SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 241

OFFICIAL REPORT
(HANSARD)

Tuesday, October 30, 2018

The Honourable GEORGE J. FUREY,
Speaker

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

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

THE SENATE

Tuesday, October 30, 2018

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

Prayers.

[*English*]

VICTIMS OF TRAGEDY

PITTSBURGH, PENNSYLVANIA—SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, I wish to take a moment to mark the horrific act of violence perpetrated on Saturday in Pittsburgh, Pennsylvania.

The lives of eleven people, including a woman originally from Toronto, were tragically taken and at least six other people were injured, including law enforcement officers.

I now invite everyone to rise for a moment of silence in memory of the victims.

(*Honourable senators then stood in silent tribute.*)

SENATORS' STATEMENTS

TRAGEDY IN PITTSBURGH, PENNSYLVANIA

Hon. Howard Wetston: Honourable senators, Joyce Fienberg was originally from Toronto. She was 75 years old. She was a research specialist at the University of Pittsburgh's Learning Research and Development Center, from 1983 until she retired in 2008.

She was married at the Holy Blossom Temple in Toronto in 1965. Her husband Stephen, who died in 2016 from cancer, was a professor at Carnegie Mellon University and a leading social statistician. They moved to Pittsburgh in the early 1980s.

Joyce lost her life last Saturday at the Tree of Life Synagogue in Pittsburgh.

Honourable senators, it troubles me and it pains me to rise today to speak about the terror last Saturday in a house of worship. It pains me because this tragedy is a result of anti-Semitism, often thought of as the world's oldest hatred.

Honourable senators, they were murdered because they were Jews.

For 2,500 years, the Jewish people have been denounced and persecuted. But in North America, Jews believed the worst of anti-Semitism was behind us. There was a feeling of greater acceptance, but the massacre on Saturday, wherein 11 died and six were injured, was a shocking reminder — a wake-up call.

In the last two years, there has been an unmistakable rise in anti-Semitic crimes in the United States and also in Canada. The Anti-Defamation League in the United States has reported an annual increase of 57 per cent in anti-Semitic incidents over the year before; that is, 2016.

Honourable senators, what's the reason? Is it the aggressive political rhetoric that accentuates divisiveness? What role does the growing global phenomenon of social media have to play? Is social media a "positive influence" or is it a platform for disinformation that spreads and fuels hatred — not just for Jewish people, but other ethnic minorities?

And obviously, there is access to guns, military-style weapons. The consequences are far-reaching.

Honourable senators, they died because they were Jewish. They died in a house of worship. The shooter, after being arrested, stated that he wanted "all Jews to die."

I stand in the memory of those who died in this dreadful, barbaric attack. We stand in solidarity with Pittsburgh's Jewish community and demonstrate the compassion and strength of Canadian society. Thank you.

Hon. Senators: Hear, hear.

Hon. Linda Frum: Joyce Fienberg, Rich Gottfried, Rose Mallinger, Jerry Rabinowitz, Cecil Rosenthal, David Rosenthal, Bernice Simon, Sylvan Simon, Daniel Stein, Melvin Wax, Irving Younger.

These 11 individuals deserve to be remembered here in the Senate of Canada. They deserve to have their unique and particular lives celebrated. They also deserve to worship their God without fear of terror or torment.

What happened last Shabbat morning in Pittsburgh was the violent manifestation of the age-old evil that is anti-Semitism.

• (1410)

These innocent souls, among them a 97-year-old Holocaust survivor and a 75-year-old academic who lived much of her life in Toronto, were not murdered for any other reason than they were Jews.

Last night, I attended a vigil in Toronto in their honour. Over 5,000 people came together in Mel Lastman Square to say no — no to hatred, to evil, and to anti-Semitism.

Similar outpourings of support for the Jewish community have been held in cities across Canada and the United States. These gatherings have been attended by Jews and Muslims, Christians and atheists. For that I simply want to say thank you. We are fortunate to live in a country tolerant and welcoming to those of the Jewish faith. A country where citizens stand shoulder to shoulder in moments of tragedy to work together to find healing

through the devastation. We must not let this moment pass without committing and recommitting ourselves again to combatting anti-Semitism in all its forms.

As the honourable members in this chamber are aware, I am a proud Jew. And like so many other Jews, I am concerned about the rising levels of anti-Semitism around the world, including here in Canada.

While an increase in security for our Jewish institutions and our places of worship may be a short-term solution to the current environment we find ourselves in today, no Jew wants to live in a world where it is necessary to pass through a metal detector to attend a wedding, or the celebration of religious festivals requires an armed guard at each entrance or where the simple act of praying in a pew requires a familiarity with the nearest exit.

Indeed, we need to work together to denounce the forces of darkness and hate whenever and wherever they happen.

May the families of the 11 victims find comfort. May all those injured be granted a swift and full recovery. May the first responders, who rushed towards danger in the hopes of saving lives, know how deeply appreciated and respected they are by all of us. And may we emulate their courage to do the right thing when the values we cherish as a nation come under threat and assault.

Hon. Senators: Hear, hear.

[*Translation*]

FRANCOPHONIE ACTIVITIES IN OCTOBER

Hon. René Cormier: Honourable senators, allow me to offer my condolences to the families affected by this tragedy. I don't want to make comparisons between our two situations, of course, but as an Acadian descended from a people that has faced many kinds of discrimination for its language and culture, I am acutely aware of how important it is to make connections to bring us closer together.

On a lighter note, the Canadian francophonie celebrated several events this month that I'd like to tell you about. You know how important the French language is to Canada's future, both domestically and internationally, and how important it is to modernize the Official Languages Act, which will be 50 years old in 2019. The Official Languages Committee is pleased to have tabled its second report on the topic this week.

On October 11 and 12, the seventeenth Francophonie Summit took place in Yerevan, Armenia. Since Ontario was recently granted observer status, Canada now has four seats on the International Organisation of La Francophonie, or OIF, given that New Brunswick, Quebec and Canada have been full members with voting rights since the organization was founded.

The OIF's mission is to embody the much-needed active solidarity between its 88 member states and governments, which include 61 members and 27 observers. Canada, Quebec, Acadia and French-speaking Canadians play an important role in that. I would like to thank Michaëlle Jean for her important contribution to this organization, particularly in defending and promoting the rights of women and girls.

I would especially like to congratulate Louisiana for joining the OIF as a new observer. Thanks to the hard work of our Cajun cousins, Acadia and the Americas will have an even stronger presence in this major international forum.

The American francophonie, whether Quebec, Acadia, or Canada's francophone community, is a welcoming place that promotes communication and solidarity within this great French-speaking world and supports its development. One need only think of the Francophonie Summit that was held in Moncton and the upcoming Francophonie Games, which will take place in the Moncton-Dieppe area in 2021.

To all those who claim — and I am referring here to a certain novelist — that the Canadian francophonie is in survival mode and on the verge of extinction, I would say that it is clear that such is not the case. The Canadian francophonie is a key player that is participating more actively than ever in the growth and solidarity of our country's peoples.

In closing, I would like to congratulate all of the artists who participated in the fortieth ADISQ gala, which aired on Radio-Canada on Sunday. Their creativity and open-mindedness builds bridges with all francophones in every country and all peoples of the world.

I thank them, and I thank you for your attention.

Hon. Senators: Hear, hear!

[*English*]

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Ms. Victoria Perrie. She is the guest of the Honourable Senator McPhedran.

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

Hon. Senators: Hear, hear!

CAIN'S QUEST

Hon. Fabian Manning: Today I am pleased to present Chapter 44 of "Telling Our Story".

Cain's Quest is a biennial snowmobile race which takes place in Labrador. At 3,100 kilometres, it is the longest snowmobile race in the world, and takes participants approximately seven days to complete. Racers ride in teams of two, day and night, guided by GPS, and must navigate deep snow, frozen lakes, and heavily wooded areas, passing through checkpoints along the

way. It is these intense perils that have attracted extreme sports enthusiasts from around the world to compete in this extreme racing challenge.

Created in 2006, Cain's Quest was designed as a winter tourism attraction that would showcase the natural rugged beauty of Labrador. It draws its name from the words of the famous explorer Jacques Cartier who, upon seeing the harsh landscape of the Labrador coast, called it "The land God gave to Cain," in reference to the biblical figure. The race promises to deliver on this description, with an adventure through frozen scenery, some of the most beautiful natural landscapes you would ever see "...where contestants are pushed to their limits, navigating without a pathway, relying on their skills and instruments."

Cain's Quest offers a unique challenge in extreme sports due in part to its northern location. The Labrador wilderness can get extremely cold in March, when the race takes place. Temperatures as low as minus 40 degrees Celsius have been observed during the event. Teams are often isolated on the race, and are equipped with a satellite tracker for safety, and also to monitor their progress.

Due to the treacherous nature of the wilderness, it is common for competing racers to demonstrate sportsmanship and help one another when needed to reach the finish.

It is considered a feat to even complete the race at all, let alone be the first to do so. In 2018, less than half of the teams finished, demonstrating the difficulty of the challenge.

Since its introduction, Cain's Quest has grown both in size and popularity. In the four years after the first race, registration increased by over 300 per cent. The prize pool has grown to offer a first-place reward of $50,000. Millions tune in online from over 70 different countries to watch the race progress. Hundreds of dedicated volunteers make the event possible, maintaining and expanding the route between races. Cain's Quest has become one of our province's most popular winter tourism attractions.

In 2010, warmer temperatures caused snow and ice to melt and disappear across Labrador, creating unsafe snowmobiling conditions. Cain's Quest's route became impassable. The organizing committee postponed the race until the next year. Fortunately, the races have gone ahead without issue since then. The next edition of Cain's Quest will take place in 2020. This event always draws crowds of spectators and well-wishers. If you or anyone that you know feels up to the challenge, please sign up and experience that unique and special part of our province which we fondly refer to as The Big Land. I guarantee you will experience the adventure of a lifetime. Thank you.

[*Translation*]

ROUTINE PROCEEDINGS

STUDY ON CANADIANS' VIEWS ABOUT MODERNIZING THE OFFICIAL LANGUAGES ACT

TENTH REPORT OF OFFICIAL LANGUAGES COMMITTEE DEPOSITED WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. René Cormier: Honourable senators, I have the honour to inform the Senate that pursuant to the orders adopted by the Senate on April 6, 2017, and October 18, 2018, the Standing Senate Committee on Official Languages deposited with the Clerk of the Senate on October 25, 2018, its tenth report (interim) entitled *Modernizing the Official Languages Act - The Views of Official Language Minority Communities*.

THE SENATE

NOTICE OF MOTION TO AFFECT WEDNESDAY SITTINGS UNTIL THE END OF 2018

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, until the end of 2018, when the Senate sits on a Wednesday:

1. the provisions of the order of February 4, 2016, relating to the adjournment or suspension of the sitting at 4 p.m., only take effect at the later of 4 p.m., the end of Question Period, or the end of Government Business;

2. notwithstanding the provisions of paragraph 1 of this order, the sitting not continue beyond the time otherwise provided in the Rules; and

3. without affecting any authority separately granted to a committee to meet while the Senate is sitting, if the Senate sits past 4 p.m. pursuant to this order, committees scheduled to meet be authorized to do so for the purpose of considering Government Business, even if the Senate is then sitting, with the application of rule 12-18(1) being suspended in relation thereto.

• (1420)

NATIONAL FRAMEWORK FOR ESSENTIAL WORKFORCE SKILLS BILL

FIRST READING

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) introduced Bill S-256, An Act respecting the development of a national framework for essential workforce skills.

(Bill read first time.)

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

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

[*English*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

SUMMER MEETING OF THE WESTERN GOVERNORS' ASSOCIATION, JUNE 25-27, 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 summer meeting of the Western Governors' Association, held in Rapid City, South Dakota, United States of America, from June 25 to 27, 2018.

ANNUAL MEETING OF THE COUNCIL OF STATE GOVERNMENTS SOUTHERN LEGISLATIVE CONFERENCE, JULY 21-24, 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 72nd annual meeting of the Council of State Governments' Southern Legislative Conference, held in St. Louis, Missouri, United States of America, from July 21 to 24, 2018.

ANNUAL LEGISLATIVE SUMMIT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, JULY 29-AUGUST 2, 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 Annual Legislative Summit of the National Conference of State Legislatures, held in Los Angeles, California, United States of America, from July 29 to August 2, 2018.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES RELATING TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY GENERALLY

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

> That, notwithstanding the order of the Senate adopted on Thursday, December 14, 2017, the date for the final report of the Standing Senate Committee on Social Affairs, Science and Technology, in relation to its study on social affairs, science and technology generally be extended from December 30, 2018 to September 30, 2019.

ARCTIC

NOTICE OF MOTION TO AUTHORIZE SPECIAL COMMITTEE TO EXTEND DATE OF FINAL REPORT

Hon. Dennis Glen Patterson: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, notwithstanding the order of the Senate adopted on Wednesday, September 27, 2017, the date for the final report of the Special Senate Committee on the Arctic in relation to its study on the significant and rapid changes to the Arctic, and impacts on original inhabitants be extended from December 10, 2018 to September 30, 2019.

[*English*]

THE SENATE

NOTICE OF MOTION TO AFFECT SITTING ON NOVEMBER 20, 2018

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

> That, in order to allow senators to attend a mandatory training session on the prevention of harassment in the workplace, pursuant to the recommendations of the first report of the Subcommittee on Human Resources of the Standing Committee on Internal Economy, Budgets and Administration, if the Senate sits on Tuesday, November 20, 2018:
>
> (*a*) it adjourn no later than 4 p.m., as if that were the ordinary time of adjournment provided for in rule 3-4;
>
> (*b*) if a vote had been deferred to 5:30 p.m. on that day, it instead take place at the end of Routine Proceedings, with the bells to call in the senators ringing for 15 minutes before the vote; and

(*c*) notwithstanding any provision of the Rules, previous order or usual practice, committees not meet between 4 p.m. and 7:30 p.m. on that day.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, pursuant to the motion adopted in this chamber on Thursday, October 25, 2018, Question Period will take place at 3:30 p.m.

ORDERS OF THE DAY

CRIMINAL CODE
DEPARTMENT OF JUSTICE ACT

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

On the Order:

Resuming debate on the motion of the Honourable Senator Sinclair, seconded by the Honourable Senator Pratte, for the third reading of Bill C-51, An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act.

And on the motion in amendment of the Honourable Senator Pate, seconded by the Honourable Senator Deacon (*Ontario*):

That Bill C-51 be not now read a third time, but that it be amended

(*a*) in clause 10, on page 5,

(i) by replacing lines 17 to 20 with the following:

"**(b)** the complainant is incapable of consenting to the activity in question for any reason, including, but not limited to, the fact that they are

(i) unable to understand the nature, circumstances, risks and consequences of the sexual activity in question,

(ii) unable to understand that they have the choice to engage in the sexual activity in question or not, or

(iii) unable to affirmatively express agreement to the sexual activity in question by words or by active conduct;", and

(ii) by adding the following after line 20:

"**(2.2) Section 153.1 of the Act is amended by adding the following after subsection (3):**

(3.1) For greater certainty, capacity to consent at the time of the sexual activity that forms the subject-matter of the charge cannot be inferred from evidence on capacity to consent at the time of another sexual activity."; and

(*b*) in clause 19, on page 9,

(i) by replacing lines 20 to 23 with the following:

"**(b)** the complainant is incapable of consenting to the activity in question for any reason, including, but not limited to, the fact that they are

(i) unable to understand the nature, circumstances, risks and consequences of the sexual activity in question,

(ii) unable to understand that they have the choice to engage in the sexual activity in question or not, or

(iii) unable to affirmatively express agreement to the sexual activity in question by words or by active conduct;", and

(ii) by adding the following after line 23:

"**(2.2) Section 273.1 of the Act is amended by adding the following after subsection (2):**

(2.1) For greater certainty, capacity to consent at the time of the sexual activity that forms the subject-matter of the charge cannot be inferred from evidence on capacity to consent at the time of another sexual activity."

Hon. Marilou McPhedran: Honourable senators, today I rise to speak in support of Senator Pate's amendment to Bill C-51.

We all appreciate in any criminal case, including charges of sexual assault, a just result must balance the rights of the accused and the rights of the person who experienced the alleged assault. In applying values from the Canadian Charter of Rights and Freedoms, we have also learned that the standard of a fair trial cannot be narrowly focused on the accused in sexual assault cases.

We have learned that sexualized violence is about power in various forms, not restricted to social or economic power. Circumstances can create power. It is this reality that is essential to understanding why Senator Pate's amendment is a calibration of our more modern understanding of the crime of sexual assault, and why the Criminal Code of Canada must provide the necessary framework to adjudicate fairly in sexual assault trials in relation to the complexities of capacity, power and the objective likelihood of harm, test and consent.

[*Translation*]

The purpose of this amendment is not to reform the law on consent. It is to ensure that our codified laws really represent the existing case law on consent in order to protect victims and survivors of sexual assault.

[*English*]

This amendment is about balance, clarity and integrity in the criminal legal system, with the goal of delivering justice. Today we have an opportunity to ensure the changes to the Criminal Code we are considering are in harmony with case law.

As we know, in 2011, the Supreme Court confirmed in *R. v. J.A.* that ongoing, conscious consent is required for any sexual activity and that prior consent cannot be given for sexual activity.

R. v. J.A. outlines the requirement for active consent. Without Senator Pate's amendment to Bill C-51, we will have failed to capture the scope of consent laid out for us by the Supreme Court, supported by experts in the law of sexual assault in Canada.

• (1430)

While faith in judicial discretion is necessary to some extent, the determination of what constitutes consent cannot be left exclusively to judges. We have decades of ample evidence that demonstrates how often judges interpret the law on sexual assault through a highly subjective — some would say biased — lens. The decision in the *R. v. Al-Rawi* taxi case is an example of this.

Sexual assault victims are typically women and girls. We as a society are not past the stage where sex discrimination and stereotyping are still perpetuated by the courts in some cases. There is no doubt that discrimination in the form of misogyny, racism or both is often seen through the application and interpretation of sexual assault law.

As an example, in 2001 in Saskatchewan, three men took turns raping a 12-year-old Indigenous girl. One of the men was given a two-year conditional sentence. The other two men were acquitted. These acquittals were overturned. One man was acquitted again by the jury at his second trial, while the other's jury deadlocked and a mistrial was declared.

As lawmakers, we have a responsibility to enable judges and juries to have the clearest possible understanding of the laws we make. Senators, you have already heard concern over how Bill C-51 addresses the meaning of the word "unconscious" in paragraph 273.2(a.1).

Feminist experts in sexual assault law have advised that inclusion of the word "unconscious" risks creating a false threshold for the capacity to consent. More than 30 years ago, I was a co-founder of LEAF, the Women's Legal Education and Action Fund, made necessary by discrimination perpetuated by the legal system then. Thirty years later, discriminatory and damaging attitudes are still present in every aspect of our legal system. LEAF and other experts still have lots of work to do today.

Experts advise the Senate committee that here is a possibility that paragraph 273.2(a.1) could effectively lead to the misunderstanding that the bright line for incapacity to consent is unconsciousness. There is no need to codify that consent cannot be given while unconscious because clearly it cannot be, and clearly this is settled law.

The debate we need to be having in sexual assault law is not about consciousness or unconsciousness. It is about a clear articulation in the Criminal Code of the capacity to consent under impaired circumstances and applying the test of objective likelihood of harm. We won't ever know exactly what happened when Bradley Barton's invasion of Cindy Gladue's body tore 11 centimetres into the length of her vaginal wall, from which she bled to death. But we do know that Cindy Gladue was a mother, making her living by selling access to her body. There is no way, no way whatsoever, that she could have or would have consented to such a violent assault on her body with the likelihood of bodily harm that would have made it impossible to work, let alone to live.

Professor Janine Benedet is an expert in sexual assault law who has researched and litigated on this question and notes the importance of understanding incapacity to give consent in situations involving the consumption of drugs and alcohol. Research on jurisprudence tells us that courts are more likely to find incapacity from intoxication when the victim was involuntarily intoxicated, and less likely to find incapacity from intoxication when the victim was voluntarily intoxicated. This reinforces tropes of "good" sexual assault victims and does nothing to promote the administration of justice.

Is this not similar to judicial commentary we've already heard, blaming sexual assault victims for how they were dressed or assuming they just needed to hold their knees together to prevent the rape?

Senators, you have already been advised by Senators Pate and Lankin that the current wording in Bill C-51 poses a serious risk that women who are intoxicated will be blamed if they are sexually assaulted. They will not be protected by this bill. Senator Pate's amendment would ensure that courts are able to recognize that intoxication can significantly diminish the capacity to consent, to affirmatively express agreement to the sexual activity in question by words or by active conduct. This would also enable courts to understand that apparent consent is not necessarily voluntary.

With this amendment, Bill C-51 will include a contextual capacity-to-consent test. Capacity cannot be understood within a binary of a "yes" or "no." Capacity is about a nuanced understanding of an individual's ability to make a free and informed choice.

As the case law demonstrates, the lack of nuance regarding consent in the Criminal Code has led to a lack of consistency in judicial outcomes and has contributed to contradictory understandings of capacity in sexual assault law. After all, we cannot ignore the fact that men have been acquitted of sexual assault on girls as young as 12 on the basis of failure for that child to prove non-consent.

There has been concern raised that this amendment will result in more complex trials. That may turn out to be true, but what is more important here? Efficiency or justice? Increased complexity is not a reason to avoid the pursuit of justice for victims of sexual assault. Let us not assume undue complexity would result. Let's instead consider that this amendment accurately reflects the existing complexities surrounding the capacity to consent.

The capacity to consent is complex, but through the lens of substantive equality these complexities can be resolved. Substantive equality is about recognizing the intersecting barriers faced by individuals to live their rights and providing decisions that will guarantee equality of results of justice.

The proposed amendment reflects a commitment to substantive equality, as the amendment ensures that capacity to consent is understood through the following contextual analysis: a capacity to recognize the risks and consequences associated with the sexual conduct; an understanding that all parties have the right to say "no"; and — important, please note — the ability to affirm that they have voluntarily consented.

While protecting freedom to make sexual choices, the framework of substantive equality reflected in this amendment will ensure that this freedom is always contextualized within an intersectional analysis of inequality and, in particular, sex and racial inequality. The contextualized capacity-to-consent test in this amendment will provide judges with the necessary tools to properly take the circumstances of victims into account.

It is important to remember that during the drafting of Bill C-51, sexual assault experts and feminist legal scholars were not consulted. As a result, Bill C-51 lacks a nuanced understanding of sexual assault litigation. Experts have warned that Bill C-51 creates the possibility for relitigation on the questions of capacity to consent that are already settled in *R. v. J.A.*

As those given the responsibility of sober second thought, we must take these concerns seriously. It is our parliamentary obligation to sufficiently respond to the judiciary and to codify laws that will ensure the administration of justice. This is particularly true when we address complex issues like the capacity to consent. When we fail to recognize and act on these complexities, it is the victims who bear the burden and suffer the consequences.

[*Translation*]

I therefore encourage you, honourable colleagues, to support Senator Pate's amendment, which will guarantee better protection and enhanced representation for survivors of sexual assault and abuse. Thank you.

Hon. Julie Miville-Dechêne: Honourable senators, I rise today to support the amendment brought forward by my colleague Senator Pate and to let the other place know that, in my opinion, Bill C-51 contains a flaw. This major flaw needs to be fixed before the bill comes into force.

The issue of sexual consent has been a core concern of mine for many years now. As former chair of the Conseil du statut de la femme, I have spoken numerous times on the evolution of this concept and the idea that, in this day and age, consent must be affirmative. A person has to say "yes" to sexual activity. Passivity, intoxication, or not saying "no" are not enough to confirm that consent has been given.

• (1440)

This bill includes a definition of consent, but its weakness is the definition of what constitutes non-consent. According to a legal expert who provides sexual consent training to judges, there is not enough precedent or awareness among judges to believe that the proposed wording in clauses 10 and 19 of the bill is clear enough to guide them.

Again, according to the wording, no consent is obtained if:

> **(a.1)** the complainant is unconscious;
>
> **(b)** the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);

I will not repeat the arguments made by my colleagues Senators McPhedran and Lankin about the risk associated with the unconsciousness criterion in Bill C-51. I agree with their arguments.

The flaw in this bill could potentially affect many women. If a person is voluntarily intoxicated — in other words, drunk — but is still conscious, how is their consent or lack of consent to be determined? That is the problem, and that is where the alleged victim faces challenges in getting justice in court.

I think it would be appropriate to amend clauses 10 and 19 of Bill C-51 by adding subparagraph (iii), which states that the complainant is:

> unable to affirmatively express agreement to the sexual activity in question by words or by active conduct;",

However, I am not convinced that the part of the amendment proposed by my colleague Senator Pate, stating that an individual must be able to understand the risks and consequences of the sexual activity, would be admissible in a court of law.

I listened carefully to the arguments for and against this difficult issue, and especially to those made by my colleague Senator Dalphond, for whom I have a great deal of respect. We both would have liked the committee to spend more time refining the amendment to achieve a broader consensus on its nature and the wording.

Despite my reservations about the wording of one part of this amendment, I will vote in favour of it because I believe it is important to show my support for a better definition of consent in the hope that more victims of sexual assault can get justice. Thank you.

Hon. Senators: Hear, hear.

[*English*]

Hon. Colin Deacon: Honourable senators, I rise to speak in support of Senator Pate's amendments to Bill C-51.

Rehtaeh Parsons was a vibrant 15-year-old girl who entered Cole Harbour High School in September 2011. She was full of hope, dreams and optimism.

Two months later she went to a party with a friend. She drank too much and, as Rehtaeh later described, was sexually assaulted. A photograph was taken showing one of the young men apparently having sex with Rehtaeh from behind as she vomited out a window. The photograph was widely shared.

Rehtaeh went to the police a week later. After a year-long investigation, the case was closed. No charges were filed. In April 2013, 17 months after that party, Rehtaeh attempted suicide. She died a week later.

Throughout this time, she felt terribly alone and completely abandoned by everyone in positions of authority. Rehtaeh had the support of her parents and a couple of friends, but that was all. She turned to the justice system, but it was decided that there was no realistic prospect that any charges would result in convictions, so none were ever laid. Despite photographic evidence that she was incapacitated to the point of vomiting, Rehtaeh's case was still considered "he said, she said."

Her father, Glen Canning, later wrote that Rehtaeh had totally lost faith in the justice system. I agree with Glen when he said, "There is no excuse for someone so young to lose faith like that."

Rehtaeh's story would have slipped away altogether but for the actions of Anonymous, the international hacker group. Colleagues, it's a very dangerous and scary place when non-state actors feel they must intervene in a local matter because large segments of the population are not satisfied that justice is being served.

The law usually prevents us from naming victims in such offences, but Rehtaeh's parents strongly advocated to keep her name and her story alive. The Attorney General of Nova Scotia agreed that the public interest is served by remembering Rehtaeh and learning from what happened to her.

I hesitated to engage in this debate because I am very conscious that I am a new senator, I am not a lawyer and I don't have any criminal law expertise, but I believe this isn't just a problem for the experts. This is a collective problem. As I listened to Senator Pate discuss her amendment and the debate that followed, I concluded that this problem cannot be viewed just through the lens of the judiciary, or through the eyes of prosecutors or police. It needs to be considered in a manner that will change the way all Canadians make decisions related to consent.

When I looked at the data, I was even more convinced. Too many Canadians are being sexually assaulted every single day. An overwhelming number don't report it to the police. Statistics Canada estimates that some 636,000 self-reported sexual assaults took place in Canada in 2014. Shockingly, they also estimated that as few as 1 in 20 were reported to the police. That's 5 per cent, colleagues. What other crime can anyone point to where as many as 95 per cent of victims feel they cannot turn to the justice system?

I wanted to get a sense of the scale of this problem. I learned that in that same year there were over 116,000 car accidents in Canada. That means there are about five times as many unreported sexual assaults in Canada as car accidents — five times. Then consider that these are accidents. Think of everything we do, all the time and money that we invest as governments, the justice system and as individuals, to reduce the number of car accidents. Surely we are capable of doing more to reduce the number of sexual assaults, especially given that these are not accidents; they are entirely preventable.

I believe that the key to prevention is for Canadians, every day, to understand how to obtain mutual consent and to act on that knowledge. Think of the lifelong harm that could be prevented.

We need to stop assaults before they take place and well before they ever reach our criminal justice system. Surely that's our goal. Surely that's our measure of success or failure, to prevent the problem in the first place. If we're to achieve this, we need the law to clearly state how and when someone can consent to sexual activity and when they cannot.

Ultimately, the Government of Nova Scotia ordered an independent review of the police and prosecutors' handling of the Rehtaeh Parsons case. The Segal report ran over 150 pages. It concluded that while another prosecutor might have decided otherwise, the decision not to proceed with sexual assault charges was understandable from the standpoint of our current justice system.

There's a long section in the report devoted to consent. What struck me most powerfully was how unclear and vague the law is on consent when it comes to sexual activity. The law is clear — and the report describes this — if the victim is intoxicated to the point of unconsciousness, but that's where the clarity ends.

In Rehtaeh's case, the police and prosecutors decided not to charge anyone with sexual assault, not even to put the matter before a judge. Yes, there were differing views on the evidence. Yes, another prosecutor could have reasonably reached a different conclusion, but I cannot help but see the lack of clarity in the law as it relates to the issue of consent as being a significant contributor.

Colleagues, we can't do anything to bring Rehtaeh Parsons back and allow her to grow up and live a life that should have been hers. But we are legislators. It's our job — it's our opportunity — to restore some measure of justice for the far too many Canadians who are being failed by our system. When the

system is failing, then it's our responsibility as legislators to address that failing. It's our job to look at the law and, if it isn't working, to do our best to fix it.

I have the utmost respect for Senator Dalphond and paid close attention as he described why the government is proposing a narrower focus or Bill C-51. But, colleagues, I can only view this bill and its proposed amendments through all of the elements of our justice system: yes, the judiciary, prosecutors and police, but, most importantly, the public. I'm firmly focused on how to dramatically reduce the number of sexual assaults that occur in this country every day, be they reported and prosecuted — or not, as is the case the vast majority of the time.

• (1450)

We regularly use criminal law to achieve this very goal. An obvious example is that the Criminal Code prohibits driving while impaired by drugs and alcohol. As a result, think about the hundreds of thousands of different decisions and discussions occurring every single day by Canadians across this country. Think of the devastation that is prevented.

I mentioned the report that Statistics Canada released last year which focused on self-reported sexual assault. They were trying to understand why most sexual assault victims don't go to police, why it's one of the most under-reported crimes. But even this report cautioned the self-reported figures could well underestimate the actual incidents.

One of the three categories of sexual assault covered by the report was sexual assault where the victim was unable to consent. The question asked was, "Has anyone subjected you to a sexual activity to which you were not able to consent …where you were drugged, intoxicated, manipulated or forced in ways other than physically?"

Nine per cent of the self-reported sexual assaults fell into this category. Colleagues, there were 636,000 self-reported sexual assaults in 2014. That means in that single year, there were more than 57,000 sexual assaults where the victim was unable to consent. That's 157 individual cases of sexual assault where the victim was unable to consent every single day.

The first year this category was even measured was 2014. In that year, only 26 per cent of sexual assault incidents where the victim was unable to consent were reported to police. That means 74 per cent — three out of every four incidents where the victim was unable to consent — did not come forward to police. Three out of every four times the victims did not believe justice would be served.

In other words, colleagues, women — and let's be honest, these are overwhelmingly women and girls — have received the message: Don't report the assault to police. That point was driven home to me during conversations with current and retired police officers. They spoke of the dehumanizing process of reporting. Senator Dalphond spoke with genuine concern of how this process gets even worse in those rare situations where the case actually reaches a courtroom.

Colleagues, I don't believe this is the justice system we want in Canada. Surely this is not who we are as a nation. It certainly isn't who we aspire to be.

The bill before us today tries to clarify the law on consent. Once again the bright line is focused on whether the person is conscious or not. There is vague language referring to whether she is incapable of consenting for any other reason. As the experts have said, if we pass this bill without amendment, we risk reinforcing the message that the dividing line is whether someone is conscious or not. Is that the message we want to send to our police, our prosecutors and our courts? Is that the message we want to send to Canadians — especially young Canadians — that even though someone is so intoxicated they're leaning out a window and vomiting, they're still capable of consenting to sexual activities?

Colleagues, the vast majority of law enforcement in this country is not done in our courts, not done by prosecutors nor by police. It's done by average Canadians as they make decisions through the course of every single day. The analysis is telling us, unequivocally, that Canadians need to make much better decisions related to consent. In this chamber today we have the opportunity to get this right, to clarify the elements that Canadians should consider when assessing whether someone has the capacity to consent or not. I believe that's what Senator Pate's amendments achieve.

It has been suggested judges don't require this guidance because they're well trained and don't need it. Colleagues, I have no doubt the vast majority of judges in criminal trials are excellent and need no guidance. But sadly, there have been many numerous high-profile cases in recent years involving judges who were not that enlightened. The simple fact is some judges do need this guidance. This is especially important when you consider the tiny fraction of assaults that ultimately make it to the courtroom.

Of course, it isn't only judges. The police and Crown prosecutor in the case of Rehtaeh Parsons decided not to lay charges. Rehtaeh's dad describes the justice system as "the tail wagging the dog." His observation is the police look at it from the court perspective, effectively becoming investigators, prosecutors, judge and jury. No one, it seems, is intensely focused on preventing the 157 times every day when a Canadian is sexually assaulted and unable to consent. Let's start to move the focus to preventing all of this harm rather than inadequately responding to it.

Don't we all want Canadians to know very clearly how to assess consent? Setting out criteria in the Criminal Code — the clearest and strongest laws on the books — does just that.

Before I close, I want to address the argument that third reading is not the time to introduce precise changes to such a complex area of criminal law, that this work should occur in committee. As a new member of the Senate, I am very grateful for the work of our committees. It helps me enormously as I learn my new role. However, I've heard nothing to suggest that committee work is a substitute for work in this chamber. Quite the opposite. I'm also aware, as Senator Lankin pointed out, that Senator Pate's amendments were defeated in committee because

the vote was equally divided six to six. That sharp division underscores why I think it is so important that Senator Pate brought this matter back to the Senate for us all to consider.

Well before I ever imagined I would have the responsibility of sitting in this chamber, I was a Canadian observing the Senate struggle with Bill C-14, the law on medical assistance in dying. That too was a highly complex area of criminal law that was actively debated and amended at third reading. Canadians saw firsthand the serious and thoughtful way this chamber handled this very important and complex area of criminal law. Watching as a Canadian, I was so proud of the difficult work done at that time.

To provide some perspective, in the two years following the implementation of Bill C-14, there have been 3,714 medically assisted deaths in Canada. Colleagues, surely the 636,000 self-reported incidents of sexual assault and the more than 57,000 where the victim was unable to consent deserve the same level of attention, care and time that was properly devoted to Bill C-14.

I know if we pass these amendments, the bill will be delayed coming into force. But I have seen how short that delay can be, how quickly the other place can respond to the amendments we pass. If they choose, they can agree to our amendments the same day and the bill can move immediately to Royal Assent.

Colleagues, we can do nothing about the past. We can't turn back the clock for any of the hundreds of thousands of victims of sexual assault or for Rehtaeh Parsons and her family. But we have the power, as legislators in the Parliament of Canada, to try and do something about the future.

Today, honourable senators, we can choose to put in place a law that can begin to change the dialogue among Canadians as they make decisions every day. We can choose to change the conversation well before it reaches the police station, the prosecutor's office or courtroom.

We are a nation of respect. For me, that means no one should be forced to engage in any sexual activity. That means there must be genuine, mutual consent. I believe our laws need to reflect this important goal and outline the elements required to achieve genuine, mutual consent. I will be supporting Senator Pate's amendments. Thank you.

Hon. Lillian Eva Dyck: Honourable senators, I wasn't planning on speaking to this amendment, but I've been thinking about the issues and I very much appreciate the speeches today.

The issue of consent in sexual assault is something that is vitally important to Canadian society. I thank Senator McPhedran for bringing up the cases she did. You brought up the Tisdale rape case in Saskatchewan where it was a 12-year-old First Nation girl. You brought up the case of Cindy Gladue, an Aboriginal woman from Edmonton. Rehtaeh Parsons, of course, we had all heard about.

Nobody talked about Helen Betty Osborne. Senator Sinclair knows this case very well from 1971. It was a case that, as a young woman, really struck me. She was a young First Nation woman going to high school in Flin Flon, and four young men decided they wanted to party. They picked Betty because she was an Indian girl. They wanted to party and have sex with an Indian girl. She was brutally murdered.

The point is Indigenous women and girls, as we all know, are much more vulnerable to rape, sexual assault and murder. The issue of consent here is how often do the voices of Indigenous women get heard to the same level, to the same extent as non-Indigenous women? Often, alcohol is involved. The victim is fed alcohol. They go out to party. The young girl in the Tisdale rape case was fed beer at 12 years old. Not only is she underage, but she is given alcohol to make her drunk. We all know that alcohol is an inhibitory drug and it affects rational thinking. You no longer think rationally. Even though she may not have been unconscious or even if she were an adult, if she had been forced to drink or had been drinking willingly, she is not going to be thinking rationally. How can she give consent under those circumstances?

• (1500)

We also know today that we have date rape drugs that render the victim totally limp. They can't move. It's like they're unconscious, but their brain is still active. We know that very well from cases in the United States. We know that from the *Bill Cosby* case.

I support your amendment, Senator Pate, but what was really in my mind was the role of the Senate. The previous speaker, Senator Dalphond, was saying it's really up to the committee. I think this is a very complicated thing, so I'm very happy with what Senator Colin Deacon said. It is very complicated, but we, as individuals in the Senate, also have to make those decisions ourselves.

I think in this case we have an issue that strikes at the heart of the well-being of all Canadian women such that we have to take a stand. If the measure is to be delayed, so what? If it goes to the House of Commons and they say no and it comes back, I think we should say no again. Take a stand. Who will take a stand for women and Indigenous women in particular? Women's issues often get pushed to the bottom of the list. Here's a chance where, as a group, as a Senate, we can make a huge difference. We can stand up and we can say, "Yes, the committee should have done this." But in this case, for whatever reasons, the committee decided not to go that way. Committees are made up of individual people and are swayed by different arguments.

So I think, as with medical assistance in dying bill, each one of us has to take our stand and say what we are going to believe in. Although I believe in the process and that the committee should have wrestled with this because they are the experts, at the same time, I think there are some things that we, as a Senate, need to stand up and say we will not accept. Maybe we're not an elected body, but we are standing up for those women, and particularly for those most vulnerable women in the Indigenous community, saying this has to change. This is a disease within our society.

I thank you, Senator Pate, as a new senator, for having the courage to come forward with this. I will support your amendment.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Pate, seconded by the Honourable Senator M. Deacon, (*Ontario*), that Bill C-51 be not now read a third time but that it be amended, (a) in clause 10, on page 5 — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: I'll ask again. I think I heard a few nays.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I am hearing nays. I don't see anyone rising. In my opinion, the "yeas" have it.

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

Some Hon. Senators: Agreed.

Senator Plett: On division.

(Motion in amendment of the Honourable Senator Pate agreed to, on division.)

The Hon. the Speaker: Resuming debate on the main motion, as amended.

Hon. Serge Joyal: Honourable senators, I rise this afternoon on Bill C-51 — of course, on another issue than the consent that has been debated in this chamber in relation to Bill C-51 — following the hearing we had at the Standing Senate Committee on Legal and Constitutional Affairs and the testimony we have heard from the Canadian Bar Association, from the Canadian Civil Liberties Association, from the Indigenous Bar Association and of course from lawyer and criminal law expert Michael Spratt, who happens to contribute to the work of the committees on many occasions.

I rise, honourable senators, because there is a problem with this bill, in my humble opinion, in relation to Charter rights, especially section 11 of the Charter, which reads:

> 11. Any person charged with an offence has the right
>
> (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Those are the two paragraphs of section 11 that, in my opinion, are at stake in Bill C-51 in some very specific paragraphs of the bill. I apologize to you for adopting maybe a technical tone in relation to the Criminal Code, but such is the Criminal Code. It's complex. It's sometimes obscure when you read it. Nevertheless, it involves the freedom of citizens. Before we vote on this, I'm totally of the opinion that those issues will probably find their way to court sooner or later. I think it speaks to the credibility of this institution to put those concerns on the record because the day they will be raised in court, I think what we could say would be helpful to the court in its deliberation in respect of the content of those rights enacted at sections 11(c) and (d) that I just mentioned.

Let me read to you two conclusive remarks in the brief of the Canadian Bar Association:

> The fundamental understanding of a trial in a fair, free and democratic society includes the notion that the vast power of the state is counterbalanced by allowing the accused, with few exceptions, to keep their defence secret from the Crown until they choose to bring it to bear in the trial. Bill C-51 would upset this important balance.

The brief continues that the reverse disclosure obligation enacted in Bill C-51:

> . . .would impact defence counsel's ability to conduct an effective cross-examination. The Canadian Bar Association questions the constitutionality of creating this disclosure obligation on an accused person and its potential impact on the Charter-protected rights of an accused to make full answer and defence.

I'll read an extract from the brief of the Canadian Civil Liberties Association:

> . . . Bill C-51 is unconstitutional, unworkable and ineffective —

— for three reasons:

> Number one is that the defence disclosure obligation is unconstitutional because it infringes on the right to silence and interferes with trial fairness.

> Number two. . . is that adding counsel for complainants in a section 276 application and the proposed section 278.92 applications creates an unfairness for the defendant.
>
> Three is that expanding the reach of section 276 to include communications jeopardizes the right to a fair trial and introduces unworkable ambiguity into the criminal law.

Honourable senators, I would like to submit to you some arguments that the Honourable Senator Sinclair, the sponsor of the bill, has been making when asking us to support Bill C-51 at third reading.

Senator Sinclair — with all due respect to Senator Sinclair and the friendship that I have for Senator Sinclair — contends:

> Bill C-51's changes safeguard the privacy interests of victims while upholding an accused's right to a fair trial, and they reinforce the long-established rule that it is never permissible to introduce evidence of prior sexual activity in a criminal trial for the sole purpose of showing that a victim is more likely to have consented to the sexual activity at issue or is less worthy of belief.

Those were one of the arguments that Senator Sinclair proposed to us in reflection.

Respectfully, senators, the change in Bill C-51 does much more than this. It is very important to note that when dealing with the reverse disclosure provisions that the admission of this material is governed by section 276 provisions of the Criminal Code and cannot be admitted for "the purpose of showing that the victim is more likely to have consented to the sexual activity at issue or is less worthy of belief," which is, of course, the same words as section 276 of the Criminal Code.

In fact, the evidence that is the subject of Bill C-51 must be admissible, relevant and not subject to any of the section 276 exclusionary roles. I think senators will concur with me that this is the right interpretation of the nature of the substance of the disclosure obligation in Bill C-51.

• (1510)

This was the second point the honourable senator proposed to us:

> The process does not impinge upon the right to a fair trial because, in my view, it is simply a requirement that the accused must disclose, as they do in some other circumstances as well. For instance, if they have evidence of an alibi, they must disclose the evidence of an alibi. I recognize that counsel who made submissions to us at committee say there is a distinction between an alibi defence and cross-examination on documents, and I accept that. Nonetheless, it's the same idea; it's the same principle.

Again, respectfully, honourable senators, the disclosure in Bill C-51 is not the same as the other situation mentioned by you in your speech. These comparisons are misleading. The defence is only required to disclose a copy of an expert report after the Crown closes their case. There is no requirement that the defence provide this information to the Crown experts prior to the cross-examination.

Similarly, the defence must provide notice that they will produce business records, but there is no requirement that the defence disclose the records in advance. There is no statutory requirement that an accused disclose an alibi. Non-disclosure of an alibi does not affect the admissibility of the evidence, only the weight it will be given by the court. Importantly, when advance notice of an alibi is given, there is no requirement to provide the exact details or evidence that will be called in support of the alibi.

The disclosures of the record as contemplated by Bill C-51 impact fair trial rights, because the content and nature of the disclosure is much broader than the examples that were quoted by Senator Sinclair. Fair trial rights are engaged because the evidence must be disclosed to the very witness that the evidence will be used to impeach. This type of disclosure, unlike the other cases, will more fundamentally impair the truth-finding function of the trial.

The third argument proposed by Senator Sinclair is the following:

> They also argue that it impinges upon the accused's right to silence, but it does not do that because an accused does not have to testify either during the proceeding regarding the documents nor does an accused have to testify at all in the trial. It is his lawyer who can use those documents if the trial judge determines they can be used for cross-examination purposes. So the accused's right to silence is not impinged by that requirement.

Respectfully, again, Senator Sinclair, this is a fundamental misunderstanding of the right to silence. The right to silence encompasses more than the choice to testify; the right to silence extends to all aspects of the proceedings, not just the trial. As an example, the exclusion of information provided by an accused after a traffic accident is routinely excluded from trials due to right-to-silence issues. Forcing an accused to disclose information engages the right to silence. An accused should only, under the rarest of circumstances, be compelled to provide information to the Crown. A robust right to silence is necessary to preserve an accused's dignity, autonomy and privacy interests. In fact, a 2003 Supreme Court case, *R. v. S.A.B.*, is very clear in that case at paragraph 57:

> . . . the principle against self-incrimination rests on the fundamental notion that the Crown has the burden of establishing a "case to meet" and must do so without the compelled participation of the accused.

In giving this principle full effect, the Supreme Court affirmed that while an accused is constitutionally entitled to disclosure from the Crown, there is no general defence disclosure obligation. I will quote *R. v. P. (M.B.)* at paragraph 39:

> With respect to disclosure, the defence in Canada is under no legal obligation to cooperate with or assist the Crown by announcing any special defence, such as an alibi, or by producing documentary or physical evidence.

Then there's the quote from *R. v. Stinchcombe*, which all the lawyers will know:

> . . . the defence has no obligation to assist the prosecution and is entitled to assume a purely adversarial role toward the prosecution.

Honourable senators, in other words, the defendant is "entitled to assume a purely adversarial role toward the prosecution."

Honourable senators, in the presentation from Senator Sinclair, he did not address the fair trial issue. Even if the concern about right to silence can be addressed, there is still the issue of fair trial rights that needs to be considered. In this case, the balance still mitigates against the disclosure mandated in Bill C-51 in breach of section 11(c) and (d) of the Charter.

Honourable senators, I know these are very technical, complex issues, but these are part of what we are voting on in Bill C-51. As I suggested to you after having read the brief from the Canadian Bar Association, the Canadian Civil Liberties Association, after having had an exchange with the lawyer and criminal expert Michael Spratt — and I thank him for his contribution to my own reflections — I would submit to you that this bill runs the risk of not only being challenged in court but being found wanting in relation to section 11(c) and (d) of the Charter. The scope of the reverse disclosure obligation is very wide and is not qualified. To read from the bill, it's:

> . . . any communication made for a sexual purpose or whose content is of a sexual nature.

— with no time limit.

In other words, you would have to disclose in a procedure within the trial, with the assistance of a lawyer for the complainant, any communication that an accused might have had, in the past, of any nature, with the complainant. That, in my opinion, stated in that wide scope, challenges the protection that is afforded to a fair trial and the right to silence.

For that, honourable senators, I would have found that I had failed in my duty to draw your attention to those issues, because when a bill has been adopted in this chamber, becomes the law of the land, is challenged in court and found to be in breach of the Charter, it reflects upon our work individually, especially those of us who sit on the Legal and Constitutional Affairs Committee. As chair of that committee, it is my duty to bring those issues to your attention, because it's part of the responsibility that you share when we vote at third reading of Bill C-51.

Hon. Michael Duffy: I have a question, if the senator would take a question.

The Hon. the Speaker: Senator Joyal, your time has expired. Are you asking for time to answer a question?

Senator Joyal: I ask if honourable senators would give me the authorization.

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

Hon. Senators: Agreed.

Senator Duffy: Senator Joyal, as always, you're very thorough in completing your work, and we all appreciate the contributions you make here on these important issues. The nation and, indeed, much of the world, is caught up in concerns about sexual assault, and we all share that concern.

• (1520)

Listening to your intervention on defence disclosure, I wonder if you fear, feel or believe that if this is allowed to go ahead in cases of sexual assault, it will also bleed over into other criminal cases and in effect undermine one of the foundations of our criminal justice system, which is the accused's right against self-incrimination.

Senator Joyal: Thank you, senator, for your question. I have reflected along those lines also because I remember very well the amendments to include the alibi in the Criminal Code. If an accused has an alibi, the accused is invited to inform the court as soon as possible that there is an alibi. It's not definitive, as I mentioned in my remarks. The alibi defence can still be raised at any point during the trial, but, of course, it will bear on the weight and the credibility to be given. Nevertheless, the proof can be made, of course, in front of the court.

It's the same with the production of records. An accused should inform the court that he or she intends to produce records. He or she is not compelled to produce the details of the records, contrary to this obligation, whereby you would have to communicate any communication in relation to sexual activity, be it only sexual chat on the Internet, on Twitter or on any kind of non-material communication.

Once you start introducing in the code those kinds of exceptions without limits on the criteria, without the capacity to define the extent to which those exceptional circumstances are addressed, you create, of course, precedent. Anyone, at a point in time, can claim that the protection afforded in the cases of sexual assault should be extended in other criminal offences before the court that are also repugnant, that also influence the reaction of society as a whole in relation to a certain type of criminal offence.

That's why, honourable senators, I raised this today and tried to draw your attention to it. What we're doing in this bill in relation to addressing sexual offences, which all of us abhor, all of us would want to see eliminated, all of us would want to be addressed — I'm thinking of sexual harassment, because it's all part of the same phenomenon. It is part of the same attitude of society to women, generally, most of the time.

I feel that if we are to embark on that kind of opening, the capacity of the code to limit the right of self-defence, of fair trial, of capacity to cross-examine a witness who lies or exaggerates — the trial is a search for the truth. That's essentially what a trial is. It's to know what happened, to know who is responsible and to measure the extent of the responsibility so that the penalty is attached to something that the court, as much as possible, has been able to understand and has been able to go beyond a reasonable doubt, which is the measure of the credibility of everything.

As I say, I have listened to all the questions that honourable senators at the committee asked the witnesses that I mentioned, the experts we heard. Those points, in my opinion, have consequential impact to future amendments of the Criminal Code, and that's why I had to draw your attention to this.

To all the senators who have listened and participated in the work of the committee, I'm sure those issues will find their way into the court sooner or later.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Senator Martin: On division.

(Motion agreed to and bill, as amended, read third time and passed, on division.)

NATIONAL SECURITY BILL, 2017

SECOND READING—DEBATE

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.

Hon. Tony Dean: Honourable senators, I rise today to speak to Bill C-59, An Act respecting national security matters, and its proposed objectives with respect to Canada's national security organizations. I start by commending Senator Gold for his hard work in sponsoring the bill.

I will briefly speak to the overall objectives of the bill but want to focus my remarks on how it would tackle the siloed nature of our security organizations and their review processes, and thus improve oversight for the protection and well-being of Canadians.

This bill is designed in part to redress the imbalance between security service powers and those of the review bodies that hold them to account. If passed, the bill would supplement the joint parliamentary review committee on security with the creation of a national security intelligence review agency, NSIRA, and also create the position of the intelligence commissioner. This review agency is a key component of the legislation. It emphasizes the importance of review, and establishes checks and balances that will protect Canadians and their rights.

Bill C-59 would also revamp the Communications Security Establishment, the CSE, so that many of its functions would be defined by law and not ministerial authority and/or by internal policies. Security experts tell us that this will bring clarity to our security organizations so they can perform their jobs more effectively. Experts have also described the legislation as forward-looking in that it would establish new mechanisms that would allow our national security organizations to be nimble and adaptable to new technologies as they emerge.

Bill C-59 is designed in part to address the current fragmentation in current review processes by providing broader oversight of Canada's security and intelligence organizations. In an effort to increase transparency and accountability, this bill represents a break from the siloed models of the past in proposing a whole-of-service approach involving multiple agencies in its review activities, including CSIS, the RCMP, the CSE and CBSA.

In former jobs, I, like many of you in this room, have led initiatives to tackle silos in public sector organizations. I've seen the downsides of policy being developed in silos. I've seen the downsides of program delivery silos and funding silos.

And we've all seen the downsides of governance and accountability silos as well. The U.S. congressional report on 9/11 not only revealed that intelligence agencies were operating within their own stockades — not sharing critical intelligence on foreign threats; it also remarkably revealed the existence of previously unknown U.S. security organizations. I call those the ultimate silos or mega-silos.

In a 2016 paper entitled *Bridging the National Security Gap: A Three Part System to Modernize Canada's Inadequate Review of National Security*, experts Craig Forcese and Kent Roach define review as "the process by which independent bodies retrospectively evaluate the conduct of security and intelligence agencies." They further suggest that an effective review system is also prospective or forward-looking and therefore able to evaluate the need for proposed legislation or policy changes.

They say that review is important because of the substantial powers that security intelligence agencies hold, particularly the power to restrict rights and liberties, that there have been instances in Canada and elsewhere where these powers have been misused; that security and intelligence agencies exercise these powers in secret and therefore could prevent complaints about misconduct; and that security and intelligence agencies are generally insulated from outside scrutiny and exposure, which is arguably an essential component to ensuring efficiency and effectiveness.

While a number of review mechanisms are currently in place, they do not together or separately have a sufficient mandate to review matters which cross-agency boundaries.

• (1530)

Our security organizations currently have three review bodies. CSE is currently reviewed by the Office of the Communications Security Establishment Commissioner; CSIS is reviewed by the Security Intelligence Review Committee, an independent external review body which reports to Parliament on the operations of CSIS; and the RCMP has a Civilian Review and Complaints Commission, which ensures that public complaints made about the conduct of RCMP members are examined fairly and impartially.

BUSINESS OF THE SENATE

The Hon. the Speaker: Senator Dean, I'm sorry I have to interrupt you. The honourable minister has arrived, and you will be given the balance of your time after Question Period.

QUESTION PERIOD

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, today we have with us for question period the Honourable Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard.

On behalf of all senators, welcome, minister.

Pursuant to the order adopted by the Senate on December 10, 2015, to receive a Minister of the Crown, the Honourable Jonathan Wilkinson, Minister of Fisheries, Oceans and the Canadian Coast Guard, appeared before honourable senators during Question Period.

MINISTRY OF FISHERIES, OCEANS AND THE CANADIAN COAST GUARD

CAPTIVITY OF WHALES AND DOLPHINS

Hon. Donald Neil Plett: Welcome, minister.

Minister, as I'm sure you are aware, we currently have Bill C-68, your government's legislation that amends the Fisheries Act, before us at second reading.

This bill does many things, some of which I have strong concerns about, as do many of my colleagues. However, as I told your predecessor, Minister LeBlanc, I do support the provision that bans the wild capture of cetaceans, save for some circumstances surrounding injury and rehabilitation. I think that's a principle most Canadians support.

Minister, the government tabled this legislation after the debates on Bill S-203 were already well under way, so it would be reasonable to believe that the government, in drafting this policy, considered what Bill S-203 proposed to do and decided not to proceed with those additional restrictions.

Minister, why did the government decide not to proceed with the extensive provisions outlined in Bill S-203? Do you agree with your predecessor, Minister LeBlanc, on this issue, that Bill C-68 has indeed struck the right balance?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the invitation to be here today. It is a great honour to be with you in the Senate. Many years ago, I was actually a constitutional negotiator and focused very much on institutional and Senate reform, so I have a reasonable understanding of what you do and great respect for the work you undertake.

I have been in my post for three months, so I will endeavour to answer all of the questions you pose to me, but if there are questions on which I require some follow-up, I certainly will commit to do that.

With respect to Bill S-203, the practice of taking cetaceans for the sole purpose of being kept in captivity should be ended. This government believes it, and I know that Canadians across the country do as well.

In fact, the banning of whale captivity, while it is not yet in legislation, has been in practice for many years. While the Minister of Fisheries and Oceans has the authority to issue a licence for the capture of live cetaceans for public display, there has been no such licence issued over the past 20 years.

We support, in principle, Bill S-203. That is exactly why Bill C-68 includes an amendment to end the captivity of whales unless for rehabilitation purposes.

I certainly look forward to the great work that the chamber will do in debating and reviewing Bill C-68. As the chamber knows, Bill S-203 is currently before the other place, and I look forward to the robust debate and discussion that will happen in that chamber as well.

Senator Plett: Well, minister, as you said, you were going to endeavour to answer all the questions.

When Minister LeBlanc was in this chamber, he stated the following:

> Since we were presenting amendments to strengthen and modernize the Fisheries Act, I thought one of the things we could do, certainly, is to put the intention of what Bill S-203 was seeking to achieve into the Fisheries Act.
>
> So we have done . . . that.

That's Minister LeBlanc.

> A number of provinces — mainly the Province of Ontario, of course, with respect to Marineland — have jurisdiction with respect to some of the practices that take place there. I am conscious not to impede on provincial jurisdiction around animals that may currently be held at facilities like that.

This assertion of constitutionality and the division of power issues was raised at our committee by expert witnesses.

Minister, do you agree with your colleague that Bill S-203 risks impeding on provincial jurisdiction with respect to Ontario, which would, of course, render the bill unconstitutional?

Mr. Wilkinson: With respect to Bill S-203, that is not a piece of government legislation. With respect to Bill C-68, it is a piece of government legislation. It is a campaign commitment that was made in the 2015 campaign to restore the lost protections that existed in the previous Fisheries Act before 2012, and it is something that we have been very focused on ensuring moves through the House of Commons to you for discussion and debate.

The amendment or the provision around the captivity of whales was included in there with the understanding that that is within the full constitutional powers of the federal government.

NORTHWEST COASTAL INFRASTRUCTURE—TANKER BAN

Hon. Nicole Eaton: Minister, two weeks ago, your colleague Minister Sohi indicated that the government's proposed tanker ban in the northwest was driven by a lack of coastal infrastructure to respond to a potential spill. I'm interested in hearing your views on that topic, given your experience as Parliamentary Secretary to the Minister of the Environment and now Minister responsible for the Canadian Coast Guard, one of the first lines of defence in managing spills.

Minister, could you expand upon Minister Sohi's comments? What specific coastal infrastructure is needed on the northwest coast, and what is your government doing to ensure it is put in place as quickly as possible?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: The tanker ban and the decision around the tanker ban was driven by a number of different reasons, some of which related to the Great Bear Rainforest and that not being an appropriate place for the pipeline, but it also related to the existing infrastructure that is there and infrastructure that is planned related to being able to actually address marine accidents if, in fact, they do occur.

Certainly the vast majority of marine infrastructure associated with spill response is located near Burrard Inlet, and that is for the precise reason that oil has been shipped out of Burrard Inlet for 60 years. That includes the Kitsilano Coast Guard base, the Sea Island Coast Guard base, the Western Canada Spill Response folks, the Coast Guard Auxiliary and a number of other small bases that exist. That infrastructure simply doesn't exist farther up the coast.

That being said, it is certainly important on a go-forward basis that we are enabling the northern coast and Indigenous communities within the northern coast to have the capacity to actually do effective spill response for smaller incidents, such as what happened along the north coast with the barge last year.

The Hon. the Speaker: I am sorry, Senator Eaton. I will have to put you on the list for a second round.

STAFFING AT LIGHTHOUSES

Hon. Patricia Bovey: Thank you, minister, for being here today. My question is with regard to Canada's staffing of lighthouses and the conditions of those who work in the 50 staffed lighthouses. Their jobs are important and complex, and their eyes on the water have proven to be critical for marine traffic safety, for life saving and emergencies, for tracking and warning of illicit activity and for monitoring large sea mammals.

Lighthouse keepers' days are long: 11 hours every day, seven days a week. They're on call 24 hours a day, and many have had holidays denied in the last several years as there are no backups. Now many are on stress leave.

Minister, why is the department acting slowly, and in some cases not at all, in filling vacancies? Why do we not have the backup so people can take their well-earned breaks? Why is the Coast Guard leaving some of the 50 lighthouses, which were promised to be staffed, unstaffed, at least temporarily?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you very much for the question. It's an important question.

Canada's staffed lighthouses play an iconic role in our organization and the protection of our coastline. They are organizational, functional and sustainable, and they have been serving the marine community for more than a century.

The position of the lighthouse keeper is an incredible adventure: remote areas, few people, travel by boat or helicopter, and living on the cusp of the beautiful and powerful ocean. But it is not a job for everyone, which can make it difficult to staff.

It is a remote lifestyle with limited access to others both physically and electronically.

• (1540)

Over the past year, as is happening in many sectors of the Canadian work force, there have been a number of retirements within the lighthouse keeper community who staff many of our light stations. The Coast Guard has been planning in advance of these retirements and actively working to attract and recruit the next generation of lighthouse keepers.

Currently there are 51 staffed light stations in Canada which require 113 lightkeeper positions. Some lightkeepers work on a rotational schedule while others live at the light stations permanently. The Canadian Coast Guard has an active recruitment strategy under way. However, currently we are experiencing some shortfalls with staffing.

We have conducted a survey among lighthouse keeper communities to come up with new, innovative ideas on how to recruit and retain the next generation of lighthouse keepers. You can find the Coast Guard at job fairs, recruitment sessions, online job banks and social media doing the same thing.

We believe in the continued viability of lighthouses and keepers. We are deploying our recruitment know-how to ensure these Canadian icons representing marine safety, the promise of getting home, and a light in the darkness continue to act as more than a symbol. They are a functional and necessary component in fulfilling our mandate to keep Canada's waterways and the people who navigate them safe.

[*Translation*]

FISHING FLEET OWNER-OPERATORS

Hon. Éric Forest: I would like to thank the Minister of Fisheries, Oceans and the Canadian Coast Guard for being with us today. My question is about Bill C-68, An Act to amend the Fisheries Act and other Acts in consequence, which has been generally well received by fishers in eastern Quebec and the Maritimes, as indicated by organizations such as the Alliance des pêcheurs professionnels du Québec and the Canadian Independent Fish Harvesters' Federation, which represent over 14,000 fishers who own small businesses and 30,000 crew members.

Small independent fishers are worried about threats to their way of life. They do not want foreign multinationals and processors to monopolize fishing rights. Fishing licences and quota should go to active independent fishers and coastal communities. If we want the fishery to go on supporting our own people, we have to take steps to stop speculation and vertical integration of the industry. Fortunately, Fisheries and Oceans Canada has been aware of this problem for 40 years and has owner-operator and fleet separation policies in place. However, those are merely departmental policies. East coast independent fishers want those policies to be enshrined in the Fisheries Act.

Minister, will you pledge to follow up on the Alliance des pêcheurs professionnels du Québec's request and amend Bill C-68 to make the owner-operator and fleet separation policies permanent?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: My predecessor Dominic LeBlanc already made a commitment to factor social and economic objectives into the administration of the Fisheries Act, and I intend to uphold that commitment.

Bill C-68 contains some clarifications and new powers that will enable me, as minister, to take steps to preserve the independence of licence holders in commercial inshore fisheries. The bill will clarify the considerations that I, as minister, already take into account when making decisions under the Fisheries Act. Two of these considerations are especially important in the context of commercial inshore fisheries: social, economic and cultural factors in the management of fisheries, and the preservation or promotion of the independence of licence holders in commercial inshore fisheries.

New regulatory powers are also proposed in order to enshrine the commercial inshore fisheries considerations in the regulations. My department is already working on drafting these regulations. The regulatory proposal will enshrine in law certain key elements of the owner-operator and fleet separation policies. Furthermore, the regulatory proposal contains new measures to ensure that licence holders retain control of the rights and privileges associated with the inshore fishing licences issued to them. Consultations with stakeholders have been taking place over the past few months, and the department is working hard to make these amendments a reality as soon as possible.

[*English*]

PROTECTION OF ATLANTIC SALMON

Hon. David Richards: Thank you, minister, for being here today. I'm asking a question I've asked a number of times over the last month and a half and that New Brunswickers have been asking for over two years.

What can be done to relieve the pressure on our Atlantic salmon in both the Miramichi and Restigouche River systems caused by the influx of protective and a voracious striped sea bass that seem to be coddled by the DFO? There are over a million and a half in our waterways today. Our salmon stocks are being depleted. We will lose our Atlantic salmon if something isn't done. This is a totally man-made crisis that must be addressed now. Thank you.

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the question. Certainly questions around Atlantic salmon stocks are important to New Brunswickers and all Canadians.

There are a range of issues and factors affecting Atlantic salmon. Climate change is one of those, the temperature of the water in the Miramichi and other rivers, habitat destruction and the need for habitat restoration. The striped bass has been an important topic of discussion over the last while. We have seen an increase in the population of striped bass. In accordance, we have extended opportunities, including increased bag limits for recreational anglers, for Indigenous food and social and ceremonial fishing. In 2018, we authorized a limited commercial fishery for striped bass to one First Nation on the Miramichi River. It's the first time since 1996 that a commercial fishery for striped bass has been authorized.

Both striped bass and Atlantic salmon are native and have coexisted for millennia. Our research shows that although striped bass are predators of Atlantic salmon smolts, they are not the main cause of the current decline of the population, but it's important we are addressing all of those issues on an ongoing basis.

INFRASTRUCTURE PROJECTS

Hon. Elizabeth Marshall: Welcome, minister, to the Senate of Canada.

Minister, under phase 1 of the government's infrastructure program, your department has approved projects totalling $433 million. While departments such as Infrastructure Canada have publicly disclosed their infrastructure projects on the government's website, your department has not. Your government was elected on a platform of openness, transparency and accountability. In fact, your election platform specifically states that data paid for by Canadians belongs to Canadians.

The taxpayers of Canada are paying for these projects and have a right to know how their taxes are being spent. As Minister of Fisheries, when will you disclose the infrastructure projects paid for by your department?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the question. If what you're referring to in the context of infrastructure projects are largely small craft harbours, those are disclosed and announced all the time. If I'm misunderstanding your question, there are lists of projects announced every year. I'm happy to provide that to you if that's what you're looking for. But if there's something else, I'm more than happy to look at it and get back to you.

NORTHERN RESUPPLY

Hon. Dennis Glen Patterson: I'd like to welcome the minister. I also thank you for the recent announcement of the creation of an Arctic region for the Coast Guard. This is very welcomed in the North and now you have to do the same with DFO.

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: We did.

Senator Patterson: That's not my question. It's about northern resupply, minister. We had before the Special Senate Committee on the Arctic last night the Director General of the Canadian Coast Guard, Gregory Lick, who stated that our expert crews aboard the ice-breaking fleet ensures safe navigation through ice that assures critical supplies and goods get to communities.

Despite northern resupply being identified as an important ice-breaking activity, my impression is these activities are not prioritized. In fact, the Coast Guard has otherwise said that all distress and emergency situations take precedence over the provision of normal services.

• (1550)

This late summer, when the special committee was in the North, the President and CEO of one northern shipping company, NEAS, explained how due to this policy of responding to every distress and emergency situation, one icebreaker was redirected to a stranded pleasure yacht, and another was sent to sit with a cruise ship that had run aground after sailing through uncharted waters. Then one icebreaker was diverted for three days due to a mandatory crew change. The commercial ship was stuck trying to get through ice-jammed Bellot Strait with vital cargo for communities in the Western Arctic.

I'm wondering, minister, in light of that event — and there are others I've heard complained of by northern shippers — will your department consider prioritizing community resupply which is vital to the survival of northern communities by either revising your policies to prioritize community resupply over non-life-threatening distress situations or perhaps by encouraging the government's sister Department of Transport to establish and regulate a safe marine corridor for Arctic shipping or requiring bonding from adventure travellers in the Arctic?

Mr. Wilkinson: Thank you for the question. It's a very important one.

The issue around shipping in the North obviously is going to become increasingly a topic of conversation. I think Cambridge Bay this year saw 60 pleasure craft that came through, which is quite different from what would have been the case even 20 years, even 10 years ago. The demands with respect to search and rescue and the ability to respond to pollution events is going to increase. We need to be thinking about that in the context of the resourcing we are putting in the North, including through the new Arctic region of the Coast Guard and the Department of Fisheries and Oceans. This is a conversation that will need to go on.

With respect to some of the particulars you noted, I think the pleasure craft that was in trouble was in significant trouble; if the Coast Guard had not gone to that site, you probably would have found loss of life. Trying to make the right choices is not always an easy one. Search and rescue in the context of life-threatening circumstances is something that will always have to be a priority.

That being said, certainly the resupply of communities is also incredibly important. This year it was particularly challenging, given the ice conditions we saw in the North. The Northwest Passage was essentially impassable and the Western Arctic was brought to a standstill by some of the southerly flow of Arctic pack ice. There were three communities that the resupply operations did not succeed in getting to. They will need to be resupplied by plane. That is not an ideal circumstance. We are going to need to reflect on what happened and try to ensure we take that into account as we go forward.

FISH HARVESTING

Hon. Marc Gold: Welcome, minister. Minister, the Standing Senate Committee on Fisheries and Oceans has been studying Maritime search and rescue, including preventive aspects of Maritime safety. Earlier this year we heard from Transportation Safety Board officials about their 2017 finding that federal fisheries regulations create economic and other incentives for fish harvesters to take risks that could, in fact, lead to search and rescue incidents. These include counting quotas on a weekly instead of a seasonal basis, where quotas could be carried over from week to week, unpredictable closing dates for a given season and regulations on how frequently nets must be attended.

The officials also informed the committee that many fishers do not know they can ask your department to grant exceptions in cases of inclement weather. They therefore take risks they really don't have to take, with terrible possible consequences.

Last December, one of your department's regional director generals was reported as saying your department would take very seriously the Transportation Safety Board's recommendations and factor that into your decision-making as you prepare for the 2018 fisheries.

My question is this: Could you provide the chamber with an update on what your department has done based on the Transportation Safety Board's report to make fish harvesting safer and reduce the risk of Maritime search and rescue incidents? What does your department intend to do to better inform fish harvesters that in case of inclement weather, safety comes first and your department can grant exceptions to the regulations?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the question. The safety of mariners is a priority for any government and any Minister of Fisheries and Oceans. It's one of the primary responsibilities of this office, to ensure we are implementing measures to ensure the fishery is not only productive but also safe.

With respect to your specific question around the Transportation Safety Board, I don't have that answer at my fingerprints. I will endeavour to provide you a fulsome response follow-up from this conversation.

PROTECTION OF ATLANTIC SALMON

Hon. Paul E. McIntyre: Minister, my question is a follow-up to one raised by Senator Richards and concerns the Atlantic salmon, a tremendously important resource in my home province of New Brunswick.

Senator Richards raised the concerns surrounding the bass in the Restigouche and Miramichi Rivers. He is absolutely correct. Recently, several conservation organizations in New Brunswick have raised the alarm about declining Atlantic salmon numbers in the Restigouche and Miramichi Rivers. For the Miramichi River, returns of large salmon were down by 20 per cent from 2016 and returns of the grilse, young salmon, were down 13 per cent. Overall, there has been a 26 per cent decline in salmon population in the past 12 years.

Minister, can you tell us what your department is doing to address the declining salmon numbers in the Miramichi and Restigouche Rivers?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you very much. The declines in the returns are extremely concerning. Again, there are many factors out there, not the least of which being some of the changes we're seeing being brought about by climate change.

With respect to actions the government is taking, there was sustained high temperatures in the Miramichi, which has corresponded to declines of Atlantic salmon. For the first time we took action of ending angling in cold-water pools for 49 days and restricting to mornings only for 19 days. We are working with stakeholders to expand these closure protocols in other rivers during these critical periods.

We also, as I mentioned before, only allow a catch-and-release recreational fishery across the region and work to limit international and Atlantic salmon fisheries to further protect the species. Indigenous communities in the region are voluntarily not fulfilling their FSC regulations and then the issue around striped bass which I responded to earlier, where we are increasing the ability to take striped bass on an ongoing basis.

We need to continue to invest in science, in habitat restoration and we need to be focused on how we manage this going forward and how we can deal with some of the challenging impacts of our ecosystem.

[*Translation*]

Hon. Percy Mockler: Minister, I want to congratulate you on your new position and on your command of French.

My question is in response to the one that was asked by Senators Richards and McIntyre. Minister, the New Brunswick Atlantic salmon industry is facing a crisis.

[*English*]

Minister, it is imperative to protect this iconic Atlantic salmon population. It is also imperative to make decisions based on science and knowledge. It is also imperative all stakeholders be at the table — First Nations, outfitters, scientists and the DFO. Minister, the Atlantic salmon stocks are in dire straits. This decline has significant negative impacts for communities that depend on the Atlantic salmon. The Miramichi Salmon Association and the Atlantic Salmon Federation have collaborated with scientists and industry to develop future salmon stocks. DFO initially showed support for the program, which included approving the smolt-to-adult supplementation initiative, where the salmon population is supplemented by mature adult fish to bypass the high at-sea mortality. They now have thousands of salmon ready to be released, minister, but DFO will not grant them the permit to do so.

Can you inform this chamber, minister? We need a decision now. Minister, are you ready to approve and release the permit for reintroducing adult salmon back into the river system for immediate spawning in order to help our people who are in dire need when you look at their economic and quality of life?

• (1600)

Mr. Wilkinson: Thank you for the question. I think we certainly agree on the need to take measures to protect this iconic species. It's very important. I think we agree on the importance of science, and I certainly agree that we need all voices at the table when we're having these conversations.

With respect to the CAST project, there has been a long series of discussions between the Department of Fisheries and Oceans and CAST. We have expressed to CAST a number of scientific concerns with respect to the growth to adult stage and then the re-release back into the river, which avoids the entire marine part of the life cycle.

We were also very clear with CAST that one of the conditions to be able to find a path forward was to ensure that the local First Nation was on side, which it is not. What we have said to CAST is we will not be authorizing that permit.

I would also say there are others who share the scientific concerns, including the Atlantic Salmon Federation, which initially was supportive of the project. I think if you discussed it with them, you will find they're not so supportive now.

MARINE POLLUTION

Hon. Thanh Hai Ngo: Welcome to the Senate, minister. Your mandate letter dictates that one of your priorities must focus on the health of Canada's Arctic, Atlantic and Pacific Oceans. My question is related to the severe damage to the Pacific Ocean caused by the industrial waste spill that occurred in Vietnam less than two years ago, known as the Formosa environmental disaster.

The severe underwater pollution killed and contaminated a significant amount of sea life. It is estimated that hundreds and hundreds of tonnes of free swimming farm fish, clams and large marine mammals washed up on over 200 kilometres of Vietnam's Pacific shore.

Unfortunately, the Government of Canada has been quiet on the matter of the risk of the toxic spill represents to our seafood imports from Vietnam, our fourth largest seafood importer to this country. Canada's seafood imports from Vietnam last year totalled $240 million — the year of the environmental crisis — to now, $276 million.

Minister, I raise this question because the aftermath of the disaster has now been felt by peaceful Vietnamese environmental dissidents who have been jailed by the communist regime for calling for clean waters, clean government and transparency.

My question is this: Can you tell us what precautions the Government of Canada is taking to prevent contaminated seafood imports to make their way to Canada, and if the Government of Canada has raised the human rights issue impact as I described with the Socialist Republic of Vietnam?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the question. The issue of marine pollution is an important one from all kinds of sources. I think you would have seen at the recent Charlevoix G7 meetings and the subsequent meetings in Halifax that Minister McKenna and I were involved in that we have focused a lot on marine pollution, specifically issues around things like plastics, which include a range of fisheries-related issues.

With respect to the specific question about what we are doing to ensure the import of products from Vietnam are safe from a consumption perspective, I would invite you to pose that question to the Minister of Health, who is the person who has the regulations responsible. But if you would like me to follow up with her and come back with a response, I would be happy to do that.

Senator Ngo: Thank you.

NORTHWEST COASTAL INFRASTRUCTURE—TANKER BAN

Hon. Nicole Eaton: As a supplementary question to my earlier question, as you know, on the West Coast there are about 300 tankers a year that go up and down the coast. On the East Coast there are about 2,000 and they go through Iceberg Alley. Do we have the necessary infrastructure to look after a major spill on the East Coast?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: Thank you for the question. I think it's important that we actually ask those questions and that we're ensuring the answer to that is yes on an ongoing basis. As you have rightly pointed out, we have been shipping oil products on both the East and the West Coasts for many decades now.

Certainly, there are response capabilities in place on the East Coast but part of what this government did when it came to office was bring into place the Oceans Protection Plan, which is essentially a program that aims to address a range of different gaps on both coasts and in the North with respect to prevention of spills, the ability to actually address pollution incidents when they happen, ensure that we can confidently say to Canadians that this is being done in a proper and thoughtful way and that we are able to respond to incidents when they occur.

INFRASTRUCTURE PROJECTS

Hon. Elizabeth Marshall: Minister, to follow up on my previous question, there's quite a variety of infrastructure projects in your department. My recollection is that there are approximately 1,000, which is included in that $433 million.

We heard from officials from your department a couple of weeks ago and projects aren't disclosed on your website. There may be some types of projects disclosed somewhere else, but departments are disclosing all of their infrastructure projects in one area, and you have quite a variety. At the time, the officials indicated that your department has no plans to put these infrastructure projects on the website.

Other ministers who didn't have the projects on the websites last year made a commitment and now the information is being provided.

Could you follow up and give us some commitment to find out when all of those projects will be disclosed on your website?

Hon. Jonathan Wilkinson, P.C., M.P., Minister of Fisheries, Oceans and the Canadian Coast Guard: I will be happy to do that. A big chunk of infrastructure-related projects would relate to things like small craft harbours; those are publicly announced. But if there is a need to collate them in some way so they're easy to find, I'm more than happy to do that.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I know you would like to join me in thanking Minister Wilkinson for being with us today. Thank you, minister.

Some Hon. Senators: Hear, hear!

ORDERS OF THE DAY

NATIONAL SECURITY BILL, 2017

SECOND READING—DEBATE CONTINUED

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.

Hon. Tony Dean: As I was saying, we were talking about silos in organizations, and particularly our security and intelligence organizations.

Although CSIS, the CSE and RCMP cooperate and share some information on their activities, their in-house review bodies are only mandated to review activities within the walls of their own organizations.

An important feature of Bill C-59 would be the creation of NSIRA, which would establish greater accountability and transparency. It would enhance national security by allowing NSIRA to "follow the thread" of a national security file as it travels, for example, from CSE to CSIS and then from CSIS to the RCMP. The Air India Inquiry made a strong case for this sort of mechanism.

The knowledge that these threads will be followed will provide an incentive for more communication between agencies in general and with respect to their operational activities.

As we know, only too often these agencies and organizations in general land in trouble when information has not been shared. As with any other critical organization, they work best where they work together, where they collaborate and where they communicate. Bill C-59 would provide a firm nudge to the agencies to do more of this.

In the absence of a sophisticated review body that oversees all national security activities, those activities tend to be reviewed when necessary on an ad hoc basis and this can result in significant cost to Canadian taxpayers. Commissions and inquiries require lawyers, staff and facilities to hold hearings, and in some cases, their recommendations are ultimately unhelpful.

In 2010, Parliament struck a committee to examine whether or not the Canadian military was complicit with torture when it transferred Taliban detainees in Afghanistan to Afghan officials. In the end, parliamentarians and a group of retired judges disclosed only a small number of the heavily redacted secret documents they had requested. The initiative cost $12 million and after the 2011 election, the committee's mandate was not renewed, leaving no lasting reforms. In a supplementary review, SIRC reviewed the role of CSIS with Afghan detainees but stopped short of reviewing the role of National Defence in this matter.

• (1610)

Appearing in front of a Senate National Security and Defence Committee meeting in 2015, Michael Doucet, the Director of SIRC, testified that, "At that time in Afghanistan, it was under the purview of DND so we could only look at CSIS information holdings and not holdings from a broader intelligence community . . . I would say as a result of that, Parliament and Canadians didn't get the full picture."

In the report of the events relating to Maher Arar, several recommendations were made concerning a centralized review body, suggesting that the RCMP specifically should engage in ". . . information-sharing practices and arrangements should be subject to review by an independent, arms-length review body." That was 10 years ago, and that has not happened.

We now have a proposal before us that would see an empowered review agency realized. Under Bill C-59, NSIRA would assume responsibility for reviewing all national security activities across the Government of Canada and put an end to siloed reviews and, hopefully, ad hoc commissions.

NSIRA would review our national security agencies' activities for lawfulness and ensure their activities are reasonable, necessary and compliant with ministerial direction. In addition, NSIRA would serve as the new review body for complaints.

The NSIRA would be led by a committee of up to seven members appointed on the advice of the Prime Minister, in consultation with the leaders in the House of Commons and Senate. NSIRA would have unfettered access to information necessary to review all national security activities across the federal government. It would provide a classified report of its findings and recommendations to relevant ministers, and would produce an annual unclassified public report to Parliament summarizing these findings and recommendations. The agency would be fully independent of government.

The information commissioner would also be independent of government and have a mandate to provide oversight of a subset of CSE and CSIS activities. The commissioner would replace the current CSE commissioner, and given the nature of the office's mandate, the position would be filled by a retired judge of a Superior Court.

Some senators are understandably concerned that the creation of the intelligence commissioner position and NSIRA would add more layers of bureaucracy — it's a really good question — and that we might be overwhelmed by paper. These are valid concerns.

But this is a complex area of work which is not easily reported in a one-page briefing note, and nobody is a bigger fan of one-page briefing notes than I, believe me.

I think, though, that increased accountability, transparency and clarity will result in more streamlined processes that are not road blocked or complicated by departmental boundary lines. It should no longer be necessary for the government to spend tens of millions of dollars on ad hoc review processes.

It's important to remember that our national security agencies are already subject to review by the SIRC in the case of CSIS, the commissioner for the CSE and the Civilian Review and Complaints Commission for the RCMP.

Bill C-59 is not adding a new review agency to the mix, but rather integrating them into a single review agency that can follow a case as it moves between agencies.

On February 13 of this year in the other place, Tricia Geddes, a current CSIS assistant director, was asked whether Bill C-59's review proposals would be overly onerous. Here is what she said:

> We are quite comfortable with review. . . .
>
> . . . I honestly believe it's critical to have the confidence of Canadians. I think operations can be slowed down if Canadians lose confidence in the security agencies, or if, for example, we have to stop and fence off data. It's therefore critical . . . that we have public confidence if we want to move swiftly through operations.

Colleagues, there's virtue in creating an independent review body. It has the potential to grow greater trust and confidence in our national security and intelligence agencies.

Honourable senators, I think we all appreciate that successful organizational change — and that's what this is about — goes hand in hand with sound human resources planning. I think it's important that NSIRA and the intelligence commissioner be properly supported by a well-resourced secretariat, and that the members of NSIRA have the range of knowledge and experience across different areas — security, intelligence, law enforcement, et cetera — to do the job well.

Turning for a minute to other provisions of Bill C-59, I, like others in this chamber, have some reservations about those provisions that would get into the areas of cybersecurity and the authorization of what I'll call mass surveillance in certain circumstances. I think the key question of principle on this is whether the safeguards surrounding such authorization find an appropriate balance between individual rights and our collective security. I have asked thus far two legal experts for their view on this balance, and they tell me that they believe that it is calibrated in a way that finds that balance. I, like you, look forward to hearing a broader range of views on this as we move forward.

The rights, freedoms and protections of Canada is paramount. It's our duty to ensure this bill benefits from rigorous study. I encourage us to send this bill to committee in order that we can hear from national security experts and others with an interest in these important matters. Thank you.

The Hon. the Speaker pro tempore: Senator Dean, would you accept a question?

Senator Dean: Yes, I would.

Hon. Yuen Pau Woo: Senator Dean, you've spoken about the importance of accountability to protect Canadians' rights. The critics have said that Bill C-59 will get in the way of agencies doing their job, thereby reducing national security as a whole. Based on your experience, do you have thoughts on how a timely review process could enable the agencies to do their job better?

Senator Dean: Thank you, Senator Woo. I've covered this a little bit in my statement, but I think this legislation, if approved, would provide support to our security and intelligence agencies by giving them a clear understanding of the rules of engagement and the rules of the game. They've told us that they want to know the rules of the game, that they want to act constitutionally and that they want to do their job properly. For example, moving away from ministerial direction or internal policy statements towards legislative requirements would provide that sort of certainty. Indeed, we've heard that from those in the security and intelligence agencies.

The Hon. the Speaker pro tempore: Sorry, but your time is up.

Honourable senators, is it agreed to grant Senator Dean five more minutes?

Hon. Senators: Agreed.

Senator Dean: Continuing, Senator Woo, I think this legislation can only help our leaders, managers and staff in intelligence operations to know the landscape, to be certain of the ground they stand on constitutionally and legally, and to have that nudge of knowing that there is the possibility, and indeed the reality, of end-to-end review of agency operations. That will provide a nudge to those organizations to work even harder to collaborate and cooperate together.

We know that not just intelligence agencies are siloed. In any organization we've worked with, we know we have concerns and issues about sharing information between colleagues. My view is that I haven't seen organizations get into too much trouble for collaborating and sharing information appropriately and in a timely way between colleagues. I have seen lots of organizations, including security and intelligence organizations, get into a lot of trouble when that information hasn't been shared.

Hon. Ratna Omidvar: Will the honourable senator take another question?

Senator Dean: Yes, certainly.

Senator Omidvar: Senator Dean, thank you. I heard you reference Air India. I want to remind the chamber that the Air India bombing took place in 1985. Justice John Major's report came out in 2010. Some 35 years later, we are looking at some solutions. I wonder if we can call that progress.

You talked about new institutions being created — NSIRA, the chief intelligence commissioner — in fact layer upon layer of institutions. I have to worry about the individual who may get caught up. It's a delicate balance, this kind of legislation, finding the right balance for protecting society, as well as protecting individuals.

In your opinion, does this legislation find this right balance, or should we continue to look for greater clarity on this at committee?

• (1620)

Senator Dean: This is an important question, Senator Omidvar. It's central to my interest in this bill. It's a question I've asked myself. It's a question I have asked others. We're early in this process. I think it's fair to say we're all going to be fixated on that as we dig down at committee into how this will work on the ground. To be fair, I'm relatively satisfied at this point. It's an open question and one that we are all going to be looking at carefully as we go forward.

I can say this: In organizations of this importance, leadership is hugely important. Every person in every organization, certainly the ones I've worked in, need to know why they're there. They need to know the rules of engagement. They need to know the parameters in which they work.

Second, they need to know how they're doing. These two things go to the essence of performance management in organizations. There will be a leadership imperative in our security and intelligence organizations to take these changes, if passed, and spend time with staff and managers in helping them understand their responsibility and accountability, which will now be clarified, and how those should be operationalized. Again, I think the possibility of end-to-end oversight and review is a terrific incentive in getting us there.

Senator Omidvar: I have a supplementary question. Senator Dean, with this new legislation, could a Maher Arar happen again?

Senator Dean: Senator, that's a terrific question. I know what I know. I'm even more certain about what I don't know. Nobody can preclude that. I believe the intentions, and indeed the reality of this legislation on the ground, would ensure greater co-operation between our intelligence agencies. It would close gaps we know are there now — organizational gaps, cultural gaps, gaps in accountability and governance — and that can only help.

The Hon. the Speaker pro tempore: Senator Joyal, you have 16 seconds.

Hon. Serge Joyal: My question is in relation to the section that the bill doesn't cover, which is essentially the capacity for the intelligence services to go to a court and request from a court judge the authorization to breach the Charter rights of an individual —

[*Translation*]

The Hon. the Speaker pro tempore: Senator Joyal, I'm sorry but your time is up, unfortunately.

[*English*]

Hon. Linda Frum: Honourable senators, I rise today to speak on Bill C-59, which proposes sweeping changes to our national security legislation. This is a broad piece of legislation which incorporates many elements. I acknowledge some of the elements proposed in this legislation may be desirable, for instance, provisions in the bill that strengthen the authorities of the Communications Security Establishment to protect Canada against cyberattacks seems to be a positive measure. However, I fear that such positive provisions are completely overshadowed by other elements of the bill that fail to strengthen Canada's national security and, in fact, weaken it.

I would like to use my time to focus on one area of particular concern, a provision that I find completely inexplicable. These are provisions in the bill which eliminate the offence of advocating or promoting terrorism and instead propose to replace that language with the offence of counselling to commit a terrorism offence.

The government has rationalized this step by claiming that since there has been no prosecution of the offence of advocating or promoting terrorism in the past three years, the offence should simply be eliminated. Minister Goodale claimed that creating the more specific offence of counselling to commit will lead to more charges that can be defended in court. However, this argument has been specifically disputed by witnesses who appeared at committee in the other place.

As security expert and former Crown prosecutor Scott Newark stated, the offence of counselling an individual to commit a criminal offence already exists under the Criminal Code. By repealing the law around the advocacy of terrorism, this bill makes it almost impossible to prosecute those who had advocate terrorism.

Mr. Newark stated:

> I guarantee you, sir, that if that wording is used, there will be occasions when defence counsel will come to court when somebody is charged, and ask, "Who was it that he was counselling to commit the offence?" If you don't have another person involved, —

— if the advocacy of terrorism is just general in nature, —

— you aren't able to prove the offence.

This is shocking since we know that terrorist propaganda is being used actively in the process of radicalization, recruitment and facilitation. Terrorist propaganda was instrumental in contributing to the radicalization of both Martin Couture-Rouleau and Michael Zehaf-Bibeau, who carried out the October 2014 terrorist attacks in Saint-Jean-sur-Richelieu and Ottawa. Other witnesses appearing before the house National Security Committee on this legislation raised the same concerns. Mr. Michael Mostyn, the Chief Executive Officer, National Office, B'nai Brith Canada stated in no uncertain terms the proposed change in the law weakens the current law and is unhelpful.

Specifically, he noted that:

> We accept that the right to freedom of expression is an important consideration, but the right of potential victims to be free from terrorism and the threat of terrorism must be a greater priority.

I could not agree more. If there is a problem with the actions of prosecutions under the current law, we must address why that is the case, even as the advocacy of terrorism is growing in all Western countries, including Canada. The solution, if this is the case, is to improve our capacity to facilitate prosecutions of both hate speech and the advocacy of terrorism, not to completely repeal the law.

Mr. David Matas, the senior legal counsel from B'nai Brith Canada, stated in testimony before the National Security Committee in the other place that:

> . . . it is far from obvious that changing the offences of advocacy and promotion to the offence of counselling will resolve this problem.

Mr. Matas also said the offences of advocacy and promotion are in fact not new offences. The offence of advocacy exists for both genocide and sexual activity with a person under the age of 18. The offence of promotion also exists both for genocide and hatred.

Mr. Matas said that the notion that prosecutors have stayed their hands because they are uncertain about the meaning of the current law or worried about its over-breadth is not supported by an examination of the Criminal Code and the jurisprudence. B'nai Brith filed written submissions with the House of Commons committee outlining a number of cases in which the Supreme Court of Canada looked at, defined and circumscribed the offences of advocacy and promotion. He noted that there's ample legal guidance about the meaning of these concepts. Instead of just removing this provision from the law, as Bill C-59 proposes to do, we should be giving the investigation and prosecution of these offences higher priority. This may require more resources, expertise, training and a greater emphasis on collaborative international approaches. It does not mean we should narrow the law.

This is not simply a theoretical issue, as is so often claimed by senators on the other side. This is an issue that directly affects the safety of Canadians. Radicalization was a key factor that contributed to the attack launched by Martin Couture-Rouleau in Saint-Jean-sur-Richelieu in October 2014 in which he murdered Warrant Officer Patrice Vincent. Prior to his attack, Couture-Rouleau had posted images of ISIL black flags on his Facebook page, as well as anti-Western rants, but he wasn't arrested. Laws around the advocacy and promotion of terrorism were not yet in place. They were put in place by the former Conservative government under Bill C-51.

Journalist Stewart Bell has conducted extensive research into the significant challenge posed by radicalization efforts in Canada. In his book, *The Martyr's Oath*, he writes:

> . . . what governments can do is challenge the world view of extremists and step in when radicalization crosses the line, when it becomes a recruiting mechanism that materially supports terrorism.
>
> Radical preachers must be isolated, and prosecuted if they violate hate crimes or incitement laws.

The point here is you require effective laws to be in place. Despite what the government has claimed, the provisions put in place by the former Conservative government are being used. Over the summer, federal Crown prosecutors used the terrorism propaganda provisions in the law in their effort to remove terrorist content from the Internet. Hearings on this matter took place in Montreal early this summer, though details have not been publicly released.

• (1630)

The current government believes we don't require these laws. Some senators opposite have essentially argued that if a provision in the law is rarely used, such as investigative hearings, recognizance with conditions or advocacy of terrorism offences, then we should get rid of them or make them difficult to use. I fundamentally disagree.

The threats we face as a country and as a society are real. We cannot simply put our heads in the sand, remove or reduce key protections in the law and hope for the best. I fear what is proposed in this bill will not make Canadians safer. This legislation also offers no assistance to those young people who may be vulnerable and are in danger of being radicalized by those who can now more openly advocate terrorism.

I simply cannot support a bill that so seriously weakens our capacity to protect Canadians. I ask that this issue be studied closely in the Senate committee and that the government be asked to explain why it has not proposed measures to strengthen the use of these provisions instead of its irresponsible approach of getting rid of them entirely. Thank you.

Hon. Marc Gold: Would the senator take a question?

Senator Frum: Sure.

Senator Gold: Thank you, Senator Frum. The issue you raise is a really important one, and I agree that it will be and should be looked at very carefully in the committee.

The provision that you refer to, the promotion of terrorism in general, was much criticized by legal scholars for some years. They really make three points about it, and I'm interested in your comments.

The first is that the phrase "terrorism offences in general" is a phrase that is unknown in Canadian law and is not defined anywhere else, though there are many terrorism offences. Therefore, it offends a basic principle of the rule of law that you should know what is being prohibited before being subject to criminal sanctions. More importantly, the breadth of it, as you pointed out, and the lack of any defences, such as were used to uphold the hate provisions, make it most likely that this is an unconstitutional violation of the Charter.

Finally, there is a broad suite of provisions dealing with speech acts in the Criminal Code, which led a leading scholar to say it's really hard to justify that we need this at all. In light of those problems with the current bill, do you still believe that this provision, which has not been used for these reasons, should remain and is necessary to secure our national security?

Senator Frum: Thank you, Senator Gold.

I'm going to rely again on the testimony of Mr. David Matas from B'nai Birth Canada and his testimony to the house on the issue of the concept of terrorism to be too broad to define. The solution to that could be for the government to publish advisory guidelines on what it means to advocate and promote terrorism. The guidelines would not necessarily be binding to prosecutors but could help to spell uncertainty. The guidelines can be drawn from Canadian and international jurisprudence, which does already exist.

No, I don't think it's too difficult to define what terrorism is; therefore, we can't have measures to address it. Furthermore, on the Charter violations, of course the Charter violation that you're referring to would be the violation of freedom of expression, but there's also a Charter right to be free from incitement to terror. Those two things have to be balanced. While, on the one hand, you are prioritizing the Charter freedom of expression, there are other Charter rights that Canadians have that have to be factored into the mix. I think the legislation, as it was written before, is a perfectly reasonable balance of those things — that we have a prohibition on the advocacy and promotion of terrorism, and I don't think there is a Charter right to advocate and promote terror.

Senator Gold: I think I might have been misunderstood, Senator Frum.

It is not that the meaning of "terrorism offence" is not defined. In fact, the Criminal Code has all kinds of terrorism offences that are very well defined. It is that the provision that you're referring to refers to the advocacy and promotion of terrorism offences in general. It's that phrase, "terrorism offences in general," that is simply open-ended and undefined. It's a basic principle of the rule of law that the law has to be certain, especially the criminal law. It is this uncertainty that this provision introduces into the law, and the fact that it has no defences such as you find in hate speech provisions and defences that the Supreme Court narrowly used to uphold the law as constitutional — and narrowly, indeed, in the *R. v. Keegstra* case.

It's the overbreadth of this law and its imprecision that is leading legal scholars to say this could never survive constitutional challenge.

Senator Frum: But we do have in our jurisprudence the offence of advocating in favour of genocide. You can't do that. You can't promote genocide or hatred. So why is that not too broad?

Senator Gold: I can't answer a question with a question, although it's in our tradition to do that.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

IMPACT ASSESSMENT BILL
CANADIAN ENERGY REGULATOR BILL
NAVIGATION PROTECTION ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Pratte, for the second reading of Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Hon. Éric Forest: Honourable senators, I am pleased to rise today to speak to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

[*English*]

First of all, I welcome the willingness of the government to restore the credibility of the environmental assessment process.

[*Translation*]

By putting more emphasis on public consultations and the interests of First Nations and by placing science at the heart of the decision-making process, the government is giving itself the means to restore public confidence in the environmental review process.

The main purpose of the impact assessment is to help the government make informed decisions about whether to approve projects that could have significant social and economic impacts, while taking into consideration the views of the affected communities. In short, impact assessments are the best way to determine whether a development is sustainable, or in other words, whether it will meet the needs of this generation without compromising the capacity of future generations to meet their needs.

Some projects that may bring hope and economic benefits to local workers and communities might not be viable from an environmental protection point of view. Knowing that impact assessments can sometimes shut down such projects, I think it is important for the government to, at the very least, be able to offer rational and credible explanations to justify its approval or rejection of any given project.

It is a matter of social cohesion. In a country like ours, where natural resources are unevenly distributed, this can lead some people to question the federation's credibility.

[*English*]

A credible impact assessment process is essential for social cohesion, but it's also important for the business community.

[*Translation*]

When the Federal Court of Appeal cancelled the Trans Mountain pipeline expansion because of the National Energy Board's flawed assessment, it became clear that developers will benefit from having a credible environmental assessment process. This decision also shows the need for a rigorous and transparent assessment process.

Bill C-69 makes the process significantly clearer and more predictable for developers. They will know right from the beginning what is expected of them because of better planning in the early stages. Furthermore, the simple fact that one organization will conduct the impact assessments should make the process more efficient and consistent.

[*English*]

Since the environment is a constitutional responsibility shared between the federal government and the provinces, I would like to insist on collaboration.

[*Translation*]

Bill C-69 explicitly recognizes, and I quote:

> . . . the importance of cooperating with jurisdictions that have powers, duties and functions in relation to the assessment of the effects of designated projects in order that impact assessments may be conducted more efficiently;

This statement, in and of itself, should reassure us, especially since Canada and Quebec signed an agreement on environmental assessment cooperation in 2004 and renewed it in 2010. This agreement allows for a coordinated approach to environmental assessments that complies with federal and Quebec laws.

• (1640)

In recent years, however, several proponents or federal stakeholders have tried to claim that Quebec's laws do not apply to them. Consider, for example, the drilling for the Energy East project near Cacouna, the plan to install petroleum storage tanks at the Port of Quebec, and the construction of a marine terminal on the Saguenay River for Arianne Phosphate. Those three projects were approved without any input from Quebec.

I would like to quote from an open letter dated April 14, 2018, penned by the former Quebec minister responsible for Canadian relations, in which he reiterates Quebec's traditional constitutional position on the environment. I quote:

> No project located in part or as a whole on the territory of one province should avoid compliance with the environmental legislation adopted by the parliament of that province. Developing an aerodrome, expanding a port area, or building a pipeline are examples of projects that concern both the provincial and federal governments: such projects must be subject to a unified procedure to minimize delays, to ensure compliance with the legislation of both governments, and to secure both provincial and federal approvals, so as to enhance their social acceptability.
>
> In evaluating such projects, the federal government should pledge to work with the provinces that are impacted by their implementation. Bill C-69 must explicitly provide that developers are not exempt from obtaining the authorizations required under provincial legislation.

I must say that I fully agree with this position: people are entitled to expect that their governments will work together to enforce their respective laws for the common good. That is the foundation of cooperative federalism.

Cooperation is all the more important for a government that wants to make social acceptability a prerequisite for any major project. As former Minister Jean-Marc Fournier wrote so eloquently:

> . . . how can one hope to secure social acceptability in situations where a community has no guarantee that the laws adopted by the provincial parliament it has elected, including laws governing environmental protection and land use, will be enforced?

I realize that ending 40 years of constitutional friction on the subject of the environment is not the primary purpose of Bill C-69.

However, if we accept the principle of subsidiarity and agree that the environment is better protected when all levels of government exercise their jurisdictions collaboratively, then first, Bill C-69 should include provisions requiring developers to obtain the necessary authorizations under provincial legislation.

Second, once Bill C-69 passes, the government should renegotiate the Canada-Quebec Agreement on Environmental Assessment Cooperation to account for the new legislation and to provide a framework for potential joint review panels, in particular with respect to the coordination process, the

cost-sharing formula, and the provisions for the resolution of disputes between the parties. The idea is to avoid having to renegotiate these terms for every single case and to speed up the review process.

Now I want to talk about land use planning and the municipal government level.

During the debate on Bill C-69, some stakeholders have criticized the fact that environmental assessments are getting increasingly broader in scope. Over the years, their scope has expanded considerably to include the project's economic, social and health impacts.

I completely agree with this evolution. Impact assessments must allow for an integrated decision-making process.

[*English*]

And it is this same logic that leads me to advocate for a better integration of municipalities into the impact assessment process.

[*Translation*]

Speaking to the Federation of Canadian Municipalities in Halifax this spring, the Prime Minister touted the benefits of cooperating with local authorities and advocated for respect for municipal leadership. We should follow through on that and formalize the participation of municipalities in the project assessment process. To those who say that municipalities are already being consulted, as are other civil society organizations, I respectfully say that you are on the wrong track.

First, local representatives receive a democratic mandate from the same people who elect provincial and federal representatives. Second, we must formally recognize municipalities because of their responsibilities with regard to land use planning.

We know that Quebec's municipalities and regional county municipalities have been responsible for land use planning and development since Bill 125 was passed in 1979. To that end, they must prepare a land use and development plan, which is a strategic planning document that establishes guidelines for the physical organization of the territory. This plan includes an environmental component and requires complex planning involving several partners and extensive public consultations. It is a long process that can take several years.

Just imagine the frustration and exasperation that local elected officials must feel when a proponent or a federal agency tries to ignore that planning and acts as though it is not subject to Quebec regulations. Let's keep in mind that in the event of a disaster, such as an oil spill or an explosion, local elected officials are the ones who have to manage the response and be on the front lines.

There's no denying that when things go wrong, citizens turn to the closest level of government, their local government. We all remember the Lac-Mégantic tragedy and the exceptional work of the mayor, Colette Roy Laroche.

In the context of Bill C-69, formally recognizing the role of municipalities means, first, at the very least, adding to the law a specific requirement to consult municipal governments. Municipalities should have special status, not be lumped in with "interested parties" or be treated like any other private landowner. We need to bear in mind that they have a democratic mandate with respect to land use planning and that they are accountable to their citizens.

Second, it also means that it should be mandatory to include the position of the affected municipalities in the initial project description that proponents have to submit to the impact assessment agency of Canada, so that all of the stakeholders who participate in the public debate have access to the information put forward by the municipalities, particularly with regard to land use planning.

Third, it means that the legislation should include a requirement to inform municipalities of notices, reports and invitations for public comment.

In closing, social acceptability is increasingly becoming a key element of any resource development project. Projects can no longer be assessed based solely on their economic benefits or environmental effects. The social acceptability of the project within the affected communities must also be taken into account. Proponents who ignore that aspect are doomed to fail. Social acceptability is achieved through transparent dialogue in which proponents, citizens and elected officials discuss the conditions that will dictate whether or not a development project should proceed. An impact assessment process that does not allow citizens, municipalities and provinces to fully participate is doomed to failure from the start.

[*English*]

I will support Bill C-69 because I am confident that it will restore public trust in the environmental assessment process.

[*Translation*]

Honourable colleagues, we need to send this bill to the appropriate committee as soon as possible. Thank you.

[*English*]

Hon. Peter Harder (Government Representative in the Senate): Colleagues, I rise today to speak on Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Almost 50 years ago, an international conference in Stockholm put the issue of sustainability on the world's radar by declaring that the environment must not take a back seat to economic development. That wise conclusion has never been more relevant than it is today, 50 years later.

Earlier this fall, the UN Intergovernmental Panel on Climate Change grabbed us all by the lapels with a warning that we need to heed. The IPCC said the world could reach temperatures of 1.5 degrees above pre-industrial levels as early as 2030 — yes,

12 years from now — a level of global warming that risks extreme droughts, wild fires, floods and food shortages much more quickly than scientists had first envisaged.

• (1650)

Given the enormity of this moving threat and the speed with which it is coming at us, we have little choice but to urgently bring together civil society to deal with how we manage growth in this country. In Bill C-69, the government has proposed legislation that will allow for responsible future growth by harmonizing development with sustaining the environment. This harmonization is a prerequisite for building an economy that provides our children with a prosperous and safe future. It is not a nice-to-have; it is a must-have.

The argument that we must build in safeguards for our environment in concert with resource development is hardly new. It is impossible to deny our responsibility to do so has intensified enormously since the issue of sustainable development made headlines at a landmark UN conference in 1972 led, by the way, by a noted Canadian diplomat by the name of Maurice Strong.

[*Translation*]

While climate change was still a generation away from becoming the threat it is today, the declaration that emerged in Stockholm included the principal that pollution must not exceed the environment's capacity to clean itself. It also declared that development is itself a key component of improving the environment.

[*English*]

The spirit of that conference was captured 15 years later in a report on sustainability led by former Norwegian Prime Minister Gro Harlem Brundtland. Much good came from that report, but one of its most important contributions was the observation that the many challenges facing the world are a cause of interlocking challenges which need co-operation from all sectors of society to resolve.

The report also famously defines sustainable development as that which "meets the needs of the present without compromising the ability of future generations to meet their own needs."

In Canada, government took those words to heart. Soon after the Brundtland report, the government of Prime Minister Brian Mulroney established the National Round Table on the Environment and the economy. The late and, I argue, lamented NRTEE did much to bring together stakeholders from across the country to grapple with and offer solutions to issues of sustainability. Environmental groups, governments, businesses, labour and other members of civil society sat around that table. Indeed, one of our more recent appointees, Senator Griffin, was a member.

That incredibly diverse group of round table members agreed on much that today seems almost impossible to believe. In 2009, the NRTEE issued a report recommending a nationwide price on carbon pollution incorporated in a pan-Canadian system of cap and trade. That was almost 10 years ago. I can't help but think that perhaps we did not pay enough attention then.

Those who signed that report included a climate change adviser to one of Canada's largest energy developers, a former Minister of the Environment in the government of Brian Mulroney, a professor whose work on sustainability of fossil fuels won the Donner Prize for policy work. As an important aside, it was the government of Brian Mulroney — a Progressive Conservative government, I dare say — that signed the Convention on Climate Change at the 1992 Earth Summit in Rio de Janeiro.

While many commentators and interest groups have supported the principles of the bill, I have also observed that several interest and business groups have advocated this bill be gutted or even defeated in the Senate. Some of you may have noticed an aircraft that recently circled Ottawa and other Canadian cities trailing a message that said "kill the bill." Another influential think tank has suggested if the bill can't be significantly amended, the vote should be delayed past the end of the spring session to ensure it dies when Canadians go to the polls. Others have called for a pause.

Killing the bill or delaying it to such an extent that it is not voted on are not the jobs of the Senate. We're sober second thought and reflection, providing a challenge function, helping to compromise and facilitate the reflections on a government bill. If there is any bill the Senate needs to look at in a cooperative and temperate fashion, it seems to me this one dealing with the environment and development is just such a bill.

While I appreciate the polarization of political debate has increased significantly within the public environment, there should be no divergence among us about what is at stake with this issue. The discussion we are currently having about Bill C-69 is not about bringing together two competing interests. There is only one issue here. That is the protection of the environment so Canada can continue to develop and prosper as a society.

Allow me to quote from the 2009 NRTEE report, which I earlier cited, when it said:

> The movement toward a low-carbon world is inevitable. But our place in it is not. Like our economy as a whole, Canada's long-term competitiveness is in a low-carbon future will not be served by an inter-jurisdictional carbon competition here at home or by allowing protectionist carbon barriers to be raised at our expense abroad. Engagement internationally needs to be reinforced by harmonized action nationally. Canada's national environmental and economic interests jointly demand such an approach.

That was from the report of 2009. I believe we have in this bill an approach that fulfills the spirit of that harmonization.

The bill's sponsor, Senator Mitchell, did an excellent job outlining the balance that exists within the bill.

Senator Mitchell: Thank you.

Senator Harder: Given that, and the fact we will be debating this at much greater length, I won't go into excessive detail about what he said. I would, however, like to discuss briefly how the economy and the environment work together within this proposed legislation.

In short, Bill C-69 recognizes the importance of providing clarity to developers about how assessments will proceed. Among its many measures, Bill C-69 will reduce the timelines for assessment done by the newly proposed impact assessment agency of Canada. Timelines for projects reviewed by lifecycle regulators, like the Canada Energy Regulator, will also be shortened. Moreover, the bill will create efficiencies that will benefit businesses, include a reduction from three to one in the number of federal authorities responsible to lead major reviews. Some mines that are subject to reviews at federal and provincial levels will now also be assessed under a single harmonized process. Increased transparency on decisions, earlier identification of issues and targeted impact assessment guidelines for the proponents will also add clarity for projects.

[*Translation*]

As I said earlier, while there are some stakeholders devoted to making substantial amendments to this bill, and a few others who would rather that it not see the light of day, a good many have expressed their support. That group includes the Mining Association of Canada, which says the bill will reduce uncertainty and increase the likelihood of timelier outcomes. This support comes from an organization whose members represent approximately 60 per cent of all federal reviews. They are the industry with the most experience with impact assessments in the country.

[*English*]

Moreover, good corporate citizenship demands the incorporation of strong environmental safeguards and stakeholder involvement. Those firms who fail to include them face being left behind in a world where, as I said, the reduction of GHG is inevitable and the requirement to consult is not optional.

Let me be clear: A lot of companies are already doing privately what this bill will do publicly and deserve our congratulations. Firms like natural resource company Teck Resources believe the intentions of the bill align with their own values and approaches to environmental assessments.

• (1700)

In its submission last spring to the House of Commons Standing Committee on Environment and Sustainable Development, Teck said:

> We continue to support the Government of Canada's intent to strengthen public confidence in environmental assessment processes, enhance Indigenous Peoples' participation, and support sustainable economic growth. For Teck, these intentions align with our values and our existing approach to environmental assessments. Overall, we are pleased to see these intentions largely reflected in Bill C-69.

As you can see, any notion that energy companies are somehow unalterably opposed to this bill is a fallacy. Teck and many businesses like it are themselves agents of change when it comes to marrying the environment with their main objective of developing the resource sector.

For example, Teck is implementing its own emission goals for 2030, pledging to reduce GHGs by 450 kilotonnes of CO_2 equivalent and also committing to 100 megawatts of alternative energy generation. This is part of a wide-ranging sustainability plan which I urge senators to examine.

Another company, the energy firm Suncor, has indicated it's working towards a 30 per cent overall reduction in GHGs by the year 2030. While Acciona, a leading firm dedicated to the development of infrastructure and renewable energy, has set emission targets of 16 per cent reduction by 2030 from a 2017 baseline.

Finally, the Canadian Gas Association, which serves approximately 30 per cent of the country's energy needs, is committed to reducing GHG emissions by 14 megatonnes, equivalent to removing 3 million passenger cars per year by 2030, by introducing a greater proportion of renewable natural gas into their operations.

These are entities who understand the interests of the environment and the economy are not in conflict. Meanwhile, the commitment of firms like Teck to Bill C-69, as well as their efforts to deal with climate change, also help to build credibility that in turn leads to greater trust that projects are being reviewed fairly. To this end, when mining companies agree that the impacts of resource projects need to be reviewed rigorously, they help to build public trust with others, including Indigenous peoples, that projects will be rigorously evaluated. When we ensure that Indigenous peoples' views will be incorporated by providing equivalent status in the creation of joint and integrated panels, proponents will be more comfortable that their projects will survive public and perhaps court scrutiny.

I would also note that key environmental organizations support the bill in part because resource developers and environmental groups both realized they couldn't get everything they wanted. Said Lindsay Telfer, National Project Director of the Canadian Freshwater Alliance:

> The petroleum industry may not have gotten everything it wanted, but neither did we. We are not supporting this legislation because it is exactly what we want, we are supporting it because it reflects a compromise we can live with, one that meets the needs of all sectors and Canadians.

Remember also that Bill C-69 is the result of two years of consultations that included two independent expert panels. All affected industry sectors, environmental organizations, Indigenous groups and many others were invited to speak before the bill was tabled. More than 100 witnesses testified. Again, all participants were working to ensure a common cause was reached in their deliberations. Aside from these wide consultations, senators will also recall the policies this bill will put into effect were promised in the 2015 election campaign. Defeating or delaying this bill, as some have suggested, is tantamount to defeating or delaying the will of the electorate.

Finally, let me return to the place where I started. We are not Luddites. The economy must be developed to provide our children with futures we want for them. We want them to have better lives, materially, spiritually, emotionally and intellectually. The days are gone — if they ever existed — when we could exploit our resources with impunity.

Honourable senators, the year 2030 is only 12 years away. Many of us will still be alive when we are asked by our children and grandchildren, what did we do to protect the world from the devastation threatened by climate change? I, for one, will vote for this bill and for others like it so that when that day comes, we can tell our youth we tried to do the right thing.

Hon. Yonah Martin (Deputy Leader of the Opposition): I have a few questions for the senator. Would you take some questions?

Senator Harder: Of course.

Senator Martin: Thank you. Senator, I care about the environment. I care about our country. I care about the future of our children and grandchildren. I think all of us in this chamber do. I listened carefully to what you were saying. You talk about "we hope the environment doesn't take a back seat to the economy." You talk about a balanced approach and that this bill contains that. However, I couldn't help but hear the question: But should the economy take a back seat to the environment?

I understand there's a shortened timeline, as the minister has said. Perhaps it could be reduced by 60, 70 or even 80 days. However, something we haven't fully discussed, and I'm curious about — and perhaps this will also come out in committee — is a whole new process that is added even before the assessment happens, which is the planning phase. I understand that could be upwards of 180 days. Furthermore, after going through this planning phase, which must include consultations and whatnot, the minister, under proposed section 17, would have pre-emptive ministerial powers to cancel any project.

I'm wondering about this planning phase which adds potentially 180 days. Even if you shorten the timeline, it's still adding 100 extra days. Would you clarify that, please?

Senator Harder: I'd be happy to do so. Before I answer that, let me simply reiterate, as I attempted to do in my speech, that it is not one taking a back seat over another. It's ensuring an integration. That's the success so many companies have brought to the debate and one I think we need to endorse. It's not the economy at the expense of the environment or the environment at the expense of the economy. What we're seeking to do is have an integrated approach.

With respect to the timelines the honourable senator asked about, Senator Mitchell went through this pretty well; undoubtedly we will have this again and in more depth in committee. Let me reiterate the pre-process numbers exist today. The post-ministerial discretion exists today. What Senator Mitchell and the bill describe is the shortening of processes, which are welcomed by many of the participants on the business side; and the commitments made by all the stakeholders, which will allow us to have a process that reaches a decision point earlier than heretofore. The way in which the participation and the views of all stakeholders are taken into account in the new review process leads to decisions that can be implemented. At the end of the day, our problem in Canada has been not being able to move forward with projects, whether they have the approval of an assessment process but haven't met court standards. What the court has given us in its decisions are the guidelines that reflect themselves in the policy position of Bill C-69.

Senator Martin: Clause 17 provides that the minister can direct the Impact Assessment Agency not to perform an impact assessment on a designated project. You talked about how important that is. However, if the minister exercises her power under proposed clause 17, the project in question would not be allowed to proceed and the proponent has no right of appeal, as I understand it.

I have seen industry concerns that this is inherently unfair, whether it's the Canadian Energy Pipeline Association, or Enbridge, the Canadian National Railway, or the Mining Association of British Columbia — I'm sure there are others. If a project has not yet been assessed, how can the minister know its environmental effects are unacceptable? The right of appeal and having it happen before even an assessment is done seems inherently unfair.

Senator Harder: Again, senator, I'm sure we'll get into the details in committee. My understanding is that the minister cannot exercise that before the assessment is done.

• (1710)

Hon. Dennis Glen Patterson: May I ask a question of the senator? Thank you.

Senator Harder, I guess I believe in the old adage of if it ain't broke, why fix it? This bill — let me use a dramatic word — trashes the National Energy Board and the Canadian Nuclear Safety Commission. They are gone. Canadians were told that the National Energy Board, in particular, had lost credibility as a prelude to these changes.

The National Energy Board, I would say, has an international reputation for rigorous and effective work. Would the Government Leader in the Senate agree that the National Energy Board and the Canadian Nuclear Safety Commission have lost credibility?

Senator Harder: As I look behind me at a former chair of the NEB, I'd be hard-pressed to trash it quite the way the honourable senator would perhaps suggest I should.

The fact of the matter, senator, is you said you believe in the adage if it isn't broken —

Senator Patterson: If it ain't broke, why fix it?

Senator Harder: If it ain't broken, don't fix it or whatever. The reality is we haven't built pipelines. We must fix that with a process that will allow better integration. Apparently, it didn't help. We had 10 years of your government. You didn't build a thing.

Let me simply say that the objective here is to have a more integrated approach, one that shortens the time frames and that provides the assurance to stakeholders that the decisions can be actionable.

With respect to the Canadian Nuclear Safety Commission to which you refer, they are in fact staying on as part of an umbrella so that their expertise can be preserved, but there will be broader participation in the larger projects that involve the nuclear sector.

(On motion of Senator Martin, debate adjourned.)

[*Translation*]

THE ESTIMATES, 2018-19

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate) , pursuant to notice of October 25, 2018, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2019; and
>
> That, for the purpose of this study, the committee have the power to sit, even though the Senate may then be sitting, with rule 12-18(1) being suspended in relation thereto.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

CRIMINAL CODE

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Moncion, for the third reading of Bill S-237, An Act to amend the Criminal Code (criminal interest rate), as amended.
>
> And on the motion in amendment of the Honourable Senator Cools, seconded by the Honourable Senator Bovey:
>
> That Bill S-237, as amended, be not now read a third time, but that it be further amended in clause 1, on page 1, by replacing line 15 (as replaced by decision of the Senate on April 19, 2018) with the following:
>
> > "plus thirty-five per cent on the credit advanced under an".

Hon. Howard Wetston: I would like to have this item adjourned in my name.

(On motion of Senator Wetston, debate adjourned.)

BILL TO CHANGE THE NAME OF THE ELECTORAL DISTRICT OF CHÂTEAUGUAY—LACOLLE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pratte, seconded by the Honourable Senator Lankin, P.C., for the second reading of Bill C-377, An Act to change the name of the electoral district of Châteauguay—Lacolle.

Hon. Yonah Martin (Deputy Leader of the Opposition): I move the adjournment in the name of Senator Carignan, who is the critic of this bill.

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

THE SENATE

MOTION TO RESOLVE THAT AN AMENDMENT TO THE REAL PROPERTY QUALIFICATIONS OF SENATORS IN THE CONSTITUTION ACT, 1867 BE AUTHORIZED TO BE MADE BY PROCLAMATION ISSUED BY THE GOVERNOR GENERAL—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Runciman:
>
> Whereas the Senate provides representation for groups that are often underrepresented in Parliament, such as Aboriginal peoples, visible minorities and women;
>
> Whereas paragraph (3) of section 23 of the *Constitution Act, 1867* requires that, in order to be qualified for appointment to and to maintain a place in the Senate, a person must own land with a net worth of at least four thousand dollars in the province for which he or she is appointed;

Whereas a person's personal circumstances or the availability of real property in a particular location may prevent him or her from owning the required property;

Whereas appointment to the Senate should not be restricted to those who own real property of a minimum net worth;

Whereas the existing real property qualification is inconsistent with the democratic values of modern Canadian society and is no longer an appropriate or relevant measure of the fitness of a person to serve in the Senate;

Whereas, in the case of Quebec, each of the twenty-four Senators representing the province must be appointed for and must have either their real property qualification in or be resident of a specified Electoral Division;

Whereas an amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;

Whereas the Supreme Court of Canada has determined that a full repeal of paragraph (3) of section 23 of the *Constitution Act, 1867*, respecting the real property qualification of Senators, would require a resolution of the Quebec National Assembly pursuant to section 43 of the *Constitution Act, 1982*;

Now, therefore, the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the Schedule hereto.

SCHEDULE

AMENDMENT TO THE CONSTITUTION OF CANADA

1. (1) Paragraph (3) of section 23 of the *Constitution Act, 1867* is repealed.

(2) Section 23 of the Act is amended by replacing the semi-colon at the end of paragraph (5) with a period and by repealing paragraph (6).

2. The Declaration of Qualification set out in The Fifth Schedule to the Act is replaced by the following:

I, *A.B.*, do declare and testify that I am by law duly qualified to be appointed a member of the Senate of Canada.

3. This Amendment may be cited as the *Constitution Amendment, [year of proclamation]* (Real property qualification of Senators).

Hon. Marc Gold: Honourable senators, with leave of the Senate and notwithstanding rule 4-15(3), I move the adjournment of the debate in my name.

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

Hon. Senators: Agreed.

(On motion of Senator Gold, debate adjourned.)

MOTION TO CALL UPON THE GOVERNMENT TO RECOGNIZE THE GENOCIDE OF THE PONTIC GREEKS AND DESIGNATE MAY 19 AS A DAY OF REMEMBRANCE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Merchant, seconded by the Honourable Senator Housakos:

That the Senate call upon the government of Canada:

(*a*) to recognize the genocide of the Pontic Greeks of 1916 to 1923 and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity; and

(*b*) to designate May 19th of every year hereafter throughout Canada as a day of remembrance of the over 353,000 Pontic Greeks who were killed or expelled from their homes.

Hon. Ratna Omidvar: Honourable senators, I move the adjournment of the debate in my name.

The Hon. the Speaker: It is moved by the Honourable Senator Omidvar that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Senator Plett: No.

The Hon. the Speaker: In my opinion, the "yeas" have it.

(On motion of Senator Omidvar, debate adjourned, on division.)

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

On the Order:

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

Hon. Mary Coyle: Honourable senators, in May 2017, Senator McPhedran called the attention of the Senate, all of us, to the important opportunity we have to review our principles and procedures with a view to ensuring that the Senate has the strongest, most effective policies and mechanisms possible to respond to complaints against senators of sexual or other kinds of harassment.

Senators Bernard, Pate, Lankin, Hartling, Mitchell and Galvez all rose to contribute in a variety of consistent and constructive ways to the debate on this critical and timely inquiry.

In the meantime, Bill C-65, An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1 — a piece of legislation designed to address harassment and violence in the workplace has been passed by both ourselves and our colleagues in the other place and received Royal Assent last week.

• (1720)

The current *Senate Policy on the Prevention and Resolution of Harassment in the Workplace* was adopted by the Senate on June 22, 2009, more than nine years ago. The previous policy had been adopted in 1993. Our colleagues on the Human Resources Subcommittee — who I believe may be meeting at this moment — of the Senate's Standing Committee on Internal Economy, Budgets and Administration, CIBA, have been working diligently to examine and propose improvements to the aforementioned Senate harassment policy. We all anticipate their report in the coming weeks.

When I thought about why I wanted to speak to this inquiry and what it was I wanted to say, I was pulled from two ends of the spectrum — from the very personal one to the higher-level, more general one. My own experience of harassment is unfortunately probably similar to that of many other women of my generation. Although I clearly benefit from my status as a White, well-educated, able-bodied, heterosexual, Canadian-born woman, I have experienced, in previous workplaces, sexual assault, unwanted sexual touching, sexual harassment, severe bullying and humiliation. I have been told to shut my trap by my supervisor at a meeting of international university professors for whom I was doing work as a graduate student. I had my breast fondled by a funder while working in the field as a young international development worker. I was told my job would be under threat if I didn't comply with the wishes of a colleague when I was a university vice-president. I wasn't admitted through the front, main entrance door of a private Toronto club for an event I had organized with a prominent Latin American economist. I was directed to the side door, while the men I had invited walked in the front door freely. Needless to say, I didn't attend and was fearful of the repercussions of my actions. Would I lose my job? I had three young daughters and a grad student husband who were dependent on me at the time.

In another situation, while in a position of authority and with senior management responsibility, I had to deal appropriately, decisively and fairly with a male staff member who had sexually harassed a number of our younger female staff. I also had to deal with transparency, accountability and caring with those women who had experienced this inexcusable harassment under my watch. How ironic to be promoting social justice, gender equity and women's empowerment through our work while encountering this disrespectful, misogynistic degrading behaviour so close to home. No one and no organization is immune.

This is why, when we move from the individual examples — and we know there are many here on Parliament Hill — a respected minister of the Crown having to deal with the degrading label of "Climate Barbie," accounts of members of Parliament and senators' staffers subjected to harassment and intimidation with few feeling safe enough to report that harassment.

Then we move to the more general. This opportunity we have to review our principles and procedures is critical to ensure that we, the Senate, Canada's upper chamber, has the strongest, most effective policies, procedures and mechanisms possible to respond to complaints of harassment of all kinds.

I am not an expert on the detailed procedures and mechanisms required to effectively implement the three pillars that were outlined in Bill C-65 — to prevent harassment in the first place, to respond to complaints when they are brought forward, and the most effective ways to support victims, survivors and employers. Our colleagues on the CIBA Subcommittee on Human Resources are grappling with these, with the input of experts and also hopefully with the input of those most affected, as suggested by Senator Lankin.

The area that I would like to speak to, at the general institutional end of the spectrum, concerns the overarching principles guiding our new, updated policy, procedures and mechanisms.

At this time in our world and our society, where the September 29 edition of *The Economist* magazine's headline read, "Sex and power: #MeToo, one year later."

At this time when women around the world are exclaiming #BalanceTonPorc, #MyDressMyChoice, #Cuentalo! and #HearMeToo!

At this time, in our Canadian society when our Prime Minister on April 26 of this year issued the following statement:

> Women's empowerment is a key driver of economic growth that works for everyone. All of us benefit when women can participate freely, fully, and equally in our economies and society, and supporting and empowering women and girls must be at the heart of decisions we make.
>
> That is why we make gender equality and women's empowerment a central theme of Canada's G7 Presidency . . . .

At this time when the *Guardian Weekly* has run at least two articles this past year on our Westminster cousins with the headlines, "How to help tackle sexual harassment in the House of Commons," and "MPs and peers could be recalled or expelled for harassment."

At this time, as we look at what modernization of the Senate could be, at what a modernized Canadian Senate should be, we, as senators, all of us responsible for this largely self-regulating and very important institution, have a tremendous opportunity to be visionary, smart, accountable, caring leaders. We have an opportunity to become a trendsetter among parliamentary institutions; and, of course, we have a clear responsibility, too.

We have a chance to address those concerns raised previously by my colleagues and by others — concerns about the dangers of the power imbalance at the core of our institution and how that impacts those working with us and how it also impacts each of us.

In an earlier speech in this chamber, I referenced our colleague Senator Joyal, who reminds us:

> Parliament is about power: it exists for one reason only — to empower the people of Canada . . . .

I also quoted my former colleague Dr. John Gaventa of IDS Sussex, who makes important distinctions regarding the concepts of power over, power to, power within and power with.

The culture change and the paradigm shift my colleagues have called for here in the Senate have at their core the issue of power. Working together to create a healthy, open, inclusive culture, characterized by professionalism, genuine mutual respect, and a code and mode of conduct which reflects that desired culture and which has at its foundation zero tolerance for harassment of any kind is of urgent and paramount importance.

For me, these characteristics of culture are the fundamentals. These are the principles, the central foundation to our policy, procedures and mechanisms.

Finally, honourable colleagues, in closing, I want to mention something that I have both appreciated and I admit to being a little uncomfortable with at times since joining you in this very privileged place, the Senate of Canada. The designation "honourable" is one I aspire to live up to. For me, it is something to be earned little by little each day. "Honourable" means "characterized by high principles"; it means "worthy of esteem." It is a title of respect.

• (1730)

Honourable colleagues, let's seize this opportunity to embody the designation bestowed on each of us, and let's challenge ourselves to be leaders in creating the best, most respectful, safe and supportive working environment for everyone who contributes so importantly to the work of the Senate of Canada. The Canadian public expects it of us, and I know we expect it of each other.

Thank you. *Wela'lioq*.

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

[*Translation*]

ANTI-BLACK RACISM

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Bernard, calling the attention of the Senate to anti-black racism.

Hon. Marie-Françoise Mégie: Honourable senators, I rise today in support of Senator Bernard's recent speech on anti-Black racism. Acknowledging that the experience is not unique to people of African descent, Senator Bernard also described the many forms of racism. In this chamber, I plan to address the phenomenon of systemic racism.

This often overused expression remains misunderstood to this day. These two words never go unnoticed, no matter who utters them or who hears them. There is no doubt that bringing up this thorny issue arouses feelings of unease, shame or anger, both in those who experience the phenomenon and in those who deny it exists.

To help you imagine what this is really all about, honourable colleagues, let me draw a parallel with a current issue. Jackson Katz is an eminent author, researcher and lecturer who created a gender-based violence education and prevention program that is used by the U.S. Army, various sports organizations, and many private businesses.

In his lectures, Mr. Katz asks the men in the audience what steps they take on a daily basis to avoid being sexually assaulted. Most men simply answer, "Nothing. I don't even think about it." Then the researcher asks the women the same question. They are quick to share the precautions they take in their daily lives, such as holding their keys as a potential weapon, not wearing headphones while jogging, carrying a personal alarm, keeping their phone within reach, and watching what they wear.

Isn't it mind-boggling? Yet not all sexual assaults are committed against women or by men. Nevertheless, young girls are taught these safety measures starting in their teenage years, but young boys are not.

Honourable colleagues, it's my turn to ask you some questions.

First: When you go shopping, do you feel like someone is watching you, following you, shadowing you? To have a better understanding of what members of Black communities experience, listen to what Tomee Elizabeth Sojourner-Campbell, a Toronto-based consultant and expert in the prevention of racial profiling, reported:

> You walk into a store and suddenly you have a shadow. A clerk follows a few paces behind you, watching your every move and checking inventory each time you pause in an aisle. You buy a few things, but you're stopped at the exit to show your receipt, even while no one else is.

It's subtle, but very unsettling. This may seem unbelievable to those who do not experience it, but a lot of Black people are constantly questioning everything they do.

Second question: How do you talk about clothing with your children? Most parents set rules based on what goes against their values, such as hyper-sexualization or hate speech. Many families in Black communities, however, will go so far as to tell their children not to wear ball caps or hoodies for fear that they could be discriminated against. The reasons behind these kinds of rules unnecessarily change the behaviour of African-Canadian children. When children keep hearing that their rights could be violated because of the clothes they wear, they are likely to grow up with a very negative view of society.

Third: What criteria do you have in mind when shopping for a car? Your dreams? Your needs? Your budget? Members of Black communities, especially young men, have to make sure they select a car that will not attract the attention of law enforcement. I have heard many an African-Canadian mother discourage her son from buying a luxury vehicle or sports car, even though he had worked hard to afford it.

Fourth: How do you get ready to go see a place you'd like to rent? I bet you don't even think twice about it. During my divorce, I was looking for housing for myself and my children. I found a suitable rental and set up an appointment with the landlord that day. People had warned me that, as a single Black mother, I would face many obstacles, so I prepared accordingly. Before showing up for the appointment, I dressed as I would for an interview: suit, makeup, jewellery, hair. I did all I could to make an excellent first impression. I told myself that everything would be fine. After all, I had impeccable credit and had been working as a doctor for several years. Unfortunately, no sooner did I introduce myself than the landlord told me the place I wanted was already rented. Typical, wouldn't you say?

How many times have you witnessed an argument at school between two children, one white and one black, where the Black child's version wasn't found to be credible or the Black child was punished even though he or she wasn't at fault? How many times in your workplaces have you witnessed complaints being handled differently depending on whether they were about a Black person or a White person?

These striking examples lead me to share with you the Barreau du Québec's definition of systemic racism, which reads:

> Systemic racism is the social production of an inequality based on race, which is reflected in the decisions affecting racialized people and the treatment that they receive. Racial inequality is the result of the racially inequitable organization of a society's economic, cultural and political life.

As you can see, we are not talking about hate crimes here, like the one that was committed at the Mother Emanuel African Methodist Episcopal Church in Charleston, in the United States, in 2015, or the one committed in Pittsburgh on the weekend. We are also not talking about violence toward immigrants or inappropriate jokes about certain cultural groups. We are talking about the conscious or unconscious use of discriminating behaviour toward members of a designated community. Many people consider these situations harmless; they cannot understand the extent of the consequences for those who experience such discrimination.

A report entitled *Paying the Price: The Human Cost of Racial Profiling*, released by the Ontario Human Rights Commission, states:

> Developing these systems to deal with profiling reflects how serious a concern it is for the communities who experience it. It is a major part of their life experience such that they are forced to alter their behaviour around it.

The humiliation and fear felt by victims of racial profiling are so traumatizing that the effects can be passed on to future generations. Parents who were victims of racial profiling, who witnessed it or who were told about acts of discrimination carefully restrict the actions of their children and warn them that they will experience profiling sooner or later.

As you will have learned from the preceding examples, faced with ongoing discrimination, members of Black communities end up trivializing and even normalizing these acts of injustice. This remains very problematic, because children come to believe that they are the cause of the problem, and this seriously affects their development. As adults, they will hesitate to fight racial discrimination because they feel responsible for the perpetrator's actions. Thus, the real offenders are very rarely punished, and this perpetuates the vicious circle.

• (1740)

Honourable colleagues, it is worrisome to know that many generations of African-Canadians end up accepting the fact that they will be discriminated against based on their ethnicity.

The significant and lasting impacts observed in young people and children are well known. At school, students who have been exposed to discrimination experience a loss of concentration and lack of motivation. This leads to poorer school performance, which can eventually hold them back and make it harder for them to access higher education. If these shameful acts are perpetrated by an authority figure, this contributes to a loss of confidence in different segments of society such as the justice system, for

example. This can translate into a reluctance to cooperate with the institutions in terms of reporting a crime or acting as a witness.

Among professionals, there seems to be a deep sense of despair especially if the humiliating incident occurred in public, near their workplace, or in the presence of peers. They fear that their clients, colleagues, or superiors will believe they are responsible for the incident. The resulting post-traumatic stress and perceived threats based on cultural identity can lead to a decline in performance at work, loss of self-confidence, and depression.

Let us take immediate action to prevent any situation that would jeopardize the inclusion of African-Canadians. To get there we must deconstruct the racialization process that Black communities go through. The *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* describes "racialization" as the social process of defining races as discrete entities that are different and unequal, a characterization that has economic, political and social impacts.

We cannot ignore the results of public consultations and the promising objectives. In addition to taking action within institutions, we should also look at community-based measures.

For example, we could look at the bystander approach that Jackson Katz developed as part of his gender-violence awareness and prevention program. This approach could be adapted to the topic we are debating today. We would have to rid ourselves of the relationship we're all familiar with and change the White-racist, Black-victim dynamic. We must also focus on the importance of peers in our schools, sports teams, workplaces and institutions to combat the underlying inequalities and racialization. Furthermore, we must insist on the role that bystanders, whether they are White or Black, can play in the fight against racial discrimination. Lastly, there could be workshops on this issue starting in elementary school, so that our children grow up and become mentors to their peers.

Those are just a few among many possible solutions. I'm not an expert in this field, but I believe we need to draw inspiration from best practices and strategies being used in other jurisdictions to combat racism. It's time to take meaningful action to protect the values of equality and dignity we hold so dear.

Honourable colleagues, we have a duty to unequivocally condemn racism in all its forms, even the most insidious. Let's promote mutual respect for all ethnicities and all cultures among all Canadians. Let's do everything in our power to encourage the full participation of all individuals in Canada's social and economic development, regardless of origin, race, or the colour of their skin.

Thank you.

(On motion of Senator Gold, debate adjourned.)

(*At 5:45 p.m., the Senate was continued until tomorrow at 2 p.m.*)

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