bill S-253, to give real protection to pensioners and ensure that when the next Canadian company goes under, the financial futures of these Canadian workers will not be thrown into disarray.

Colleagues, this bill aims to accomplish two things: to protect pensioners in bankruptcy proceedings and to ensure that pension plans remain healthy when a company is solvent.

The first item is straightforward. Bill S-253 would amend the Companies' Creditors Arrangement Act, or CCAA, and the Bankruptcy Insolvency Act to put pensions on an equal footing with owed or unpaid wages in bankruptcy proceedings, putting them above the unsecured creditor status that they currently receive.

This is not a new proposal, colleagues. It has been debated for some time. Detractors of this idea argue that lenders would be reluctant to lend to businesses if their loans have a lower credit ranking than pension plans in the event of bankruptcy, and that the wheels of business might grind to a halt.

This is absurd. Banks and businesses make money off of loans, which entail risk. The very nature of their business is risk and, routinely, credit risk is addressed through loan pricing — the interest rates which lenders charge. Why should pensioners be forced to carry this credit risk instead? In effect, that is what the current rules require.

Banks and businesses have other customers and other loans. They have an opportunity to manage risk via loan pricing and to carry on profitable business with other clients. Pensioners are not so fortunate. They are retired. They had planned their financial futures around the set amount that their former employer is contractually obligated to provide.

It is important to remember that these defined benefit pension plans are not a gift or a goodwill gesture. They are a cost of doing business, created, offered and operated to attract and retain the best workers.

Not only that, they are also something an employee pays for directly or indirectly. Whether or not it's paid for by the employer or employee contributions, the pension promise is, effectively, compensation that employees forego in the here and now so that they can have secure retirements. In other words, pensions are funded with money that employees could have set aside and invested themselves. When a pension promise is not kept, it is a betrayal of that bargain.

Take the workers at Sears Canada, for instance. When they were hired, they signed a contract that determined they would be paid partly in wages and partly in future pensions. The employees fulfilled their obligations, some working over the course of decades, foregoing some pay in exchange for retirement security. Now they are told that not only will they not receive what they were promised, but that their deferred wages will be going to lenders like banks and bondholders instead.

That is wrong. Though it is frustrating that thousands of Canadian workers find themselves in this situation again, there is reason for some optimism, because currently there are two private members' bills in the House of Commons that aim to secure the rights of pensioners in bankruptcy proceedings. However, they have languished on the Order Paper for some time. It gives me reason to believe that there is some will in the other place for this kind of change.

Furthermore, the government's own party has called for such a move. At this year's policy convention the Liberal Party adopted a policy resolution that would see pensioners receive the kind of security that this bill calls for.

It is, after all, in the government's best interest to protect these pensions. When a pension is cut, it is not just the retiree that suffers but the taxpayer as well. Pensioners who lose all or part of their benefits may have to claim greater benefits from social security programs which are funded from general tax revenues. This will tax an already overburdened social security system that is showing signs of strain as the retirement of the baby boom generation of workers is accelerating. Other countries in the OECD have recognized this and have taken steps to ensure that when a company becomes insolvent, the burden of these pensions is not downloaded onto the taxpayer.

It is in all our interest to prioritize Canadians when it comes to these bankruptcy proceedings to ensure that the company pays, not the pensioner and not the Canadian taxpayer.

Colleagues, as I mentioned earlier, there is another aspect of this bill as well. It would amend the Pension Benefits Standards Act, 1985 by empowering the Superintendent of Financial Institutions to effectively restrict businesses subject to the act from issuing dividends or share buy-backs when there is a pension deficit.

What I am proposing here is not a prohibition on all dividend payments or share buy-backs. Rather, it would require that an employer must notify the superintendent, in writing, of any proposed or actual transaction, event or decision of the employer that could hinder the solvency funding of a pension plan.

If the superintendent determines that the pension fund is impaired, they shall advise the employer of that determination, and of the prescribed measures that are to be taken by the employer in respect to the funding of that plan, and could request that the plan be made solvent immediately or over a specified time or number of years. The superintendent's power would be discretionary, and it would weigh other factors before making that decision. The superintendent's power relates to all federally regulated businesses.

The Sears case provides us with an example of what this bill is trying to prevent. In 2005, U.S. hedge fund manager Edward Lampert gained control of Sears Roebuck in the United States, thereby becoming the controlling shareholder of Sears Canada.

Between 2005 and 2013, Sears Canada paid $3.4 billion in dividends to shareholders. To fund these payments, Sears Canada saw some of its most important assets sold off. This included Sears Credit and Financial Services, which was profitable at the time, as well as flagship stores in Calgary, Vancouver and Toronto. Sears Canada saw its operating income drop every year after 2007, all while shareholders continued to get richer. In fact, between 2005 and 2011, the average dividend yield for Sears shareholders was 17.8 per cent. Other companies on the Toronto Stock Exchange averaged a dividend yield of 3 per cent in the same time span.

• (1700)

When Sears Canada filed for bankruptcy in 2017, it became clear that while it was making these generous payments to shareholders, it had allowed its pension fund to become severely underfunded to the tune of $267 million. Put another way, since 2010, Sears Canada paid back five and a half times more to its shareholders than it would have cost to erase the pension deficit.

Perhaps the most egregious aspect of this was that the pensioners could see it coming and had been raising alarm bells for years. They wrote to the CEO of Sears Canada in 2013 and the chairman of the board in 2016.

One letter addressed to Sears Canada board dated January 20, 2014, read:

> The substance of Sears Canada's management conduct is asset stripping, and has resulted in a company with negative operating earnings and cash flow, and deteriorating key performance measures. Sears is on a path where it will not have sufficient cash to meet its funding obligations under the Sears Canada Plan and retiree plans.

Since 2012, the pensioners from Sears took 41 steps to address the funding deficit, yet nothing was done. Instead, enormous shareholder payouts continued to be approved by the board of directors.

This practice was not limited to Sears Canada either. A 2017 study done by the Canadian Centre for Policy Alternatives found that in every one of the past six years, the aggregated pension plans among Canada's biggest public companies were in deficit.

The study also found:

> In each of the past six years, payments to shareholders substantially exceeded the pension deficit; in 2016 alone, payments to shareholders were four times the value of the pension deficit for those companies with pension plans.

Twenty-five of the companies listed on the S&P/TSX 60 with a pension deficit could make up their pension shortfalls with under a year's worth of shareholder payments.

With the exception of one, all others could be fully funded with less than two years' worth of payments to shareholders.

It is clear Sears was not alone in this practice, and should any one of these companies file for bankruptcy, we could again be witness to shareholders being enriched or executives through their various bonus payments — I saw it in Nortel; it was outrageous — at the expense of Canadian workers.

It is important to note that my proposed changes to the Pension Benefits Standards Act would have done nothing to remedy what is happening at Sears Canada. There is a very definitive distinction in this country between which pensions are regulated federally and which are regulated provincially, Sears being regulated by the latter. But this does not mean that federal legislators are off the hook.

The companies listed in the Canadian Centre for Policy Alternatives study as having a pension funding deficit include airlines and banks; these pension plans are governed federally by the Pension Benefits Standards Act. Nor should we discount the value of federal leadership in this area in setting an example for the provinces to subsequently act upon.

This is not to suggest that the number of federally regulated companies with pension plans is insignificant, however. According to the latest report of the Office of the Superintendent of Financial Institutions, 7 per cent of private pension plans came under federal jurisdiction as of March of last year. That's 1,230 private pension plans that cover more than 1.1 million active members and other beneficiaries in federally regulated areas of employment, with a value of approximately $206 billion.

Of these plans, 420 are either defined benefit or a hybrid of a defined benefit/defined contribution plan, covering roughly 494,000 workers. That's nearly half a million Canadian workers that could see their pensions strengthened and protected through the latter part of the legislation.

Similar regulations exist in other countries. The Pension Benefit Guaranty Corporation in the United States uses the payment of extraordinary dividends as a criteria to determine when it will intervene and stabilize distressed pension plans. In the United Kingdom, the Pensions Regulator's "moral hazard" powers allow it to consider shareholder payouts in the context of pension regulation. So this is already being done in a number of countries.

Even Ontario came close to enacting such powers for its pension regulator. In 2017, the former Ontario government proposed the creation of a new entity, the financial services regulator authority. This regulator would have implemented a disclosable events regime, making the disclosure of certain corporate events mandatory. This would have alerted the regulator to potential issues, such as "significant asset stripping or the issuance of extraordinary dividends."

This is in line with what my bill proposes — not to hinder dividends or share buybacks entirely, but to ensure these payments are not being made at the expense of pensioners.

Colleagues, it is clear the time has long passed to address this. As I watched the Nortel saga play out nearly a decade ago, I was hopeful that public pressure would have been enough to instill some kind of guarantee for pensioners. If we had taken action then, it may have been the last time we saw executives and shareholders line their pockets at the expense of workers and the pensions they paid into. Let us not waste another opportunity to protect the financial futures of our Canadian workers. Thank you.

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

Senator Eggleton: Certainly.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): I want to congratulate you on this bill, Senator Eggleton. It is very interesting.

[*English*]

Is this bill similar to provincial laws, like some in Quebec, or is it different? If it differs, do you know how and why?

Senator Eggleton: I can't tell you specifically how it differs from what is being done in Quebec. There are different things done in different places. There are not too many that are very effective.

I know the Ontario plan, for example, a little better. It only provides for the first thousand dollars. It provides a small amount, not a big amount.

You'll find a lot greater involvement in the U.K. or Germany or even the United States, in terms of protection for pensioners.

The U.K. plan is a particularly extensive one. It involves a lot more protection, and it is essentially paid for by the companies. They pay into it. There could be some administrative costs picked up by the government, but by and large, they expect the companies to pay in, they take over pensions and they ensure if something is going wrong in a company that the pensioners are going to be protected. That's what this is all about, the need to protect those pensioners.

As for the amount of money that the Ontario plan gives, for people on the Canada Pension Plan who are also getting Old Age Security, that generally will keep them out of poverty, not in every case, but it generally has kept a lot of people out of poverty. But there are a lot of people who maybe made 50, 60 or $70,000 a year. They're not going to get nearly enough out of those plans to sustain the kind of quality of life or standard of living they had in the past.

So the private pension plan becomes an important part of the mix. There are not enough people who have private pension plans, and fewer and fewer have defined benefit plans. Nevertheless, let's protect what we can and what they have as their earnings and not allow this fire sale of assets and different means of fattening up the dividend cheques and bonuses at the expense of these people.

(On motion of Senator Tannas, debate adjourned.)

• (1710)

SENATE MODERNIZATION

FIRST REPORT OF SPECIAL COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the consideration of the first report (interim) of the Special Senate Committee on Senate Modernization, entitled *Senate Modernization: Moving Forward*, deposited with the Clerk of the Senate on October 4, 2016.

Hon. Ratna Omidvar: Honourable senators, I move that further debate be adjourned until the next sitting of the Senate.

(On motion of Senator Omidvar, debate adjourned.)

STUDY ON ISSUES RELATING TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY GENERALLY

TWENTY-SEVENTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Day:
>
> That the twenty-seventh report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled *The Shame is Ours: Study on the Forced Adoptions of the Babies of Unmarried Mothers in Post-war Canada*, tabled with the Clerk of the Senate on July 19, 2018, be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of Families, Children and Social Development being identified as minister responsible for responding to the report.

Hon. Kim Pate: Honourable senators, I rise today to thank Senator Eggleton, Senator Petitclerc, Senator Seidman and all of the other members of the Social Affairs Committee for their work examining the abhorrent history of forced adoptions in Canada. I commend all those who contributed to the committee's excellent report, particularly the women — and the children who were forcibly removed from them — who came forward to discuss their horrific experiences in federally and provincially funded maternity homes and the legacies of government policies that sought to marginalize and silence them.

I rise today to provide additional context for the committee's report by drawing attention to the experiences of women who were often not welcome in the maternity homes discussed in the committee report — racialized women and White women who had relationships with non-White men. In Ontario in the early 20th century, for example, women I know or whose adult children I know, and far too many others, were labelled as incorrigible and jailed at the Mercer Reformatory in Toronto.

From 1896 to 1964, the Ontario Female Refuges Act permitted the incarceration of women and girls aged 16 to 35 as a result of vague charges of incorrigibility, vagrancy and immorality. It was used to target women who were labelled as promiscuous, sometimes after they had been raped or who had relationships and children with racialized men.

In 1939, Velma Demerson was 18 years old when a judge deemed her incorrigible without trial or appeal. Her crime? She was pregnant and living with her fiancé, Harry Yip, a man of Chinese descent. Ms. Demerson's memoir, *Incorrigible*, dedicated to her son, Harry Junior, chronicles some of the tortures inflicted on the women jailed at the Mercer Reformatory, including lockdowns in four-by-seven-foot cells — or even worse, in windowless basement cells used for solitary confinement — beatings, horrific and violating medical procedures, operations without anesthetic, including sterilizations, and threats of having children taken away. In the course of her so-called treatment, Ms. Demerson was administered a highly toxic chemical subsequently considered to have resulted in her son Harry Junior being born with enduring, disabling health challenges.

Authorities at the Mercer kept her son separated from her in the prison nursery and then he disappeared altogether. She was told only that he was taken to hospital. Though reunited briefly with him, she ultimately lost custody of her son after being released from the Mercer, only seeing him once more when he was 26 years old. The needless and senseless racism, sexism and the cruelty of the policies that placed Ms. Demerson in the Mercer Reformatory have never been publicly acknowledged.

I was recently contacted by a number of now-adult children whose mothers were incarcerated at the Mercer Reformatory. One man's mother, who was Indigenous, was arrested for becoming pregnant out of wedlock. He said that after being born at the Mercer, he had been hospitalized more than once as an infant as a result of the treatment he received from a matron in the prison nursery, including severe trauma to his head and arm.

A woman described being adopted at an early age and the trauma of being deprived both of part of her family history and of being able to speak with members of her family of origin about her past as well as the resulting loss of a sense of identity that many of us take for granted. She is desperate for information about her mother and the circumstances of her adoption and is struggling to access records regarding the Mercer Reformatory through the Access to Information process.

She has read the committee's report and identifies as one of the individuals described by the committee as having their "identities stripped from them at birth," and having suffered:

> . . . discriminatory practices that have made them feel as though they have not been granted the equality rights that are inherent to all other Canadians.

Though I note that the committee's report unfortunately does not refer specifically to the experiences of the women incarcerated in the Mercer Reformatory, she says that she felt validated by the new narrative related to forced adoptions that this report has brought to light, offering an alternative perspective to the hurtful speculation that she and so many other adoptees have had to endure about why their mothers may have "given them up." She also says she has found solace in knowing that an authoritative power like the Senate has made findings and recommendations about the issues surrounding past adoption practices.

These stories of courageous women and their families represent only a few of the forced adoptions and other atrocities that women and their children experienced while unjustly incarcerated at the Mercer Reformatory. This shameful part of Canada's history has been overlooked for far too long, too often resulting in the silencing and marginalization of survivors who seek to speak out against it.

While the committee's final report applies to, but does not single out, the experiences of these incarcerated women who form part of the group affected by forced adoptions, I urge the government, in implementing the recommendations of the

committee, to address these women and their families specifically. A public apology and reckoning is long overdue. I also urge the Senate, whether through the Social Affairs Committee or by other means, to study the horrific injustices perpetrated at the Andrew Mercer Reformatory in order to build on the committee's excellent work bringing public attention and scrutiny to the issue of forced adoptions. Thank you.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

• (1720)

[*Translation*]

STUDY ON FEDERAL ESTIMATES GENERALLY

THIRTY-SECOND REPORT OF NATIONAL FINANCE COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE— DEBATE ADJOURNED

The Senate proceeded to consideration of the thirty-second report (interim) of the Standing Senate Committee on National Finance, entitled *The Phoenix Pay Problem: Working Toward a Solution*, deposited with the Clerk of the Senate on July 31, 2018.

Hon. Percy Mockler moved:

> That the thirty-second report of the Standing Senate Committee on National Finance entitled *The Phoenix Pay Problem: Working Toward a Solution*, deposited with the Clerk of the Senate on July 31, 2018, be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of Public Services and Procurement and Accessibility being identified as minister responsible for responding to the report, in consultation with the President of the Treasury Board and Minister of Digital Government.

He said: Honourable senators, I rise today to speak to the report of the Standing Senate Committee on National Finance on its study of the Phoenix pay problem.

I also want to inform this chamber that on July 31, 2018, the Standing Senate Committee on National Finance deposited with the Clerk of the Senate its report entitled *The Phoenix Pay Problem: Working Toward a Solution*.

[*English*]

Honourable senators, our committee hosted a press conference with the support of the Communications Directorate of the Senate on Tuesday, July 31. In the room, we presented to 10 reporters and six camera crews, which led to over 70 news stories across Canada that ran the Phoenix recommendations.

On behalf of the Standing Senate Committee on National Finance, we want to thank the Senate Communications team under the leadership of Ms. Mélisa Leclerc. The accompanying social media campaign, honourable senators, reached over 30,000 people. To date, the report has been downloaded over 1,200 times, the web page has been viewed over 2,000 times, and we are proud of the impact of this report. We look forward to collaborating with Senate Communications again for a job well done.

[*Translation*]

Colleagues, first of all, I want to thank the two co-chairs of the committee, Senator Jaffer and Senator Pratte, whose expertise and collaboration were instrumental in getting this report deposited on July 31.

I also want to thank all the members of the committee for their cooperation and for the many hours they spent studying this issue, which needed to be brought to the attention of the Senate so that we could try to find a solution for hundreds of thousands of Canadians — our employees. There are likely thousands of hard-working Canadian public servants who are psychologically and financially affected. We have a responsibility to have a working pay system in place for them.

[*English*]

Honourable senators, before I go any further, I would like to acknowledge the hard work of all honourable senators who took part in this study and the contributions of the committee's support team. I also want to take a minute to recognize, in particular, Senator Jaffer, who was a great help even with all the health challenges she was facing.

To Senator Jaffer, on behalf of all our committee members, and no doubt the Senate of Canada, we want to wish you a speedy recovery and God bless.

As chair of the committee, I also want to thank the staff — the clerk, analysts, interpreters, translators, stenographers, technicians, assistants, senators' staff, communications team and others in the back rooms whose hard work made this study possible. You enabled us to do our work as parliamentarians in this chamber. We are deeply appreciative of your long hours and professionalism as you worked together seamlessly to carry out this study successfully in a very short period of time.

Honourable senators, during the press conference, which was held in Ottawa on July 31, my colleague Senator Jaffer said:

> The first concern should be that the hard-working public servants who have been affected by Phoenix get their pay adjusted immediately.

It is with that objective in mind that the National Finance Committee took a deeper look at the Phoenix problem that impacted approximately 165,000 employees from coast to coast to coast.

Honourable senators, as a result of the federal government's Transformation of Pay Administration Initiative that led to the Phoenix pay system, more than half of the federal government's 290,000 public servants have experienced pay problems, causing significant anxiety, stress and undue hardship on our employees.

Honourable senators, instead of realizing millions in annual savings by centralizing pay operations, the government will incur approximately $2.2 billion in unplanned expenditures. By any measure, the Phoenix pay system has been a complete failure. As senators, we must be mindful of the challenges that lie ahead as we wait for the government's response.

[*Translation*]

Honourable colleagues, as my colleague Senator Pratte said so well in the press release issued by the Standing Senate Committee on National Finance, and I quote:

> It's an embarrassment that a G7 country like Canada has failed to pay . . . its own public servants properly. Canada has one of the best public services in the world, but the Phoenix disaster has revealed a cultural problem within the management of the federal bureaucracy, a problem that we have to address if the government is to successfully undertake complex projects such as this one in the future.

[*English*]

Honourable senators, to examine the causes of this failure, the Standing Senate Committee on National Finance held eight meetings with 28 witnesses, including the Auditor General of Canada, union representatives across Canada, departments and agencies, officials from IBM, the Minister of Public Services and Procurement, and the Clerk of the Privy Council. We also made a visit to the Public Service Pay Centre office in Miramichi, New Brunswick.

Honourable senators, in 2009, Public Services and Procurement Canada began the process of replacing the Government of Canada's outdated 40-year-old pay system with an automated, off-the-shelf commercial system. The department hired IBM to customize the system, which it called Phoenix.

Honourable senators, at the same time, the department sought to centralize pay operations at the Public Service Pay Centre. Together, these projects were known as the Transformation of Pay Administration Initiative in Canada, which had a budget of $310 million, including $155 million to build and implement the new payroll software.

This initiative, honourable senators, was expected to save $70 million by eliminating 650 positions, automating pay processes and eliminating duplicate data entries that were found in the Government of Canada system.

Honourable senators, for the record, let us be clear: As soon as Phoenix was launched in February 2016, problems arose, which continued to compound for two years after the launch such that, at the end of May 2018, the Public Service Pay Centre had a backlog of almost 600,000 pay requests, over half a million.

To respond to the problems, Public Services and Procurement Canada has had to hire almost 1,000 new employees and pay additional fees to IBM to make substantial changes to the software that was not supposed to happen.

• (1730)

Honourable senators, the causes of the failure are multiple, and let me share them with you.

First, failing to manage the pay system in an integrated fashion with human resources processes; second, not conducting a pilot project; third, removing essential processing functions to stay on budget; and fourth, laying off experienced compensation advisers, and implementing a pay system that wasn't ready. In the end, it gave us what? It gave us the Phoenix fiasco.

Let's not look at blaming people. Let's look to help our employees because of the undue hardship they are facing, and that is approximately 165,000 employees across Canada.

[*Translation*]

Honourable senators, the causes of the failure are multiple, including failing to manage the pay system in an integrated fashion with human resources processes, not conducting a pilot project, removing essential processing functions to stay on budget, laying off experienced compensation advisors, and implementing a pay system that wasn't ready.

[*English*]

However, honourable senators, we heard that some progress is being made at the Public Service Pay Centre in part by using "pods." Pods are teams of compensation advisers that provide services to specific departments. Nonetheless, we also heard that the compensation advisers do not have adequate training, and that the Phoenix pay system continues to produce numerous errors and requires regular manual intervention.

[*Translation*]

Honourable senators, the Phoenix problem is making it hard for the federal government to recruit public servants, as I recently witnessed. A few weeks ago, I had the opportunity to speak with leaders in Atlantic Canada's forestry industry, in New Brunswick in particular. They told me that young professionals joining the forestry sector prefer to get a job in the private sector rather than in the federal public service because they are concerned that they will not get paid and will cause serious problems in their own families.

[*English*]

Honourable senators, a career working for the federal government used to be something young people aspired to. However, lately Phoenix has tarnished that. For young people embarking on their careers, being a federal public servant used to be the brass ring. I believe that Canada needs to attract the best and the brightest to the public service, but it has made people question whether they want to pursue a career in the public service with this Phoenix fiasco.

Honourable senators, your Standing Senate Committee on National Finance is mindful that solving the problems with the Phoenix pay system will not be an easy task. In our report, we make five recommendations on how the government can move toward putting a solution in place to help our employees. In the short term, we believe that the government should support its employees by identifying priorities for processing outstanding pay requests and also establishing targets for the time to process these requests.

[*Translation*]

Second, the government should reassess the adequacy of training provided to compensation advisors and human resources staff, as well as its staffing levels for compensation advisors and human resources staff.

[*English*]

Third, to ensure continued accountability and transparency, the government should report annually on the costs associated with the Phoenix pay system.

Honourable senators, could I have an additional five minutes?

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

Hon. Senators: Agreed.

Senator Mockler: Thank you, honourable senators.

In the medium term, the government should examine whether departments with complex pay requirements, such as shift work, might be better served by alternative solutions rather than a centralized pay system across Canada.

[*Translation*]

Fifth, ultimately, the government should explain to Parliament the options to replace Phoenix, including the costs of each option and measures that would be put in place to avoid repeating the mistakes of the Phoenix pay system. Talking about setting up a new system without telling public servants why such a change is being made is not good enough. Our employees have suffered enough.

[*English*]

Honourable senators, lastly, and most importantly, we are dismayed that this project proceeded with minimal independent oversight, including from central agencies in Canada, and that no one has accepted responsibility for the failure of Phoenix or has been held to account on the failure and fiasco of Phoenix.

Honourable senators, we believe there is an underlying cultural problem that needs to be addressed. The government needs to move away from a culture that plays down bad news and avoids responsibility, to one that encourages employee engagement, feedback and collaboration.

[*Translation*]

Colleagues, we believe that the federal government should continue to provide a better quality of life for all Canadians. If it is to provide Canadians with a good public service, then the Phoenix pay system problem should be one of its priorities.

[*English*]

As we stated before, our committee doesn't want to play the blame game. It's easy to play the blame game. The reasons for Phoenix's crash and burn have been well documented over the past two years. Our committee's goal was to offer recommendations to help rebuild from the ashes of this disaster.

There is no doubt in my mind that the government clearly needs help to resolve a very serious problem that is affecting more than half of Canada's public servants. A full, detailed report to Parliament will help clear the air, give Canadians the information they deserve to know about this debacle and get Parliament on track to fix it.

Our committee requests that the government consider and follow up as soon as possible on all of these recommendations.

As I conclude, honourable senators, I believe it is appropriate now to take the time to remind ourselves and the Government of Canada of a quote from the Right Honourable Winston Churchill. He once said that, when dealing with public policies, ". . . it is better to be both right and consistent. But if you must choose — you must choose to be right."

The Standing Senate Committee on National Finance is on the right track with our recommendations to the government. We ask the government to respond to our road map for a solution to the Phoenix problem so that we can help many families across Canada from coast to coast to coast.

[*Translation*]

In closing, we proposed a road map that could prove helpful to the Canadian government and provide meaningful solutions for federal employees. As Canadian parliamentarians, it is our responsibility to provide immediate assistance to the families affected by the Phoenix fiasco. Thank you.

Some Hon. Senators: Hear, hear!

[*English*]

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Would the senator take a question?

The Hon. the Speaker: The senator's time is up. He has already had an extra five minutes.

Would you like to ask for five more minutes, Senator Mockler, to take a question? You've already had five minutes.

Senator Mockler: Your Honour, thank you very much. I don't want to play the blame game, and it's no.

[*Translation*]

Hon. Lucie Moncion: Honourable senators, the Standing Senate Committee on National Finance published a report this summer entitled *The Phoenix Pay Problem: Working Toward a Solution*.

The study by the Standing Senate Committee on National Finance on the Phoenix pay system was meant to shed some light on the matter, assess the situation, look at the degree of progress made in correcting the problem and make recommendations for future activities to solve the outstanding cases.

The recommendations in the report call on the government to establish a training program for all compensation advisors, report the annual costs associated with Phoenix, come up with alternative pay solutions, and provide comprehensive information on project management measures to be taken before embarking on a future pay transformation initiative.

• (1740)

[*English*]

Although this report brings to light the situation surrounding the failures of the Phoenix pay system, it paints a rather bleak picture of the prospects for full resolution of the problems in a timely fashion and at reasonable costs. The pay problems from the Phoenix system will take years to correct and will incur high costs for Canadian taxpayers.

[*Translation*]

I have some concerns involving the publication of that report. Let me begin by saying that I was extremely surprised and disappointed to see that the steering committee of the Senate Finance Committee had decided to remove an information page containing the findings of our analysis. Upon inquiring, I was told that the steering committee had every right and the authority to do so, as that right and authority had been granted through a resolution adopted by the committee members. I thought that that right related to the correction and publication of texts, and not to the suppression of an entire page of information.

[*English*]

This information page, which provided a quick and clear record of the Phoenix pay system's findings, was approved by all members of the National Finance Committee. To see that the steering committee had the powers to remove a whole page of information is both surprising and disappointing. I believe when we allow the steering committee to make the final adjustments to a report that will be tabled in the Senate, even if the Senate does not sit, we accept that minor changes are made. We do not give carte blanche for a complete re-edit of the report.

[*Translation*]

Allow me to tell you what it said on that page. It contained background information about things like the scope of the federal government's pay system. It said that there are 101 departments and agencies within the federal government with close to 290,000 employees to be paid. These departments and agencies are governed by 105 different collective agreements and work contracts.

[*English*]

It was in 2009 that the government at the time had approved the pay administration transformation initiative. This project was designed to update the pay system that had been in place for over 40 years. The pay administration transformation initiative included two main components: The first was to regroup the pay services to centralize them in Miramichi, New Brunswick; and the second was to modernize and replace it with a new system that used a commercial software. Phoenix was to increase the automation of certain administrative processes and provide some self-service function to users while integrating the government's human resource management system. Seven years is a long time to prepare for a conversion, and it should have been enough to properly prepare for the work associated with the transformation of the pay system.

[*Translation*]

Before the move to Phoenix, every department and agency had compensation advisers on staff. In total, there were over 2,000 compensation advisers assigned to deal with pay issues, who made sure to manually enter information regarding hours of work, leave, absences, reassignments and any other relevant human-resource-related information.

[*English*]

On the summary page of the findings, there was a section giving information on the groundwork to be done on the Phoenix system which required the programming of 80,000 pay rules, the personalization of 200 different programs to meet the needs of all departments and agencies, and the integration into a new database of 290,000 employee records. These customizations were necessary to ensure the functionality and compatibility to the PeopleSoft system, a new software used for the payrolls.

[*Translation*]

Another section of that page provided information about the problems with the pay transformation initiative. When the government converted from the old system to the new Phoenix pay system, 95,589 pay actions were pending, which is abnormally high considering the preparation time that preceded the system change.

In April 2016, 46 departments no longer had pay advisers. Some 1,200 of those advisers had already received their notice of termination of employment dated April 16, 2016, and many of them had already left. When they did, they left behind incomplete and unverified integration files.

The pay centre had some 1,115 employees in Miramichi and satellite offices across Canada, who were supposed to administer a pay system that was fully operational and integrated at the time of conversion, which was not the case. Many of those employees did not have the necessary knowledge about compensation or the training they needed on the rules and use of the pay system.

[*English*]

The other findings also reported the project's shortcomings. In our analysis of the Phoenix pay system, we learned there was no pilot project or parallel operation between the old and the new system. There was no impact analysis by departments and agencies, no risk analysis or planning for the recovery of the old system in case the new system did not meet expectations.

[*Translation*]

Had a risk analysis been done, experienced compensation advisers would not have received their pink slips before Phoenix was stabilized. They would have been there to maintain the old system until the new Phoenix system produced accurate pay cheques for all employees of all departments and organizations.

The departure of these employees spelled the end of the old system. Once pay was moved over to Phoenix, it was impossible to go back, not because the old system was no longer operational, but because there were no experienced workers to manually input the pay information.

By late August 2018, there was a backlog of more than 630,000 pay files. Of these, 52 per cent, or 327,600, involved errors of more than $100 and were in the "high impact" category; 37 per cent concerned "low impact" errors of $100 or less; and 11 per cent concerned errors with no financial impact. For the past several months, the files being processed as a priority by the teams assigned to this task are those involving errors exceeding $100.

[*English*]

During our research, the Finance Committee met with employees working on the operations of Phoenix and correction of errors. Considerable efforts and resources are being deployed to address the situation as quickly as possible. Several components are now corrected and functional, and pods of pay employees are being integrated into departments and agencies. The error correction work is moving forward and the monthly statistics issued by the authorities are positive.

[*Translation*]

The Phoenix project was expected to save $70 million a year. In project management, it is essential to conduct a risk analysis and introduce contingencies. With Phoenix, this analysis was never done, and the contingencies were never calculated. If this had been done, we would no longer talk about $70 million in savings a year, a calculation based on the salaries of 1,200 employees. Instead, we would talk about the additional costs associated with stabilizing a system whose impact is calculated on the basis of the severity level of a situation.

We must therefore stop using this simplistic argument, since it based all the savings on the calculated salaries of the employees who were losing their jobs. This calculation would have been fine if Phoenix had worked, but it did not, and it can only be classified as a failure. It was very poorly planned and very poorly executed. There was no pilot project, and it was universally deployed — yet we had seven years to prepare.

Here is what we found. The mistakes with the Phoenix pay system can be attributed to a series of errors along the way that, when compounded, created the disaster we have before us. Federal government employees have suffered from the system's mistakes, and Canadian taxpayers are footing the bill.

• (1750)

I would like to close with a comment about the work of our standing committees' steering committees, which are made up of individuals who take on important responsibilities on their own behalf and on behalf of members of the committee they represent. They have to make decisions that involve their colleagues, and those decisions must reflect the collective will. They are often required to work under pressure and meet exceedingly tight deadlines at particularly busy times in a given parliamentary session.

[*English*]

To improve our committee work, I will submit a proposal to the steering committee of National Finance on how to proceed when drafting the reports. This procedure remains to be reviewed, and if it is considered appropriate, it may be submitted to other Senate committees.

[*Translation*]

Writing reports is the most important part of a committee's work, yet we spend less time on that than on anything else. We are constantly grappling with publication deadlines that are too short and an excessive amount of work at the editing stage. There is never enough time for this important step.

The reports we produce must represent us and reflect the quality of our work. They must always meet the highest standards, which is why they deserve our full attention.

Thank you.

[*English*]

Senator Mercer: Honourable senators, I wasn't going to enter the debate. I was simply going to ask a question of Senator Mockler, but he is obviously running from the questions because he knew I might say those awful dirty words — Stephen Harper — in my debate. But I'm not going to talk about Stephen Harper because we all know his government made the initial decision.

I want to know something, and I've asked Senator Harder this question time after time. And when we get other ministers here who should be able to answer, I'm going to ask the same question that I will pose now. It's a rhetorical question: Why are we still paying IBM a nickel? We bought a product from them. It was a product that didn't work. They screwed it up from the get-go. If we had done our due diligence and checked out other people who had used that same product — for example, New South Wales in Australia — who have had the same problems we have had, why are we continuing to pay them? Why are we not in court suing IBM? Guess what? They've got more money than God.

The Canadian taxpayers should be able to recover some of the money wasted on this program and they should be in court suing IBM for every nickel they have because it is their failure to provide a product that met our needs. There was nothing magic about what the needs were. Here are the number of employees we have. We need to pay them. Here is the system we have. We want to move to a new system, and you're supposed to be Big Blue, IBM, the saviour of the world in IT, and we get in this mess.

I'm not going to blame Stephen Harper because we all know it was his fault anyway. I'm not going to blame the Conservative government because I know it was their fault anyway. I'm going to blame IBM because they marketed a bad product and we bought it. If you went out tomorrow and bought a product on the street and it didn't work, you could do one of two things: You can take it back or sue the people for providing a product that didn't work.

Honourable senators, I'm not going to go on any further except to say that we should talk about getting some of our money back. And the only way we can get some of our money back is to sue IBM.

The Hon. the Speaker: Senator Moncion, do you have a question?

Senator Moncion: I have a question for Senator Mercer.

The Hon. the Speaker: Would you take a question?

Senator Mercer: Yes.

Senator Moncion: You touched on two issues that were studied by the committee. Do you know how many companies brought a bid forward to do the work for the pay transformation? Do you have any ideas how many companies brought in an RFP?

Senator Mercer: No, but I suspect it's probably one.

Senator Moncion: Yes, the answer is right.

Second question: You spoke about Australia. When we were in the committee, we had the CEO of the health department in Australia and he spoke to us about the pay system that is in place in Australia. They're still using the pay system.

They had problems with the implementation of their pay system, which is about the same as the one we have here, and within six weeks, they had solved the problem. Within four months, they started correcting the pay problems.

Now, they're still using the system today. At the time, there were 85,000 people who were on that pay system. Today there are over 100,000 people using the system, and they're very satisfied with the system.

Were you aware of this information, Senator Mercer?

Senator Mercer: No, and it doesn't matter a tinker's damn to me. It matters to me that public servants in this country are not being properly paid. It matters to me that we were taken by IBM and we should be recovering our money from IBM. That is the bottom line. They gave us a bad product. They didn't learn enough in Australia to fix it here in Canada.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

THE SENATE

MOTION TO AMEND RULE 12-7 OF THE *RULES OF THE SENATE*— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator McCoy:
>
> That the *Rules of the Senate* be amended by:
>
> 1. replacing the period at the end of rule 12-7(16) by the following:
>
> "; and
>
> Human Resources
>
> **12-7.** (17) the Standing Senate Committee on Human Resources, to which may be referred matters relating to human resources generally."; and
>
> 2. updating all cross references in the Rules accordingly.

Hon. Ratna Omidvar: Honourable senators, with leave of the Senate, I move that further debate be adjourned until the next sitting of the Senate.

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.

(On motion of Senator Omidvar, debate adjourned.)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to rule 3-3(1), it now being six o'clock, I must leave the chair until eight o'clock unless it is agreed that we not see the clock.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

RELEVANCE OF FULL EMPLOYMENT

INQUIRY—DEBATE CONCLUDED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Bellemare, calling the attention of the Senate to the relevance of full employment in the 21st century in a Globalized economy.

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): I will try to be brief.

[*English*]

The Hon. the Speaker: I should also inform senators that Senator Bellemare is exercising her right of final reply, which means that after she speaks, no other senator will be able to speak to this matter.

[*Translation*]

Senator Bellemare: Honourable senators, I rise today to exercise my right of final reply in the context of this inquiry into full employment.

Honourable colleagues, let me begin by thanking Senators Cormier, Bovey and Petitclerc for their contributions. Their speeches shed light on the realities that so many people face in the labour market, including artists, indigenous peoples, and persons with disabilities. You shed light on the gap between the living and working conditions of these people and the concept of full employment.

• (1800)

[*English*]

The question asked in this inquiry is the following: Is it still relevant to talk about full employment in the 21st century? We can understand from the speeches of our colleagues that the concept of full employment is more understood as an ideal situation that we would like to happen but that doesn't inspire actual public policy.

[*Translation*]

Senator Cormier said, and I quote:

> In talking to my fellow Acadians, I came to realize that they saw the concept of full employment more as a long-term ideal for a community than as a short-term economic development strategy.

[*English*]

According to Senator Bovey, full employment is an admirable goal but perhaps not attainable. As she explained, she considers that a guaranteed minimum income would have a favourable effect on the situation of employment in Canada.

In fact, both of my colleagues are right insofar as this goal was not sought after very hard for many decades.

[*Translation*]

That is why Senator Petitclerc quite rightly remarked, and again I quote:

> Many governments are working toward full employment. Belgium has set a goal of achieving full employment by 2025. Germany has set a similar goal. Canada joined 192 other countries when it committed to achieving the United Nations' Sustainable Development Goals. One of these goals is to achieve full, productive employment and decent work for all, including for young people and persons with disabilities.

Therefore, it is clear that the concept of full employment remains relevant today within the United Nations. Essentially, it means that anyone who wants to be gainfully employed should be. This goal is even more important in the 21st century, considering the immense challenges we face related to the environment and climate change adaptation. It is clear to the United Nations that achieving specific environmental targets goes hand in hand with social and economic targets, such as full and productive employment and decent work for all. Environmental challenges will be difficult to overcome in a context of unemployment and poverty. That is part of the rationale behind the 2030 Agenda for Sustainable Development, which helps reconcile environmental, economic and social concerns.

That said, and to conclude this inquiry, I would like to explain how we can achieve full employment. More specifically, I would like to briefly explain that strategies for economic growth are necessary, but they are not enough to achieve and maintain full and productive employment and decent work for all. Active labour market policies are indispensable. Lastly, I will explain why it is the important for Canada to align its employment policies with the needs and reality of the 21st century.

To begin with, full employment can be achieved, but it does not automatically result from economic growth. Economic strategies to foster growth are necessary, but they are not enough. Why? Because economic growth will come to a stop even before everyone who wants to work finds a job. That is readily understood. Not everyone has the skills businesses are looking

for or lives in places where jobs are abundant. That is currently the case in Quebec. Some regions have full employment even though many people remain unemployed, including young people, immigrants, Indigenous peoples, persons with disabilities, and people who live in large cities like Montreal and do not want to move. This is known as structural unemployment.

An economic growth strategy cannot fix this problem. Under such circumstances, economic growth could peter out because of a skilled labour shortage, or those responsible for setting monetary policy may react and slow down economic growth by raising interest rates for fear of seeing salaries and prices increase too much. Currently, in a number of regions of Quebec, the skilled labour shortage is jeopardizing economic growth. Companies that can't find skilled labour may decide to reduce production or set up shop elsewhere.

In Canada, although the unemployment rate is relatively low at the moment, we are not yet at full employment. To many economists, full employment is when the number of job vacancies equals the number of unemployed workers. By that definition, Canada has roughly 2.5 unemployed workers per job vacancy. Quebec has 2.7 unemployed workers per job vacancy. The labour market situation has vastly improved in the past few years. For example, in 2012, Canada had nearly six unemployed workers per job vacancy. Things are looking up.

However, as the Governor of the Bank of Canada, Stephen Poloz, said in a speech he gave in March 2018 — and his conclusion was similar to mine — at least 100,000 young Canadians could have jobs. Also, many other Canadians who are not counted in the unemployment statistics because they have given up could also join the workforce and be gainfully employed. If all of these people can't find jobs, it is generally because they don't have the desired skills or do not live in regions where there is a labour shortage. What can be done in such circumstances?

The short answer to this complex question is that, to address structural unemployment, we need the right employment policies. These include employability, labour force integration, workforce training, skills development, official-language learning, labour mobility and information programs.

Despite the commendable efforts that have been made in that regard, the labour force investments made in Canada are low compared to those made in performing countries. Canada invests half as much in active employment integration measures than the average for OECD countries. In fact, Canada spends much more on so-called passive labour market measures, or income transfers, such as employment insurance and social assistance, than it does on what are referred to as active labour market integration measures.

For example, according to OECD data, Canada invests 0.24 per cent of its GDP in active measures compared to 0.62 per cent in income support measures. It invests three times more in passive measures than in integration measures. In contrast, Sweden invests more than 1 per cent of its GDP in labour market integration measures. The same goes for Germany and a number of other countries.

Labour policies are crucial because artificial intelligence and climate change mean that Canada will be facing some major challenges that are sure to affect the job market. We need labour policies that develop new skills and enable people who lose their jobs to move. We need to invest much more in workers than we do now. We also need to plan for major structural changes to training services.

Our employment policies also need updating. That is the third point I want to raise. If we want effective employment policies, they have to be informed by the realities of the 21st century and what workers and businesses really need now and in the future. They have to align with and complement businesses' human resource policies. Unfortunately, our employment policies are still based on the notion of a labour market with an oversupply of workers and less sweeping technological change than we can expect to see with artificial intelligence.

Today, and even more so in the future, skilled labour shortages will be one of the main challenges for employment policies, which will have to address ongoing adaptation in a rather unpredictable world.

Lifelong learning is becoming the major challenge and will have to be reflected in employment policies. Public and private sector policies will have to be complementary and mutually reinforcing in order to reduce to the extent possible the structural unemployment that would otherwise likely grow significantly.

On that, a recent study by McKinsey Canada lays out this challenge as perceived by major corporations around the world. The report states:

[*English*]

> Companies view lack of talent and skill mismatches as barriers to reaping the benefits of automation.

• (1810)

> If they cannot source the talent they need to deploy the new technologies, and if they cannot upgrade the skills of their workers fast enough, business leaders worry that this could hurt their financial performance, impede their growth, and lead to the departure of top-performing employees. Their main concerns include employees who do not upgrade skills fast enough, are not sufficiently adaptable to move to new types of work, or lack requisite technical skills.

[*Translation*]

The Fédération des chambres de commerce du Québec came to the same conclusions and emphasized the development of basic skills. The Canadian federation of chambers of commerce agrees.

We must start right now and emphasize the development of tools and strategies for skills development in our employment policies, or Canada and most of its provinces could end up falling behind.

Policies on employment and ongoing training will also have to cover a large proportion of the workforce, and not just EI recipients, as is the case now. This was recommended by the Advisory Council on Economic Growth, which advises the Minister of Finance.

I would remind you that, according to the OECD's Programme for the International Assessment of Adult Competencies, which I mentioned a while ago, one out of two people of working age in Canada does not meet the minimum requirements to obtain a decent new job today. This means that one person in two who loses a job will have a hard time developing the skills needed to get a decent new job.

The vast majority of these people are not entitled to the employment services funded by EI. As a society, we must do much better. According to a study on work ethic that I commissioned in 2014, Canadians said that they were prepared to train if they were given the tools.

Canada and the provinces have a lot of work to do and must make a concerted effort to better serve Canadians and strive for full employment. An economic growth strategy is necessary for achieving full employment and should encourage employers to improve employment conditions. However, as the senators who took part in this inquiry have pointed out, modern societies like Canada have a lot of work to do to achieve decent employment.

Pursuing full employment on a macro-economic level is not enough. On the other hand, the growth and prosperity that results from full employment cannot be shared equitably without social dialogue. It seems Canada has some catching up to do in terms of social dialogue. However, fear not, that is for the next inquiry.

On that note, honourable senators, thank you for your attention, and I hope that you are now a little more persuaded of the relevance of full employment and the significance of this economic and social objective.

Thank you.

Hon. Renée Dupuis: I would like to ask Senator Bellemare a question.

The Hon. the Speaker: Senator Bellemare, your time has expired. Are you asking for five more minutes to answer questions?

Senator Bellemare: Yes, with leave of the Senate.

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

Hon. Senators: Agreed.

Senator Dupuis: Senator Bellemare, in your study, did you find any information on instances of employers, whether public or private, actually applying the formula for the portion of the salary that is supposed to be dedicated to employee training?

Many workers in both the private and public sectors are complaining about the fact that 1 per cent of their income is theoretically supposed to be dedicated to training, but in reality, that is not happening.

Senator Bellemare: Thank you for your question, senator. The obligation to invest 1 per cent of the payroll in workforce training was enacted in a Quebec law. That is not the case for the rest of Canada. The Quebec law was modelled on a French law. There are now very few countries that do that, and even France has made some changes to the terms and conditions of that obligation and turned it into more of a personal training account.

There is a lot of work to be done, and these are exactly the kinds of things we need to consider in Canada. We need to consider them in cooperation with the provinces and the federal government. That is not happening right now.

(Debate concluded.)

CHALLENGES OF LITERACY AND ESSENTIAL SKILLS FOR THE TWENTY-FIRST CENTURY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Bellemare, calling the attention of the Senate to the challenges of literacy and essential skills for the 21st century in Canada, the provinces and the territories.

Hon. René Cormier: Honourable senators, considering the eloquent and well-thought-out speeches delivered by Senator Bellemare and Senator Gagné on the important topic of literacy, I would like to fine-tune my speech and deliver it on October 2.

Therefore, with leave of the Senate, I move that debate be adjourned until the next sitting of the Senate for the remainder of my time.

(On motion of Senator Cormier, debate adjourned.)

(*At 6:17 p.m., the Senate was continued until tomorrow at 2 p.m.*)

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