SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 44th PARLIAMENT • VOLUME 153 • NUMBER 34

OFFICIAL REPORT
(HANSARD)

Thursday, April 7, 2022

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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

Publications Centre: Publications@sen.parl.gc.ca

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

THE SENATE

Thursday, April 7, 2022

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

Prayers.

SENATORS' STATEMENTS

OPEN BANKING

Hon. Colin Deacon: Honourable senators, on March 22, the Associate Minister of Finance, Randy Boissonnault, announced that Abraham Tachjian will be the open banking lead in Canada. His task is to lead the creation of an open banking system that gives individuals greater control over their financial data and access to the benefits that those data can deliver. This is great news.

This week, Pollara Strategic Insights released a comprehensive survey examining how Canadians feel about traditional banking and newer financial technology products. Pollara found that 84% of small business owners and consumers feel that bank fees are too high, and more than half feel stressed when interacting with the banks. For marginalized Canadians, this stress can be even greater. Maybe that's why more than two thirds of Canadians told Pollara that they think more competition will lead to greater product choices and lower fees. Of those who already use new financial technology products, 91% say they're easy to use, 82% like the lower fees and 73% say these products help them save money.

By contrast, our big banks introduced fee increases mid-pandemic. For example, one bank's chequing account transaction fees increased 56% –- from $1.25 to $1.95 per transaction –- but with no corresponding increase in service. Quite the opposite. The minimum deposit required to avoid paying these fees also jumped — from $2,000 to $5,000. This pricing policy disproportionately impairs the financial health of the already marginalized. It also really improves bank profits. The Canadian Centre for Policy Alternatives just reported that the 2021 profits of the five big banks were 40% higher than their pre-pandemic average in 2018-19. That's six times the rate of inflation. The five big bank CEOs saw, on average, a 23% increase in personal earnings in 2021. That's almost four times the rate of inflation. In a few hours, the Government of Canada may impose an excess profits tax on the Canadian banks. My profound preference would instead be to accelerate and broaden regulatory reforms like open banking.

The reason is that markets work best when innovators — the makers of better mouse traps — are rewarded. Markets fail to serve citizens when regulatory moats protect incumbent businesses from that competition in ways that enable them to increase prices and profits while still selling the same old mouse trap.

Colleagues, as you may expect, I am thrilled about the implementation of open banking and the consumer-centric financial opportunities it will unlock, and also about the progress in the related areas of payment modernization and digital identity. There are challenges ahead, but we're finally moving in the right direction.

GWICH'IN COMPREHENSIVE LAND CLAIM AGREEMENT

CONGRATULATIONS ON THIRTIETH ANNIVERSARY

Hon. Margaret Dawn Anderson: *Drin Gwiinzii*, honourable senators.

It is my privilege to rise today to congratulate the Gwich'in of Aklavik, Inuvik, Teetl'it Zheh and Tsiigehtchic on the thirtieth anniversary of the Gwich'in Comprehensive Land Claim Agreement.

The agreement, signed on April 22, 1992, granted the Gwich'in ownership of 22,330 square kilometres of land in the Northwest Territories and 1,554 square kilometres of land in the Yukon, including the subsurface rights to 6,158 square kilometres of land in the Northwest Territories. The agreement also secured the Gwich'in economic benefits, the exclusive rights to be licensed to conduct commercial wildlife activities on Gwich'in lands and formalized Gwich'in participation in land-use planning and the management of renewable resources, land, water and heritage resources. This included a commitment to negotiate self-government.

Since receiving the original $75 million of capital transfers between 1992 and 2007 secured through the land claim agreement, the Gwich'in have increased these funds to over $165 million while supporting their people and communities.

The recognition and affirmation of Gwich'in rights secured through the land claim agreement have also supported Gwich'in initiatives around conservation and sustainability. For example, the Gwich'in have been able to maintain the Porcupine Caribou Herd as one of the largest and healthiest international barren-land caribou herds in the world — a critical and vital resource for the Gwich'in.

Over the last 30 years, the Gwich'in have, through their Department of Cultural Heritage, been working to preserve culture, language and traditional knowledge for future generations as well as develop programs appropriate for Gwich'in needs. Some examples of their work include recording the life stories of many Gwich'in elders and collaborating on second-language curriculum for kindergarten to Grade 12 students in the Beaufort Delta Region.

Finally, the move toward Dinjii Zhuh government will ensure the Gwich'in can continue to undertake occupancy and harvesting activities for generations to come while blending their historic leadership structures with contemporary forms of governance.

I wish to congratulate the Gwich'in and their communities and organizations on their achievements over the past 30 years. I know the Gwich'in Tribal Council will continue to prioritize their people, communities, culture, spirituality, language and values as they move toward Dinjii Zhuh government. It is indeed time to define "Your future, your way."

Mahsi'cho, quyannaini. Thank you

HEALTH PARTNERS INTERNATIONAL OF CANADA

Hon. Denise Batters: Honourable senators, we have all seen the horrific images broadcast from Ukraine, the record of a people under siege. Reports speak daily of thousands killed and thousands more wounded, the bombing of schools and of a children's cancer hospital, apartments and other buildings obliterated while hundreds of Ukrainians are trapped in bunkers beneath and of unspeakable horrors on the streets of Bucha.

After seeing these images and after President Zelenskyy's heartfelt address to our Parliament, it is impossible not to be moved. We all want to help, and we all feel helpless. In this kind of chaotic emergency, medical assistance is badly needed.

That is why a group of Canadian MPs and senators — including Senator Larry Campbell and I — have paired up with Health Partners International of Canada, or HPIC, a Canadian charity licensed by Health Canada that handles and distributes medical supplies into crisis zones like this one.

Supplied by major medical and pharmaceutical partners, HPIC is working in partnership with Canadian Medical Assistance Teams to deliver their Humanitarian Medical Kits into needed regions in and around Ukraine. For a sponsorship cost of $600, each medical kit contains about 600 treatments — a value of about $6,000 per box. The current medical kits to Ukraine contain supplies like antibiotics, antihypertensives, anti-inflammatories, analgesics and products to treat dermal infections, asthma, heart conditions and first aid. HPIC has set a goal to mobilize 400 medical kits for Ukraine and refugee camps in neighbouring countries in the next few weeks with a donation target of $240,000.

• (1410)

Many of you have charities you support generously, but we ask you to consider this one. If many senators and MPs donated to this cause, we could make a huge impact.

Honourable senators, it is an extraordinary privilege for us to sit in this chamber of democracy. Recently, five Ukrainian members of parliament travelled here to Parliament to show Canada how critical it is that Ukraine receives more help. I was able to meet them. They were all moms who had to leave their kids behind in Ukraine to travel to Canada. One MP received an air raid siren notification on her cell phone during her Parliament Hill meetings, notifying her that her child would not be going to school that day but, instead, to a bomb shelter. It's unimaginable.

Honourable senators, let us, as Canadian parliamentarians, join hands to help ease the pain of the Ukrainian people at this dire time when they need it the most. If you are able, please donate a medical kit at hpicanada.ca or by contacting Senator Campbell or me. It's a great way to make a meaningful contribution to the people of Ukraine.

PAPAL APOLOGY

Hon. Mary Jane McCallum: Honourable senators, I thank the Canadian Senators Group for giving me space to speak today.

When I was in residential school, I began to disbelieve this Catholic God that the nuns and priests spoke of. How could a good and just God see me as a savage when he made me? When I went to confession at the age of 12, the priest asked if I let boys do bad things to me. I rarely entered the church after that and never went back to confession, thinking, "Why should I confess to another sinner?"

Over the decades, I didn't believe I needed an apology, but, in listening to the words of the Pope on Friday, I was shocked when I burst into tears. Unexpectedly, it brought me peace and relief. Through this acknowledgment of past harms, people can finally accept that something life-changing and devastating happened to us at the hands of Church representatives. We are no longer burdened with the task of trying to convince others.

Do I forgive the Church? Not at this moment, and I'm okay with that. It took me 62 years to forgive the nun who had caused me immense and violent trauma at residential school. After going through a ceremony two months ago, I was finally able to let go of that violent energy I carried with me most of my life. I believe this is why I was able to embrace the Pope's apology in the way that I did.

Now, I and other former students need the space to sit with his words, free from perspectives, dissecting it from a place of colonial thinking. In speaking to many former students, we are all at different stages of understanding the apology's impact. There is discussion of whether it was needed and whether it is accepted. Despite our shared experience, we all have our own interpretations and lingering impacts.

I have had hate directed at me over my lifetime due to narratives thrust upon me simply because I am Cree. These narratives still exist in Canada today. However, I echo intergenerational Cree knowledge keeper Deborah Young, who states:

> Despite all these atrocities and genocide that our people have endured and survived, my heart remains full of love and hopefulness because if I lose hope or love, there is nothing.

Kinanâskomitin. Thank you.

[*Translation*]

INTERNATIONAL FORUM ON PEACE, SECURITY AND PROSPERITY

Hon. Tony Loffreda: Honourable senators, Russia's reprehensible invasion of Ukraine continues amid mounting atrocities, making it more important than ever to promote international peace, security and prosperity, particularly to our young people who may not comprehend just how serious the consequences of this kind of conflict can be.

That is why I immediately agreed to participate in the second International Forum on Peace, Security and Prosperity, a hybrid event happening today and tomorrow. Hundreds of participants are gathered in Italy for the occasion.

[*English*]

For two days, the Peace, Security & Prosperity, or PSP, Forum will unite military and political leaders, policy-makers, researchers, students and the wider public to explore the role of the military and the institutions of public order and justice in establishing the basis for flourishing peace, stable security and increasing prosperity. In other words, what does it take to make, and, more importantly, to keep and protect, world peace?

As Canadians, it's easy to take for granted these three elements that are part of our DNA. We are privileged to live in a just and democratic society where the rule of law prevails and our rights and freedoms are protected under the Constitution. Recent world events have shown us just how precious and fragile democracy can be.

In just a couple of years, Stephen Gregory, the co-founder and chairman of the forum, and his dedicated team of officials and volunteers have successfully and considerably expanded the reach of this event. Today's forum will feature representatives from 32 countries, 23 military academies and approximately 75 high schools representing some 2,000 students, along with many distinguished guests, academics and military personnel.

Beyond the various panels and keynote speeches, one of the highlights of the forum is a student essay and video contest that I will be moderating. Students have been given three topics to choose from with the focus of civil-military cooperation. It will be an honour for me to engage with these students tomorrow morning and exchange ideas on how to achieve and maintain peace in the world.

In my view, the Government of Canada should take note of this important conference and consider establishing a more formal partnership, financial or otherwise, with the PSP Forum, so it can continue to offer high-value educational opportunities for our youth and build strong links with citizens around the world who share the common goals of promoting peace, improving security and ensuring prosperity.

Honourable senators, please join me in congratulating the organizing committee for hosting the second International Forum on Peace, Security & Prosperity and for assembling such an impressive program.

Thank you.

[*Translation*]

CANADIAN VICTIMS BILL OF RIGHTS

Hon. Pierre-Hugues Boisvenu: Honourable senators, I rise today to pay tribute to a victim of crime and to her family, who have been struggling for years to ensure that her memory is honoured.

In October 2007, Francesca Savoie, who was only 17 years old, died suddenly and tragically in a car accident in Bas-Caraquet, New Brunswick. The accident was caused by an impaired driver.

Since that tragic day, Francesca's mother has had lingering questions about the circumstances surrounding her beloved daughter's accident. For 15 years now, she has been fighting to obtain information from the RCMP investigation file in order to gain a better understanding of the circumstances surrounding her daughter's death, so she can finally grieve in peace as she deserves.

At this point, there are still some unknowns about what happened on that night. Francesca's mother just wants to be told the truth about her daughter's death. Her legitimate and entirely understandable efforts have been blocked by the RCMP, which denied her request on the grounds that the victim's personal information is protected under the Access to Information Act, and that disclosing it would be an unreasonable invasion of the deceased girl's privacy.

The RCMP's response, which was confirmed by a Federal Court ruling, is an assault on the supra-constitutional principle of the Canadian Victims Bill of Rights and, more specifically, on the right to information that Francesca's mother is asserting.

Honourable senators, the Canadian Victims Bill of Rights was created to redress the perpetual injustices inflicted on victims' families and to prevent them from having to endure a lengthy process to have their rights respected. This sad story is just a reflection of a system that does not take the suffering of these families into account. It is another indication that there is still a lot of work to do to enforce the Canadian Victims Bill of Rights.

The RCMP is not above federal and constitutional laws, as we heard last week from Marco Mendicino, the minister responsible for the RCMP.

• (1420)

The courts have a duty to enforce laws democratically passed by the Parliament of Canada, and this additional assault on the Canadian Victims Bill of Rights is simply outrageous.

As we approach the second anniversary of the Portapique massacre, my thoughts are with all these families who should not have to fight to be respected by federal institutions. I offer my support to all these families, and I will fight to ensure that the Senate of Canada, the upper house of Parliament, upholds their rights and the rights of all victims of crime. Thank you very much.

[*English*]

ROUTINE PROCEEDINGS

DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES ACT

BILL TO AMEND—FIRST REPORT OF AGRICULTURE AND FORESTRY COMMITTEE PRESENTED

Hon. Robert Black, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, April 7, 2022

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

FIRST REPORT

Your committee, to which was referred Bill S-222, An Act to amend the Department of Public Works and Government Services Act (use of wood), has, in obedience to the order of reference of December 9, 2021, examined the said bill and now reports the same with the following amendment:

1. *Clause 1, page 1*: Replace line 10 of the English version with the following:

   "ter shall consider any potential reduction in greenhouse";

and with certain observations, which are appended to this report.

Respectfully submitted,

ROBERT BLACK

Chair

(*For text of observations, see today's* Journals of the Senate*, p. 455.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Black, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

FOOD DAY IN CANADA BILL

SECOND REPORT OF AGRICULTURE AND FORESTRY COMMITTEE PRESENTED

Hon. Paula Simons, Deputy Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, April 7, 2022

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

SECOND REPORT

Your committee, to which was referred Bill S-227, An Act to establish Food Day in Canada, has, in obedience to the order of reference of March 3, 2022, examined the said bill and now reports the same without amendment, but with certain observations, which are appended to this report.

Respectfully submitted,

PAULA SIMONS

Deputy Chair

(*For text of observations, see today's* Journals of the Senate*, p. 456.*)

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

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

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE STATUS OF SOIL HEALTH

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

That the Standing Senate Committee on Agriculture and Forestry be authorized to examine and report on the status of soil health in Canada with the purpose of identifying ways to improve soil health, enable Canadian forest product and agricultural producers to become sustainability leaders, and improve their economic prosperity;

That in particular, the committee should examine:

(a) current soil conditions in Canada;

(b) possible federal measures that would support and enhance agricultural and forest soil health, including in relation to conservation, carbon sequestration and efforts to address the effects of climate change;

(c) the implications of soil health for human health, food security, forest and agricultural productivity and prosperity, water quality and air quality; and

(d) the role of new technologies in managing and improving soil health; and

That the committee report to the Senate no later than December 31, 2023, and that the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

QUESTION PERIOD

FINANCE

BUDGET 2022

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question today is for the government leader in the Senate. It concerns one of the many leaks that appeared in the media detailing items that will be found in the "NDP budget" later this afternoon — the first NDP budget in Canadian history.

According to *Reuters*, the "NDP finance minister" will bring forward a growth fund for new and green technologies. It will be run by professionals at arm's-length from the government. It has no clear mandate. It hopes to attract $3 of private investment for every public dollar invested, and it will contain $15 billion in taxpayers' dollars.

Does that sound familiar, leader? Every single taxpayer should be concerned about the similarities between this new scheme and the Canada Infrastructure Bank, something I asked you about yesterday. Why on earth would you want to repeat your failed infrastructure bank?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question, senator. I'm not yet privy to the budget, so we'll have to wait one more day to find out what the government is proposing.

The comparison with the Canada Infrastructure Bank is an interesting one. Despite the fact that the projects are not yet completed, there are 35 projects under way, as I think I mentioned at another time, and they are important projects, Senator Plett. They include the Manitoba Fibre broadband project that will bring broadband services to nearly 50,000 households in rural Manitoba, an issue that our colleague Senator Patterson has underlined on more than one occasion. It also includes work to advance the Kivalliq Hydro-Fibre Link, which will provide a vital energy and communications link between Manitoba and Nunavut.

Every dollar that Canadians are being asked to spend through the government on those infrastructure projects is creating jobs, attracting investment, fighting climate change, promoting social equity and building the economy of the future.

Senator Plett: Of course, the similarity in those projects is that not one of them is completed. Perhaps, leader, someone in the New Democratic Party should be taking our questions today.

According to the media, they have been briefed on the contents of the budget. As Senator Martin mentioned on Tuesday, the Canada Infrastructure Bank has never attracted private investment, something the Prime Minister claimed it would do. They've completed no projects in five years but have spent over $46 million in salaries and other compensations, including $10 million in bonuses.

Leader, if the NDP-Liberal government is intent on going ahead with this scheme, at the very least will you commit to withholding incentive bonuses where there is nothing to show for it, yes or no?

Senator Gold: No.

Hon. Denise Batters: Senator Gold, as Senator Plett mentioned, it is being reported today that members of the NDP were briefed earlier this week on measures that will be found in this afternoon's federal budget. It has also reported that the NDP briefing came before members of the Liberal caucus received their briefing on the contents of this "NDP budget."

Senator Gold, you are the Liberal government's representative in the Senate, so could you tell us if you have received a budget briefing yet? If so, did it take place before or after the third place opposition party in the House of Commons received theirs?

• (1430)

Senator Gold: Thank you for your question. My understanding of what took place was there was a conversation between the Prime Minister and the leader of the New Democratic Party, as you would expect there to be in the context of the relationship that has developed between them. To the best of my knowledge, that is the appropriate way to characterize what you have characterized otherwise.

Senator Batters: Senator Gold, you need to answer for us whether you have received a budget briefing, after all, you were sworn in as a Privy Council member and the NDP are not.

I noticed recently also that you're no longer listed on the PMO website as a member of the Trudeau government's Cabinet Committee on Operations. Is this actually true? If so, why? Did Jagmeet Singh take your spot? Why does this Trudeau government have more respect for the NDP, which holds only 25 seats in the House of Commons, than it does for its own government leader in the Senate and by extension the entire Senate?

Senator Gold: Thank you for your question and for your concern about the respect with which I am held. But your facts are wrong. I remain a member of the Operations Committee, I attended most recently on Monday. I can't explain the website. I have other things to do than look for myself on the web.

I repeat, senator, with respect, my understanding is that there was a conversation, there was no formal briefing. Neither I nor my team nor anybody else — unless we attended the budget lock-up which we organized for all senators, I gather, one senator attended. But apart from that, no, I did not receive any briefing, as none of us would have. Thank you.

FOREIGN AFFAIRS

COMBATTING MISINFORMATION AND DISINFORMATION CAMPAIGNS

Hon. Mary Coyle: Honourable senators, my question is for the representative of the government in the Senate.

Senator Gold, we know that Russia has been spreading false propaganda about its brutal and illegal invasion of Ukraine, and that it and other non-state actors are using social media to amplify these messages as well as other messages which specifically target Canadian domestic issues as well.

Overall, we're seeing a rampant uptick in the spread of misinformation, intentional disinformation and what some experts are calling malinformation — all very dangerous to our democracy and global stability.

Our colleague, Senator Simons, spoke to the many emails we have been receiving around Bill S-233, An Act to develop a national framework for a guaranteed livable basic income and the impact those disinformation campaigns are having on misleading Canadians.

In my climate solutions inquiry, I highlighted my concerns about the dangers of disinformation as it relates to undermining public confidence in scientific, evidence-based climate data, climate policy and climate actions.

In response to Senator Housakos's recent question regarding Russian propaganda, you noted that the Communications Security Establishment, CSIS and the RCMP and others are working with the government and partners to ensure that we remain safe.

Senator Gold, given the very real consequences of a rise in this type of disinformation, what else is the Government of Canada doing to counter these well-orchestrated campaigns and what concrete actions are being taken to promote awareness of these dangers amongst Canadians active on social media platforms? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question and for shining a light on what we all know is a growing and pernicious phenomenon.

Disinformation, in its various forms, is a really serious threat to our society, to our democracy and to all Canadians. I am advised that the government has just added $2.5 million for targeted projects to help Canadians identify misinformation and disinformation online through the Digital Citizen Initiative. This is on top of the government's $8.5 million Digital Citizen Contribution Program. That's a program which funds projects to help Canadians become more aware and more resilient and to think more critically about the information that they see and the information that they consume online.

As mentioned by our honourable colleague in her question, the government clearly must look at the role of social media platforms in reducing the spread of misinformation and disinformation as well as online hate and other pernicious practices. To this end, I'm advised that the minister has announced the creation of an expert panel to provide advice on eventual legislation to counter these forms of online harm.

SUPPORT FOR UKRAINE

Hon. Stan Kutcher: Honourable senators, my question is for Senator Gold.

Senator Gold, recently, the Russian state-owned domestic news agency published a piece which vigorously promoted what they called the de-nazification of the entire population of Ukraine. It proposes to liquidate the political, civil and economic leadership of the country and those who support it and calls for the removal of all vestiges of Ukrainian identity, including the very name Ukraine.

This genocidal obliteration by Russia of Ukraine is what this war is about. We have all seen the horrors of Bucha, the presence of mass civilian graves and photos of people found lying in the streets with their hands bound, shot in the head and some bodies showing signs of torture, rape and burning.

While I acknowledge the important help that Canada has been providing and continues to provide, much if not most of our efforts have focused on sanctions and humanitarian assistance. However, Ukraine is asking for heavy weapons and air and naval defence systems, which it needs to defend itself. It is in this area of need that Canada has not stepped up fully.

On Monday, my 9-year-old grandson gave my daughter $10.85 that he received for selling Ukrainian flags that he had made and asked her to send it to Ukraine to help Ukraine fight back.

Will our government follow his lead and provide Ukraine with the weapons or the funds to purchase the weapons that Ukraine needs?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I hope your grandson is watching. He should be very proud.

Canada is providing a comprehensive suite of military aid to Ukraine and is constantly and continuously reassessing the needs. That's why it has announced several new tranches of military aid, both lethal and non-lethal, to Ukraine.

The government has also been assisting our allies in delivering aid to Ukraine by over 40 flights on the C-130s Canada is providing for airlift support. I'm also advised that the government is in touch with a range of industry partners about further support for our Ukrainian partners.

Finally, I'm also advised that the government is currently working with Canadian companies to evaluate military aid options for Ukraine. Minister Anand will remain in close contact with Minister Reznikov regarding Ukraine's evolving needs.

NORTH ATLANTIC TREATY ORGANIZATION

Hon. Stan Kutcher: Senator Gold, on a slightly different angle, what measures are Canada taking to prompt our allies in NATO to support Ukraine by providing the heavy weapons and air and naval defence systems that Ukraine needs to counter this illegal and horrific Russian attack?

If Canada can't do it directly, what are we doing indirectly?

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for your question. I'm advised that the minister continues to be in close contact with both her Ukrainian counterpart and our NATO allies, including at multiple NATO defence minister's meetings, to see how Canada and the alliance can continue to provide support to best respond to Ukraine's evolving security needs and to coordinate our current and future efforts.

I note that following meetings of NATO Ministers of Foreign Affairs, NATO confirmed today its commitment to provide more aid to support Ukraine, including stepping up humanitarian aid and financial support.

Colleagues, the discussions are ongoing and I understand that consideration is being given to provide equipment to help Ukraine protect against chemical and biological threats.

JUSTICE

SYSTEMIC RACISM

Hon. Wanda Elaine Thomas Bernard: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, one of the root causes of the overrepresentation of Black people in Canadian prisons is systemic, anti-Black racism. One of the major barriers that many Black prisoners face is being labelled as part of a "security threat group." This label can be applied to their file for simply wearing a durag or for the neighbourhood in which their family resides. This label stays on their file whether or not they are currently gang-affiliated and it impacts the treatment in prison, eligibility for programs and for parole. This is only one example of anti-Black racism present in Canadian prisons.

• (1440)

Senator Gold, what is being done to address systemic anti-Black racism in Canada's prisons and the criminal justice system?

Hon. Marc Gold (Government Representative in the Senate): Thank you, senator, for your question. As we all know, far too well, Indigenous people, visible minorities, including Black Canadians, are overrepresented in our criminal justice system and this needs to change.

The government is working to create the conditions for everyone who works within the criminal justice system to take the necessary steps to redress this and to produce more equitable outcomes. I'm advised that the government is also providing Black-Canadian offenders with services aimed at supporting their reintegration, including addressing cultural employment and mentorship needs.

I'm further advised that the Correctional Service of Canada is studying the in-custody experience of racialized inmates including Black Canadians, which is expected to produce a full research report this fall.

As we know, the government has also introduced Bill C-5, which represents an important step forward. These changes, if and when the bill passes, will ensure that our criminal justice system is more fair, effective and will keep Canadians from all communities safe.

Finally — and this goes without saying — there is more work to be done. The government knows it. The government is committed to doing it.

FOREIGN AFFAIRS

RUSSIAN DIPLOMATS

Hon. Larry W. Campbell: Honourable senators, my question is to the Leader of the Government in the Senate.

I would like to start with the first two lines of a Johnny Cash song:

> There's a man going 'round taking names
>
> And he decides who to free and who to blame.

Leader, as a fine musician, I'm sure you're familiar with this song. I ask you to consider it in the following context: In 2014, Canada expelled Russian diplomats after the illegal and immoral attack and occupation of Crimea in Ukraine. In 2018, Canada expelled Russian diplomats after the Kremlin poisoned a Russian and his daughter in England.

The world now watches as Vladimir Putin — who will forever be known as the "Butcher of Bucha" — murders, rapes, burns and destroys the citizens of Ukraine. There can be no doubt about this, despite the words of the butcher's henchman ambassador to Ottawa.

The government asserts that if we expel, the Russians will retaliate and we will lose the ability to gain backdoor information on the situation or, God forbid, lose our ability to be influential. Yet, on at least two other occasions that were horrendous in nature, the government did expel the diplomats.

The invasion of Ukraine is far beyond the horror of these two occasions. The right thing to do is to admit that Russia has systematically committed crimes against humanity and say so. The right thing to do is have our UN ambassador work tirelessly to have this country known as Russia thrown off the Security Council where it has veto power. The right thing to do is to the remove the murderous regime from the United Nations Human Rights Council. But first, when will this government expel all Russian diplomats from our country? I started off by saying, "There's a man going 'round taking names and he decides who to free and who to blame."

Where will the government be on this list? Thank you.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question.

Canada has been very clear in both clearly condemning Russia's actions in Ukraine and naming it for what it is.

It is also the case that Canada, in various ways and certainly through our ambassador to the UN, is also taking steps to isolate Russia in all respects that it can. I think we in Canada should be happy that, in fact, the UN has removed Russia from the Human Rights Council. Efforts continue to be under way with regard to other diplomatic measures.

With respect to your question, the government continues to evaluate the costs and benefits — both to Canadian interests but also to the interests of our allies in Ukraine — for maintaining or not maintaining our diplomatic presence in Moscow, where information about what is actually happening on the ground resides, not sheltered through the disinformation and misinformation that is flooding the world in some cases, huge swaths of the world. The government will continue to act responsibly as it evaluates what measures, if any, to take with regard to Russian diplomats in Canada.

Senator Campbell: There's a French proverb that reads:

[*Translation*]

"It is madness for sheep to talk peace with a wolf."

[*English*]

If my French is as poor as I believe, it worked. If, as the government says, they fear the Russians will retaliate, how do you explain that Germany has expelled 40 diplomats; France, 35; Italy, 30; Spain, 25; and, in fact, the European Union countries have expelled more than 230 Russian officials since the Ukraine invasion began.

I would suggest that these countries that share close space with Russia will be far more at risk of retaliation than Canada. Are they wrong or is it simply a fact that this government talks a good story but lacks the will or the courage to take action against the diplomats of this murderous regime? Thank you.

Senator Gold: Thank you for your question. Canada is not afraid to take the actions that it needs to take to support the democratic government and the peoples of Ukraine, and our actions demonstrate that. Each sovereign country must make its own decision as to how and what measures to take, which measures will be effective, which will be performative and which will serve the best interests not only of its own citizens but also of its allies and Canada will continue to act responsibly in that regard.

FINANCE

FEDERAL INCORPORATION FEES

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, my question is also for the government leader.

Among the promises the Liberal government made to small businesses during the 2019 federal election campaign was a commitment to cut the cost of federal incorporation by 75%, from $200 to $50. This is a relatively small promise for a federal government to make, but it matters to entrepreneurs as every dollar counts when starting a new venture.

A recent answer to a written question on the Senate Order Paper states the government "continues to assess the impact of reducing the fee."

Instead of saying when this fee will be cut, the answer notes that annual incorporations have increased by over 100% within the past five years.

Leader, this sounds very much as though the NDP-Liberal government has chosen to abandon this promise made by the Prime Minister to small businesses. Why?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I don't know that the way you characterize it is the case at all, but I certainly will make some inquiries and be happy to report on the status of this particular policy initiative.

TRANSFER OF SMALL BUSINESS

Hon. Yonah Martin (Deputy Leader of the Opposition): Yes, it's very important in every change that we make to help small businesses, even the smallest of fees will make a big difference for them.

On another matter of importance to many small businesses, is Conservative MP Larry Maguire's Bill C-208, which reduces the taxes paid when transferring family farms or small businesses to family members. Although Bill C-208 passed last June, the Trudeau government never supported this bill and, in fact, even attempted not to implement it through a finance department press release.

In July, on the night before a committee of the other place intended to examine the government's defiance of Parliament on this bill, Minister Freeland happened to release a statement acknowledging the law had come into force. The minister committed to bringing forward changes to Bill C-208 in November.

• (1450)

Leader, here we are in April, nine months later, and we still don't know what the NDP-Liberal government intends to do with this bill. What are your plans with respect to Bill C-208?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I do not have information as to the status of that particular bill. I'll make inquiries and be happy to report back.

INTERNATIONAL TRADE

FORESTRY SECTOR

Hon. Percy Mockler: Honourable senators, my question is also for the government leader in the Senate.

Senator Gold, the President of the Forest Products Association of Canada recently told the House of Commons Standing Committee on International Trade of the industry's concern with anti-Canadian forestry legislation that is currently being advanced in the state legislatures of California and New York. Mr. Nighbor said that these bills, if passed, are designed to restrict Canadian forest exports to those states through their own procurement channels.

The industry is very concerned. And we saw the Forest Products Association of Canada, Unifor and the United Steelworkers calling out the anti-Canadian forestry legislation in California and New York, knowing that it would devastate our forestry sector and our communities. Mr. Nighbor told the committee that they want to see action and engagement on this file from the senior political level of the Government of Canada itself — the cabinet.

Senator Gold, will the Prime Minister and his cabinet defend our forestry sector against these bills going through legislatures in the United States? We know the impact that would have on the livelihood of hundreds of thousands of Canadians.

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question.

I begin my answer by reminding this chamber that the Government of Canada and the previous governments of Canada have always worked hard to defend Canada's forestry industry. In that regard, as we're all aware, the U.S. has indicated it would maintain its unjustified duties on Canadian softwood lumber. And as many in the chamber know, the government launched litigation under chapter 10 of CUSMA in December to fight those duties.

I note that for the past 13 months Minister Ng has been advocating with her counterpart that Canada stands ready to start discussing proper and potential resolution to the softwood lumber issue.

The government is encouraged by Ambassador Tai's recent comments, recognizing the importance of reaching a softwood lumber deal. And the government will continue to defend our forestry workers and our industry to ensure it gets a good deal with our U.S. counterparts.

Senator Mockler: To the Leader of the Government in the Senate, Senator Gold, let's take this into consideration: The Forest Products Association is also asking the Department of Global Affairs to carry out a formal, legal review of both bills currently on the floors of the legislatures in Albany and Sacramento to clearly understand this impact. Mr. Nighbor told the House committee that Global Affairs has so far refused to do this work.

Mr. Leader, I understand, however, that the Forest Products Association of Canada's own independent review of these bills suggests that concern about the potential impacts of these bills go well beyond Canada's forest sector.

There could be precedent-setting impacts in Canada, such as on Canada's agriculture, energy, hydroelectric power and mining sectors, as well as their workers.

Leader, this doesn't appear to be an unreasonable request. Can you tell us why Global Affairs won't review these bills? Will your government intervene to request that the department conduct these reviews? There is much at stake. This will impact hundreds of thousands of Canadians working in those sectors.

Senator Gold: Thank you for your question.

Though I am not aware of what Global Affairs may be doing with regard to these, I can advise this chamber — and I have been advised — that the government is very much aware of the bills that are currently before both the legislatures of California and New York. They are in close contact with industry with regard to those bills.

As colleagues know, our legislation governing forestry are amongst the strictest in the world. We're a climate leader. The U.S. and Canada have always collaborated closely on forest management, notwithstanding the differences that often arise between us and our trading partner in the United States.

The government, as I said before, will continue and will always defend the forestry sector and its workers.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Patti LaBoucane-Benson (Acting Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: consideration of the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs, followed by all remaining items in the order that they appear on the Order Paper.

STUDY ON MOTION TO RESOLVE THAT AN AMENDMENT TO THE CONSTITUTION (SASKATCHEWAN ACT) BE AUTHORIZED TO BE MADE BY PROCLAMATION ISSUED BY THE GOVERNOR GENERAL

FOURTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator LaBoucane-Benson, for the adoption of the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs, entitled *Report relating to Government motion 14 (taxation of the Canadian Pacific Railway in Saskatchewan)*, presented in the Senate on March 31, 2022.

Hon. David Arnot: Honourable senators, I am speaking to you from Treaty 6 territory and the homeland of the Métis. In treaty territory, I can tell you the sun is shining, the grass is growing and the river is flowing, and that's the way it should be.

I rise to speak in favour of the recommendation of the Senate Standing Senate Committee on Legal and Constitutional Affairs that the Senate adopt Motion No. 14. I would like to say that it made good sense for the Senate to send this to the committee. I appreciated the opportunity to attend meetings of the committee to hear witnesses.

The witness for CP Rail advised that the corporation launched the litigation in Saskatchewan with intent to eventually achieve a win-win result. By that, he meant investment or partnership between Canadian Pacific and the Saskatchewan government to develop rail-line infrastructure. My interpretation of that is this: CP is attempting to lever additional monetary subsidies for rail-line maintenance.

The question of fairness has arisen in this debate. I ask my colleague senators these questions: Is it fair for a corporation to claim recovery of taxes it paid since 1905 based on a historic anomaly created 142 years ago? Is it fair for that same corporation to assert a claim to be exempt from taxes in perpetuity today? Is it fair to give one corporation a huge advantage in the marketplace — a place where other competitors must pay their fair share of taxes but not Canadian Pacific? Is it fair to force the taxpayers of Saskatchewan to provide an unjust, unfair enrichment to a corporation listed on the New York Stock Exchange that recorded a profit of $2.8 billion in 2021?

• (1500)

The answer to each question is a resounding no, in my opinion. It is absolutely patently unfair and unconscionable to foist that burden, that responsibility, on the citizens of Saskatchewan.

In my view, "CP Kansas City," as its name will become, comes to court seeking fairness with "unclean hands," and that should never be rewarded. To explain, CP was allowed to abandon passenger service in Canada. They were allowed to abandon branch rail lines throughout Canada, and particularly Western Canada. They obtained subsidies to their liking in 1966. They were described in 1966 by Minister of Transport John Pickersgill as a fine example of good corporate citizenship when they agreed to end the in-perpetuity tax exemption.

Today, I say to you that it is open to draw the opposite conclusion from CP's current actions. In my opinion, if we balance the scales of justice today in the modern era, those scales weigh heavily in favour of the taxpayers of Saskatchewan and not Canadian Pacific Kansas City rail.

The question of retroactivity has arisen in this debate. Concern about questions related to retroactive application of law is valid. Legitimacy of retroactivity is always open to debate. It deserves examination. The courts and the public are well aware of the unfairness of the concept unless there is a legitimate reason. Retroactive application of tax law is legitimate in some narrow circumstances.

The Supreme Court of Canada dealt with this issue in 2007 in the *Kingstreet* case. The court specifically noted the possibility for Parliament or a legislature to enact valid taxes and apply them retroactively to limit the recovery of previously paid ultra vires taxes. The Supreme Court of Canada made it clear that retroactive application of tax law is possible, lawful and constitutional.

In some circumstances, that mechanism may provide an equitable remedy. In my opinion, it is a legitimate remedy to an obvious inequity in the situation we have before us.

The amendment sought by the people of Saskatchewan will not provide a blanket precedent that would allow a hypothetical rogue government to pass laws with retroactive application for some nefarious purpose. The case is far too narrow and very unique. Its wide application is extremely unlikely.

Retroactivity in this case is the only fair way to protect the innocent taxpayers of Saskatchewan from the heavy fiscal responsibilities created by historical anomalies and the fact that CP took up the cudgel of litigation.

I'd like to pause there for a second to consider this historical context. Sir John A. Macdonald did not want one thin dime of financing for the railway to come from the United States of America. He needed Canadians to form a consortium of investors. Canadians George Stephen, from the Bank of

Montreal, and Donald Smith, from the Hudson's Bay Company, stepped up. They sought investors from the United Kingdom, France, Germany and the Netherlands.

The Canadian consortium needed the kind of incentive Macdonald provided — a tax exemption in perpetuity. In February 1885, George Stephen wrote to Macdonald that he and Smith would be considered fools by every businessperson in Canada for taking on such a high-risk venture. Why? Because they did not know the exact cost to build a rail line north of Lake Superior and through the Rocky Mountains. They did not know with any real certainty when revenue would flow to repay that debt. In fact, at one point, Stephen left Parliament Hill in Ottawa — he was an MP — to go home to Montreal, believing that he was about to go bankrupt; he was disillusioned and despondent. But that story changed miraculously.

Stephen and Smith became billionaires in today's meaning. They retired in the United Kingdom and were appointed to the House of Lords: Stephen as Lord Mount Stephen and Smith as Lord Strathcona.

Historical context is very important. I want to remind you of this historical fact. When government surveyors came to the west to survey the land for the railway and the newcomers, they were turned back peacefully by the First Nations people. They were told they were not welcome on the land. That act accelerated the making of treaty with the First Nations in order to fulfill the national dream of a coast-to-coast railway.

As Senator Pate has mentioned in debate, and as Senator Clement raised in the committee and in public, there is much unfinished treaty business in this country. There is a lot of history to examine. The good intentions of the treaty parties were replaced by the paternalistic policies inherent in the Indian Act just a few weeks after Treaty 6 was created.

Now back to the CPR. I do not believe one can find a government in the last 200 years in the Western world that has given a corporate tax exemption to a single corporation in perpetuity and, in addition, incorporated the exemption in the Constitution of the said country. The clause in question is extremely rare and is probably the only example of its kind. The Legal and Constitutional Affairs Committee heard expert opinions of three constitutional law experts. I can say, in my opinion, it is extremely rare for Canadian constitutional law experts to be able to agree on one idea concisely and congruently. They found motion 14 is wholly constitutional.

In addition, the Senate has four constitutional experts, not all lawyers, in our midst: Senator Gold, Senator Harder, Senator Cotter and Senator Dalphond. I believe the first three senators have all commented favourably on the constitutional legitimacy of motion 14.

I have a caution. I believe there is one precedent the Senate should be loath to set. That precedent is the Senate rejecting the report of the Standing Senate Committee on Legal and Constitutional Affairs and, in effect, thwarting the will of the elected members of the Legislative Assembly of Saskatchewan and the will of the elected members in the other place. That will cause major public opprobrium in Manitoba, Saskatchewan, Alberta and, I believe, elsewhere in Canada. I ask any senator thinking about voting against the motion to give due consideration to that precedent-setting consequence. Thank you.

Hon. Jim Quinn: Honourable senators, when I hear the words "constitutional amendment," I believe the matter being considered to be a serious one. We have heard that there have been constitutional amendments in the past, such as when the name of the province of Newfoundland was changed to Newfoundland and Labrador. We also heard other amendments being referenced by honourable colleagues during earlier debates, and we have heard that some of these amendments have been legally challenged after the adoption of the amendment.

The amendment now under consideration has been approved by the Saskatchewan legislature and the lower chamber without debate or committee consideration, including witness input. Only the Senate of Canada has really spent time studying the bill with the involvement of witnesses.

I have two issues that I think we as senators need to reflect upon. First is the retroactivity consideration contained in the bill and the fact that we have the issue before the courts in Saskatchewan. The question of retroactivity for me is a question of fairness. We have heard that there have been numerous occasions over the past decades when a constitutional amendment could have been initiated but was not. Now we're being asked to make the amendment while, at the same time, a court case could be influenced by such an action.

When witnesses at our committee were asked if they felt the current court case could be influenced if this amendment were passed before the conclusion of the court case, there was, I would propose, some belief that the amendment could in fact have an impact on the case. I questioned the Attorney General of Saskatchewan. I asked if he believed, given the primacy of the Constitution, that the amendment of the Constitution could in fact have an impact. His response was:

> It would be our position, senator, that it would have some effect on the litigation, but we're not sure what effect it is going to have.

• (1510)

In conclusion, honourable senators, why would we put the Senate in the position of agreeing with the proposed amendment when even the Attorney General of the Province of Saskatchewan is certain there will be some effect on the court case, but to what extent he's unsure?

After all of these decades, the urgency of this bill on the eve of a court decision seems to be a way to make a change today that could influence tomorrow. Why would we not simply allow the court case to come to a conclusion over the next few weeks, after which the appropriate amendment could be introduced to allow for the request of a constitutional amendment?

Hon. Scott Tannas: Honourable senators, I wish to make some comments on this matter.

First, I want to thank Senator Jaffer for her leadership and the Legal Committee for their efforts on this file. In terms of committee meetings, witnesses and questions by senators, it was all a textbook exercise of the due diligence we undertake in the Senate of Canada, and it was done well.

I had a couple of reflections that I wanted to express. As has been said — and I think will be said more — the experts left us with absolutely no doubt about the legality of this action. It is entirely legal for Saskatchewan to do what they did, and we should not be troubled by that at all.

However, one of the legal scholars, an eminent fellow from the University of Ottawa, did draw a distinction. He talked about the difference between legality and legitimacy, particularly as to the retroactive extinguishment of what is a legal right under a valid contract today. This is the piece that continues to trouble a number of people, including a number of senators, and it troubles me as well.

It also became clear — and Senator Quinn has just referred to this — that this action is intended to have an impact on legal proceedings and on the imminent judgment of a court in this matter. This has helped to highlight the issue for me.

As you may know, I have been troubled by this motion and its potential consequences since it was first delivered to us. I have to say that in my heart I wish it did not have to come to this. For a while I wanted to find out how and why it came to this. However, in the end and on reflection, it really doesn't matter for our deliberations if the government moved too quickly or if the company, as was just suggested, was trying to overplay a hand. It is here and we need to deal with it.

I am offended by the notion of retroactivity and the obvious intention to circumvent court proceedings — not just to put a finger on the scale of justice, but to actually knock the scale off the table.

I am also troubled by the issue of CP being the big, bad company that has unjustly enriched itself through an illegitimate perpetual benefit. I don't think there is another company in the history of our country that has contributed more to the building and preservation of this country through its actions — well over one hundred years ago, but through the actions it took way back then.

Today, Canadian Pacific employs 10,000 Canadians. Ninety-one per cent of the shares of CP are lodged in Canadian financial institutions, which leads me to believe that most of the shares are owned by Canadians — most of them probably in pension funds, mutual funds and so on. I would not be surprised if a significant percentage of Canadians, if not a majority, have some ownership in Canadian Pacific.

The committee meetings, the debates and the extra time we've had for reflection, rather than passing the bill with alacrity — hurrying up and passing the bill, as was suggested earlier — have been helpful to me as I consider what my job as a senator is: sober second thought, but also humility and respect toward other orders of government, especially in my own region. We had a job to do and I think we've done it. I believe that today is the time to vote.

I cannot bring myself to support this motion; however, I do not think it is legitimate for us to vote this motion down. It may be legal, but it is not legitimate. By the same arguments we heard in committee, there are things we can do legally that are not legitimate. I believe that in this case we must do the legitimate thing.

While I cannot support this motion, I do not think it is right to oppose it and risk it being voted down. I will make my own small statement on this issue by abstaining. Thank you, colleagues.

[*Translation*]

Hon. Pierre J. Dalphond: Colleagues, I rise today to express my reservations about the motion before us. These concerns are based on the testimony heard over four hours at the Standing Senate Committee on Legal and Constitutional Affairs and a review of the legal proceedings initiated in Saskatchewan, debates in the legislature of that province and in the House of Commons, relevant laws, and the 313-page ruling that the Federal Court of Canada handed down on September 29 in *Canadian Pacific Railway Company v. Canada*.

I will begin by giving an overview of the context and then explaining my reservations.

[*English*]

In 1880, unable to deliver on the promise to B.C. to be linked to the rest of Canada by a railway, the federal government signed a contract with a group of entrepreneurs, who would become the founders of the Canadian Pacific Railway Company.

In consideration for constructing the railway and operating it in perpetuity, the contract provided, among other things, for the grant of $25 million to the company; the transfer of 25 million acres of what was considered Crown land to be sold to settlers brought to the West by the company; and a tax exemption in perpetuity in connection with certain property.

Commenting on the contract, Justice Nesbitt of the Supreme Court of Canada wrote, in 1905, in *Canadian Pacific Ry. Co. v. James Bay Ry. Co.*:

> . . . the undertaking was thought to be so hazardous that exceptional privileges were deemed necessary to induce the contractors to enter upon the undertaking . . .

Today, we are dealing with the tax exemption found at clause 16 of the contract, which reads as follows:

> The Canadian Pacific Railway, and all stations and station grounds, work shops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company shall be forever free from taxation by the Dominion, or by any Province hereafter to be established or by any Municipal Corporation therein . . .

• (1520)

In other words, the agreed upon exemption in connection with certain property was to include federal and municipal taxes as well as provincial taxes should provinces be established.

In 1905, Parliament created the province of Saskatchewan from what was once more considered federal Crown land. Mindful of the government obligation to continue the tax exemption, Parliament included, at section 24 of the Saskatchewan Act, a restriction preventing the use of provincial taxation powers in a way that infringes clause 16 of the contract.

It is not disputed that, since 1905, the company has paid all the provincial taxes imposed from time to time by Saskatchewan, and until 2008, the company did not argue that portions of these taxes could be related to property covered by the tax exemption found in the contract.

However, the company changed its position further to an important 2007 judgment by the Supreme Court of Canada in *Kingstreet Investments Ltd*. In that decision, the court concluded that amounts paid pursuant to a tax later found unconstitutional may be reclaimed without statutory time limits. In other words, a government can never benefit from collecting an unconstitutional tax.

Being of the view that the tax exemption included in the 1880 contract enjoys constitutional protection, thus making ultra vires any tax collected contrary to it, the company initiated legal proceedings to recover certain amounts paid to Revenue Canada and to Saskatchewan, Alberta and Manitoba. In the Court of Queen's Bench for Saskatchewan, the company stated that if it were to prevail, it could be entitled to a refund as of December 31, 2020, of about $341 million. This estimate breaks down as follows: fuel taxes $248 million, sales taxes $49 million, income taxes $14 million and corporation capital tax $4 million.

The purpose of the constitutional amendment before us is clear: to remove from Saskatchewan's internal constitution the obligation to honour the tax exemption found at clause 16 of the contract, retroactive to 1966.

I will now express my concerns. My first concern, which I share with Senator Simons and Senator Tannas, is that the motion would repeal Saskatchewan's obligation back to 1966. Before the committee, the constitutional experts concurred that the Legislative Assembly of Saskatchewan, the House of Commons and the Senate have the authority together to amend section 24 of the Saskatchewan Act by resorting to section 43 of the Constitution Act, 1982, called the bilateral amendment procedure.

They also agreed that this authority should include the ability to make an amendment that applies retroactively, adding that the motion, if adopted, will be the first constitutional amendment with retroactive effect, the first in Canadian history.

However, these experts, especially Professor Benoît Pelletier, to whom Senator Tannas just referred, expressed concerns about how the retroactive application of a constitutional amendment may impact taxpayers' settled expectations, as well as legal principles such as vested rights, including private rights, and finally, the integrity of the rule of law.

My second concern is that the Saskatchewan government has designed this constitutional amendment to affect the outcome of ongoing litigation before that province's court. I share the concerns of Senator Quinn. Essentially, Saskatchewan seeks to extinguish the company's right to argue that it is entitled, pursuant to section 24 of the Saskatchewan Act, to claim a refund in connection with some taxes.

Today, we are asked to adopt this motion without further delay because the trial in Saskatchewan is set to resume soon. I am disheartened to see a province using the constitutional amendment process to interfere with the outcome in a pending legal proceeding.

My third concern is the lack of need for a constitutional amendment.

Colleagues, you may not be aware of it, but the scope of the tax exemption was the subject of the recent Federal Court judgment I referred to at the beginning of my speech. This judgment rejected the company's arguments that it was entitled to a refund of some federal taxes. In fact, the judge adopted the federal government's arguments and concluded that the tax exemption, as drafted, was not intended by the parties to cover income tax, fuel tax and what is often called carbon tax.

The judge concluded that the exemption could apply only to the federal tax on capital stock of the company, a tax repealed in 2006 and refunded by the Canada Revenue Agency to the company before the Federal Court trial, rendering that point moot.

Of course, if the scope of the exemption does not include federal income tax or federal fuel tax, it cannot include Saskatchewan income tax or fuel tax. Moreover, it cannot logically include Saskatchewan sales tax, because excise taxes are exempted. In fact, the exemption could only apply to Saskatchewan's capital tax on large corporations, a tax reduced to zero in Saskatchewan in 2008.

In other words, if the interpretation of the contract made by the Federal Court is adopted by the Saskatchewan courts, the amount at stake is not $341 million, but a mere $4 million.

Some will reply that this judgment has been appealed by the company and is now pending before the Federal Court of Appeal, and thus not final. This is true. But why not wait for that decision and possibly that of the Supreme Court of Canada before resorting to the ultimate tool, a retroactive constitutional amendment?

The answer seems to be that the Saskatchewan government prefers to impose an outcome in the provincial courts. However, judicial proceedings will continue at the federal level. Thus, if the Federal Court judgment is confirmed in appeal regarding the scope of the contractual tax exemption, the amendment's sole impact will be to have prevented a refund of $4 million to the

company by Saskatchewan. Is that worth a constitutional amendment, one that is precedent-setting on retroactivity? I believe not.

Unfortunately, the Federal Court judgment was not mentioned in the other place or in the Saskatchewan legislature. Incidentally, in both places, as Senator Harder said, the motion was adopted without any witnesses being called, including experts, of course.

My fourth concern is about another reason advanced by the Saskatchewan government to justify the motion. The preamble of the motion states, "Whereas on August 29, 1966 . . . [the] Company had no objection to constitutional amendments to eliminate the tax exemption . . . ."

Colleagues, that assertion has been rejected by the Federal Court. Based on days of evidence and arguments, the trial judge concluded that in 1966 the company renounced only the exemption in connection with municipal taxes. In other words, the court found that the company did not agree to a constitutional amendment to eliminate the tax exemption in connection with federal and provincial taxes as alleged in the motion. Moreover, that conclusion of the Federal Court is accepted by the federal government that agrees that the contract is still binding, including clause 16.

An assertion to the contrary in the motion is even more surprising when made by the Saskatchewan government, considering that it elected to intervene in Federal Court proceedings. How could it ignore the judgment?

Unfortunately, many speeches in the other place have referred to this rejected assertion to justify supporting the motion, unaware of the Federal Court's rejection of it. In my view, a government relying on a fact that has been proven false is showing the utmost disregard for the courts of this country and their mission to determine disputed facts.

My fifth and last concern is about the likely consequence of the adoption of the motion to the federal treasury.

Before the committee, the federal Justice Department acknowledged that the contract still binds the federal government and that the scope of the tax exemption clause will not be affected by Saskatchewan's constitutional amendment.

Thus, if the adoption of the constitutional amendment results in a loss for the company of some provincial tax exemption in Saskatchewan, the company could sue the federal government for breach of contract and seek compensation.

• (1530)

Interestingly, no one in the House of Commons mentioned this possibility. In fact, many speakers claimed that the constitutional amendment is necessary to prevent a refund of $341 million to the company. The logic of this argument means, since the contract remains in force, that this substantial amount may accrue to the federal government. Surprisingly, the risk that the federal treasury would be left holding the bag seems to be of no concern to the motion's supporters.

On the other hand, if the federal government prevails again in appeal, then this unprecedented retroactive constitutional amendment would be proven to have prevented a refund of a mere $4 million by Saskatchewan, most likely to be compensated by the federal government as it did for the federal tax on capital.

In conclusion, colleagues, I will vote no to this motion, which I consider to set a dangerous precedent. I don't have to decide if some people may argue that it is illegal or an abuse of the constitutional amending process, but I think the legitimacy of the motion has been proven to be non-existent. Thank you.

Some Hon. Senators: Hear, hear.

The Hon. the Speaker: Senator Richards wishes to ask a question. You only have about 1 minute and 10 seconds left, Senator Dalphond. Do you wish to take a question?

Senator Dalphond: Yes.

Hon. David Richards: Senator Dalphond, will this concern other industries across the country? Will this set a precedent that will open up a litigation can of worms?

Senator Dalphond: In my view, this country is based on the principle that a contract is the law of the parties, and the contract should be respected until amended. It was amended in 1966 to remove the tax exemptions for municipal taxes, but it was not amended to remove the other taxes, provincial and federal. Therefore, the rule of law shall apply and leave the courts to decide what is the scope of the exemptions and trust the court to make the right decisions and come to the right conclusions.

The Federal Court said that the federal Crown was right in the definition of the scope of the contract, and I don't see why Saskatchewan is not ready to let its own courts decide if the scope of the contract is the scope that has been defined by the Federal Court.

Hon. Brent Cotter: Honourable senators, I wish to speak briefly in support of motion 14, which will adopt a resolution to amend The Saskatchewan Act.

The Legal and Constitutional Affairs Committee heard and reported that the proposed constitutional amendment is legal, including its retroactive aspect, and has recommended its adoption.

My remarks will focus on two process points and two points on the policy dimensions of the issue, which I will call the equities process.

First, our process. I want to thank Senator Tannas for his determination in seeing this motion referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration. As others have said, the Senate appears to have taken this important question more seriously than others, and this does honour to this chamber.

We learned a good deal about the motion from the parties significantly affected by it, giving them a hearing in a sense, and from experts. All of us from the committee came away better informed, more able to advise the Senate as a whole and more able to make the best possible decision with respect to this motion.

Thank you, Senator Tannas.

A second process point related to the substance of the issue itself. A multi-province approach to this historical anomaly, as Senator Simons suggested two days ago in her very fine speech, is or would be good policy but not an immediate option for a couple of reasons.

First, as Senator Dalphond has noted, this is a bilateral constitutional amendment, a Canada one-province amendment, and any motion and resolution therefore needs to be province specific. They have to be individual motions.

Second, the one before us is specific to Saskatchewan. Even if we would like to form a common front on this issue, despite efforts, none has been developed, and we have little choice but to deal with the amendment before us.

With respect to the equities, in one aspect of this, I hope to answer Senator Quinn's concerns and, quite frankly, some of Senator Dalphond's suggestions.

The first point is legal. CP gave up its provincial tax exemption in 1905. By that time, CP was doing just fine, thank you very much, and its initial investors, according to Pierre Berton and others, had become immensely wealthy and quite distinguished as a result of the transcontinental railway.

CP has paid provincial taxes uninterrupted for over a century. As Senator Arnot noted, it was lauded as a good corporate citizen by then Minister Pickersgill for additionally giving up the municipal tax exemption in the other place in 1966, having already given up the provincial tax exemption.

I want to suggest to you that any other understanding of provincial taxes is not plausible. How likely is it, for example, that Tommy Douglas, a provincial-rights premier and notoriously careful about his government's finances, would only have lobbied Ottawa, as he did, for an end to CP's municipal tax exemption if, at the same time, CP was still claiming an exemption for provincial taxes? Not a chance.

CP abandoned this provincial tax exemption long ago. Let me just say, as a matter of contract law — which you have just heard Senator Dalphond speaking to — if this was just a contract, the fact that CP abandoned its tax exemption would be today held against it. In any other context than constitutional law, legal doctrines of estoppel would prohibit CP from now coming forward and claiming this exemption.

The concept of estoppel, simply put, is that you are estopped from asserting a right that you have abandoned, which CP did, and that someone else has relied upon, which the Province of Saskatchewan has done. Unfortunately, estoppel is recognized everywhere except with respect to constitutional rights. With the CP tax exemption, long abandoned, embedded in the Constitution, CP has been able to get around this estoppel problem and raised, a century later, something that in any other context it could not do.

As Senator Dalphond has noted, the Supreme Court of Canada decision in *Kingstreet* enabled taxpayers to go after present and back taxes that are found to be ultra vires. CP combined these fortuitous developments to reassert its long-abandoned exception from provincial taxes and now seeks to pocket in its claim up to $340 million from the Government of Saskatchewan, but essentially from the taxpayers of Saskatchewan.

Perhaps it is what corporations, or at least the Canadian Pacific and Kansas City Southern Railway, think they should be doing on behalf of their shareholders, but it is unprincipled. If the idea of making the constitutional amendment retroactive sticks in your craw, this corporate manœuvre should stick in your craw even more — we have the authority to prevent it from happening.

My second policy or equities point is this: Only Saskatchewan, Alberta and Manitoba are exposed to this vulnerability. No one, for example, exempted the headquarters of CP from tax — wherever it might have been — in 1881. This has exposed these three provinces, since 1905 and 1881 respectively, to a vulnerability that is unacceptable in principle.

If nothing turned on it, we might have just left this to be a curious relic of Canada's peculiar constitutional history, as, in fact, we have done since 1905, but something does turn on it. When a company revives this relic of history to try to assert a claim it has long since abandoned, this is nothing less than an attempt to exploit an unintended loophole to avoid paying taxes that, like other taxpayers, it has actually been paying for a very long time. What turns on it is a financial risk to three provinces that should never have been imposed on them in the first place.

Senator Dalphond argues that it's a small financial risk. As a matter of principle, that's irrelevant. The basis on which he makes that argument is an interpretation by a trial judge in another case that has no binding effect at all on Saskatchewan or the people of Saskatchewan.

• (1540)

In public finance terms, what turns on this is a potential burden of hundreds of millions of taxpayer dollars, a responsibility they should never have been asked to shoulder in the first place.

Your vote on this issue is significant, in part on the basis of what you will be saying to the people of Saskatchewan and what you will be saying about tax fairness to three provinces that Ottawa burdened unfairly over a century ago.

If you are inclined to vote against this motion because of its retroactivity, I ask to you keep in mind these two things: first, the unfairness of this burden from the get-go; and second, the opportunism pursued by CP in this venture. Thank you. *Hiy hiy*.

Some Hon. Senators: Hear, hear.

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

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

(Accordingly, the Senate adopted the motion that it agree with the proposed resolution to amend the Constitution.)

BUSINESS OF THE SENATE

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I wanted to correct the record. I inadvertently slipped up in a response to Senator Batters' question. I clearly should spend some more time looking for myself on the internet.

In strict terms, I've never actually been a member of the Operations Committee, though I've attended every meeting and my reports from the Senate to the committee are a standing item on the agenda. I continue to be a regular participant as invited and as appropriate.

However, from a strict membership standpoint, only ministers of the Crown can be considered members of cabinet committees. So I wanted to correct the record. Let me add, if I may, that I'm not here for trophies or for titles. I'm here to do the best I can for Canada and to serve the public to the best of my ability.

I do apologize for the error in my response. Thank you.

Some Hon. Senators: Hear, hear.

STRENGTHENING ENVIRONMENTAL PROTECTION FOR A HEALTHIER CANADA BILL

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Kutcher, seconded by the Honourable Senator Duncan, for the second reading of Bill S-5, An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I rise to speak to Bill S-5, known by its short title as the strengthening environmental protection for a healthier Canada act.

Our colleague Senator Kutcher, the sponsor of the bill, pointed out that the long title is a mouthful, so I will take his lead and just refer to it as Bill S-5.

Given what we have been through these last two years, it is hard to imagine anyone being opposed to legislation or anything else that looks to provide all Canadians with as healthy an environment as possible. Health is at the forefront of all our minds and will be for some time to come.

Protecting the environment has always been at the forefront for Conservatives. After all, it was Brian Mulroney — voted Canada's greenest prime minister — who took strong and successful action to stop the acid rain problem. Successfully navigating that issue was no small achievement at the time.

However, if the coronavirus pandemic demonstrated anything, it was the limits of governments to deliver on such promises as the right to a healthy environment. Yet this is what the government has, with great fanfare, made a cornerstone of this bill.

It's not that I don't applaud the effort, but we all know there are limits to what the government can do to protect that right — limits that stem from environmental threats beyond their control, obviously, but also from government ineptness, which has been a hallmark of this NDP-Liberal government in particular. Their handling of the pandemic is a good example. No government should have been better prepared to deal with a pandemic, given our experience with SARS and H1N1. But still, we were totally unprepared.

Not only were we unprepared, but the NDP-Liberal government's actions in the year leading up to the pandemic made things worse by closing down three of our emergency stockpile warehouses and throwing out millions of items of PPE that could have been used to deal with the first-wave surge, effectively shutting down our world-renowned infectious disease early warning system in the six months prior to the outbreak and sidelining scientists at the Public Health Agency in favour of administrators.

I don't want to belabour the point, but suffice it to say that while we all support Canadians having the right to a healthy environment, I am less than confident that this government can deliver on that promise.

Remember, too, that the right to a healthy environment, as recognized in Bill S-5, is not a legal right like a Charter right. It is entirely confined to areas under the Canadian Environmental Protection Act, or CEPA. It remains to be seen what exactly is accomplished by recognizing this right in the legislation.

I am not arguing against it. I am just somewhat worried that the government is claiming more by it than is justified, that there is less here than meets the eye, but that can be sorted out at committee.

Honourable senators, as Senator Kutcher informed you, this is the first time that the Canadian Environmental Protection Act has been updated since 1999 — so, it has been more than 20 years. Again, it is hard for me not to look at this through the prism of the pandemic where we — this government, in particular — clearly let our guard down in the 20 years that have passed since the SARS report that, in fact, established the Public Health Agency.

It is hard to argue with finally updating CEPA after 20 years. From what I have seen, most stakeholders agree. Many of you, like me, have probably heard from some of them. Stakeholders like the Chemistry Industry Association of Canada support the bill as a good way to address the shortcomings in CEPA. Cosmetics Alliance Canada supports it as well, as long as decision making continues to be based on sound science and risk assessment.

Furthermore, they wrote in their letter in support of the bill that they believe it is important to review any and all regulatory frameworks from time to time. That is good advice, and taking a look at the entire regulatory framework will hopefully be a by-product of our study of the legislation when it gets referred to committee. However, what they didn't support were amendments to the legislation that do not have the support of all the stakeholders, most of whom, from what I gather, were consulted in the preparation of this legislation.

Honourable senators, this bill is really a housekeeping bill. It deals with regulatory modernization and is not in any real sense an expansion of environmental protection in spite of what the government has freighted on to it. For instance, there is nothing wrong with specifically singling out vulnerable Canadians for mention in the right to a healthy environment, but even if they were not specifically mentioned, they would have that right by virtue of simply being Canadian. But this government cannot resist any and all opportunities to signal its own high virtue. That is not always in the best interests of science.

Honourable senators will recall that the government allowed virtue signalling to get in the way of science when it refused to ban foreign flights from China in the early days of the pandemic, calling it racism. Yet the SARS report was clear that ". . . travel plays a pivotal role in the rapid dissemination of disease."

In fact, the science on this was well established even before SARS, but the government that supposedly follows the science, as they like to tell us, ignored that.

• (1550)

So while the bill ticks off the usual boxes for virtue signalling to the NDP-Liberal government, it does not address the environmental committee recommendations around national standards for clean air or clean water.

Honourable senators, we cannot let the science get sidelined or hijacked by activist causes. The danger from toxic substances is real. Senator Kutcher, in his speech, provided us with two stark examples of the damage done to a community by toxic chemicals: one in Japan and the other in Grassy Narrows in northwestern Ontario. In both instances the cause was mercury dumped into the water, and the results were tragic.

There are other well-known instances of toxic chemicals wreaking havoc that I will mention. We have all heard of the Love Canal, an abandoned waterway in New York State, into which the Hooker Chemical Company dumped 21,000 tons of chemical waste in the 1950s. Twenty years later, in 1976, the canal overflowed its banks and the chemicals made their way into the developed area in the surrounding neighbourhood. Area residents began to report children suffering from chemical burns, foul odours, including nausea, undrinkable water and black sludge due to the resurfaced chemicals. One local resident, the president of the Love Canal Homeowners Association, began to mobilize public attention, organizing petitions, protests and speeches, culminating in the passage of the Comprehensive Environmental Response, Compensation, and Liability Act. The New York State health commissioner declared a public health emergency. He sought to relocate particularly vulnerable pregnant women and children out of the area.

In 1978, he published a report entitled *Love Canal: Public Health Time Bomb* describing Love Canal as a modern-day disaster, both profound and devastating. The governor of the state of the New York, Hugh Carey, in the midst of an election, got involved and agreed to relocate 239 families living close to the canal.

Not long after, President Jimmy Carter declared an emergency in the area. The Love Canal incident galvanized U.S. public opinion about hazardous waste sites that persist to this day. Billions of dollars have been spent to clean up abandoned waste sites, all galvanized by the Love Canal.

Similarly, in the late 1980s the Natural Resources Defense Council, an environmental think tank, concluded that the continued use of Alar, a pesticide long used on apples, would cause cancer in 1 out of every 4,200 preschool children. That finding made its way on to the news show "60 Minutes," whose host Ed Bradley called Alar the most potent cancer-causing chemical in our food supply.

Celebrities like Meryl Streep became involved, as did an activist group called Mothers and Others for Pesticide Limits. The demand for apples plummeted, and they were removed from store shelves and widely banned in schools.

The problem with both Alar and the Love Canal story is that the dangers were non-existent in both cases, or at the very least vastly overexaggerated. In the Alar case, the U.S. Environmental Protection Agency, EPA, estimated the risk for preschoolers not to be 1 in 4,200 but in fact 1 in 111,000. In the Love Canal case, peer-reviewed follow-up studies conducted by the New York State Department of Health uncovered no abnormal health trends in Love Canal residents.

This finding was later supported by analyses done by the American Medical Association, the National Research Council and the Centers for Disease Control and Prevention. In fact, an exhaustive study by the Environmental Protection Agency in 1982 found no evidence of environmental contamination at the Love Canal. But in both instances, the science and politicians were overwhelmed by an activist-led outcry that caused great social panic and cascaded into real-world consequences with no basis in fact.

Honourable senators, I say this neither to undermine Senator Kutcher's very legitimate examples of the damage that can be done nor to undermine Bill S-5. I say this to you to underscore the complexity of the issue we are facing, the need for, as the cosmetics association said, decision making to be based on sound science and risk assessment, not on activism, and to urge the committee that studies this bill to undertake a thorough and careful study of all the issues involved and to bring all the stakeholders to the table.

Colleagues, the Conservative caucus supports this bill going to committee for extensive study, and I also support it at second reading. Thank you, honourable senators.

Hon. Dennis Glen Patterson: Honourable senators, I too rise to speak to Bill S-5, with the short title "Strengthening Environmental Protection for a Healthier Canada Act." This bill proposes to do three things. If passed, it would make over 100 changes to the Canadian Environmental Protection Act, or CEPA, as we fondly know it. It would make related amendments to the Food and Drugs Act, and it would repeal the Perfluorooctane Sulfonate Virtual Elimination Act.

I would like to focus my remarks on the first slough of amendments related to CEPA. It is known internationally as a world-leading, flexible and risk-based piece of environmental legislation. It declares that:

> . . . the protection of the environment is essential to the well-being of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention.

According to the Environment and Climate Change Canada website, "Canadians have indicated that the Act is fundamentally sound."

That said, no legislation is perfect. Between 2004 and 2007, consultations were undertaken by Environment Canada and Health Canada in an effort to identify issues with CEPA that could be addressed during a comprehensive review of the legislation.

According to a 2017 paper posted by Environment Canada entitled *The Canadian Environmental Protection Act, 1999: Issues*, these consultations identified 12 specific concerns and 3 broader ones.

The 12 specific concerns all sought to bring clarity and certainty to the bill, as well as to alleviate unnecessary bureaucratic red tape by streamlining certain processes. How, for example, would the government deal with substances added to the Domestic Substances List created in 1988, prior to the requirement for rigorous testing established by CEPA?

There was also the question of national consistency. The report states that national consistency with regard to regulations:

> . . . creates a more level playing field by reducing problems associated with having a patchwork of different regulations across the country being applied to the same industry sectors.

This overall desire for more certainty and consistency across jurisdictions in an effort to mitigate a guessing game by potential investors and proponents is what has helped shape my opinions on this bill.

Colleagues, Bill S-5 seeks to add a preambular clause that would recognize the right of all Canadians to a healthy environment. Clause 5 of the bill then goes on to outline the multi-year consultative process that will set out how to implement this right.

• (1600)

However, as we look at this bill, my question is this: What does that right actually mean for Canadians? To explore this question, we must first look at Canadian jurisdictions that have similar provisions and look at the body of jurisprudence we currently have available.

Ontario, Yukon, N.W.T. and Nunavut all recognize the right to a healthy environment in their legislation in preambular clauses. Quebec put the right into its Environment Quality Act in 1978 and added it to its provincial Charter of Human Rights and Freedoms in 2006. This has resulted in the ability of cases to be brought against CEOs of companies, who, in that province, can be held personally liable for any detrimental environmental effects resulting from their companies' mismanagement.

In recent years, four actions have been launched in Canada asserting that the Constitution guarantees Canadians a right to a healthy environment. In late 2018, a group called ENvironnement JEUnesse launched a class action, alleging that the Government of Canada, by adopting what they felt were ill-conceived GHG emission targets, failed in its duty to protect the right of Canadians to a healthy environment. They argued that this right is inherently granted under section 7 of the Charter of Rights and Freedoms, which lists a right to ". . . life, liberty and security of the person . . . ." In their submissions, they stated that:

> . . . by adopting inadequate targets and failing to put in place the necessary measures to achieve these targets, the government is violating the class members' right to live in a healthful environment in which biodiversity is preserved, protected by the Québec Charter.

The Government of Canada submitted, in turn, that this issue was not justiciable, as those were inherently political arguments. In the end, the class action was not certified. The July 11, 2019, decision did not disagree with the substantive issues but instead found that the age group of Québec residents, 35 years or younger, that the organization claimed to be representing was an arbitrary one. So Justice Morrison did not certify the claim based on procedure, and the substantive question about what a right to "a healthful environment" entails went unanswered.

In 2019, *La Rose v. Her Majesty the Queen* and *Mathur, et al. v. Her Majesty the Queen in Right of Ontario* were launched in quick succession of one another. They were both launched by children throughout Canada and Ontario, respectively. Some of the plaintiffs were Indigenous children, while others were vulnerable children whose medical conditions or geographical locations made them more susceptible to pollutants or drastic

changes in the environment. Both claims stated that section 7 of the Charter created a constitutional obligation to protect the right to a healthy environment.

According to the summary by climatecasechart.com regarding *La Rose*:

> On October 27, 2020, a Federal Court judge dismissed the lawsuit by Canadian youth against the Canadian government on a pretrial motion to strike for failing to state a reasonable cause of action. . . .

A similar motion was put forward in *Mathur*, but it was rejected by the Ontario Superior Court of Justice, so that case has yet to be heard.

The final case that follows this theme is *Lho'imggin et al. v. Her Majesty the Queen*, which was launched in February 2020 during the blockades resulting from some Wet'suwet'en opposition to the Coastal GasLink pipeline. The plaintiffs argued that Canada has failed in its international obligations under UNDRIP, and that the government's inaction on climate change has caused irrevocable damage to their traditional lifestyles and land. They also contend that Canada ". . . has a constitutional duty to maintain the peace, order and good government of Canada . . ." The case has not yet been heard.

Honourable senators, I am concerned by what I have learned. With two cases looking to define what the right to a "healthful environment" would afford, it seems prudent to wait to introduce such a right in legislation.

It brings me back to the need to preserve the certainty that so many have lauded in CEPA. Environment and Climate Change Canada, on their own website, describes CEPA as providing:

> . . . a structured predictable approach to risk management decision-making that provides for the input and full consideration of public values and concerns at all stages of the decision-making process. . . .

In my opinion, if we are to agree to put the official recognition of this right into a bill that industry relies upon for clarity on process and policy, we must ensure we know right here and now what that right means. We should not be waiting years for answers regarding how to implement this right or what actions and expectations that right entitles Canadians to.

There are many other concerns that I have with this bill, colleagues, that will not fit into the short time that I have in speaking to it today. I have not had a chance to discuss my concerns regarding the potential infringement on provincial or territorial jurisdiction, nor do I have time to fully discuss concerns regarding the change in how substances are labelled "toxic" or, as clause 75.1 states, ". . . capable of becoming toxic."

I will close in saying that I believe careful and thorough study of this bill must be done in committee. I sincerely hope our committee is not rushed as it considers this important bill since I, for one, am hoping to gain more clarity and comfort through that process.

Thank you.

Hon. Robert Black: Honourable senators, I rise today to speak to Bill S-5, the strengthening environmental protection for a healthier Canada act.

As you know, I am a longtime supporter of the agricultural industry, and it's what I know best. So as you can likely assume, my focus today will be the way in which Bill S-5 may impact the agricultural industry. I understand that this is the first time the Canadian Environmental Protection Act, or CEPA, has been amended since 1999. It is clear, as my colleague the Honourable Senator Kutcher highlighted in his earlier speech, that a great deal has changed since then. A great deal has changed about our world in general but also in the world of agriculture. Farming is smarter and more connected now than it ever has been before. As things are continuing to change, the agriculture community is ready to change with it.

That being said, I have recently learned from a few agricultural stakeholders that there are minor concerns about the inclusion of and language around a precautionary principle throughout the bill, particularly since it states that a weight-of-evidence approach and a precautionary approach should be taken.

Members of the agricultural community are concerned that it's commonly understood that a precautionary approach is used in the absence of data. A weight-of-evidence approach, on the other hand, suggests there is evidence in place.

While the balance between the precautionary principle and weight-of-evidence approaches referenced in the bill isn't new, as it already is in CEPA, there is a need for clarity as to how it is to be applied to the broader subset of potentially toxic substances this bill brings into CEPA consideration.

It is important to note that there is existing guidance on how the two are balanced by Environment and Climate Change Canada. However, agricultural stakeholders have highlighted the critical need to ensure the end result is as fully informed decision making as possible. And I agree with their concern that Canadian regulators should have a clear mandate to pursue additional evidence where it's found lacking.

Ultimately, given the important role this bill will play in evaluating substances present in our environment, I believe that where there is an absence of data, there should be legislated processes and mechanisms to request more data. I am hopeful that members of this chamber will consider such a matter at committee and investigate how we can possibly strengthen this bill to ensure its success.

• (1610)

Another area that members of the agricultural industry have flagged is regarding chemistries that are not yet registered as pesticides and whether or not they will fall under the Canadian Environmental Protection Act, 1999, or CEPA. This would be

critical to receive clarification on this, so that manufacturers can be mindful of speed to market for innovation and tools that will support food producers.

Due to administrative burdens, farmers remain concerned with lost competitiveness and any further delays in getting access to new innovations. In fact, every year that Canadian farmers go without a product that's available to our major trading partners represents an additional obstacle to their competitiveness and to Canada's competitiveness on the world stage. Health and safety are paramount for and to farmers, but the efficiency of Canada's regulations in addressing this priority needs to be examined closely to ensure it supports and strengthens the competitiveness of the Canadian agricultural industry.

One additional area of concern that agricultural stakeholders have raised is with respect to section k, wherein it states:

> expand certain regulation-making, information-gathering and pollution prevention powers under that Act, including by adding a reference to products that may release substances into the environment;

Depending on how they are applied, there is a question about whether these powers will impact on farm activities. I am hopeful that farmers and the greater agricultural community will be consulted on this section to assess potential implications.

Finally, as Senator Kutcher highlighted, thousands of substances have been identified as needing risk assessments, and many that have been previously assessed may require re-evaluation because of new uses, new scientific information and greater exposures than were the case at the time of the original evaluation.

This could cause delays and backlogs in the use of these substances, which could potentially lead to further issues and concerns. While I am pleased to see that the time is being taken to understand the potential risks of these substances, we must ensure it is an efficient and effective process.

All that being said, there are aspects of the bill that members of the agricultural community have voiced their support for, namely, the efforts to reduce, refine and replace animal testing. Agriculture has actively worked as a partner towards this change, but it cannot be successful without further support from government.

I heard from Syngenta Canada, a leading agriculture company offering innovative products, expert agronomic advice and support for best management practices, on their work in animal testing. They shared that the scientific community has been working to help the government make scientifically backed decisions that protect both human and environmental health with the use of fewer animal studies. To that end, Syngenta has been working with multiple agencies to develop other methods and evaluation strategies that will allow the agricultural industry, government and regulatory agencies to make better decisions. In fact, some of the methods they have developed and advocated for have already been accepted by regulatory agencies.

As a long-standing member of the agricultural community, I've risen on a number of occasions in the Senate Chamber to highlight the role of Canadian agriculture in relation to their efforts to protect the environment and support the fight against climate change.

Across the country, farmers are changing the way they farm by adopting more sustainable approaches, like the way they seed, till and prepare their land, as well as the control of weeds. Practices such as crop rotation and the use of cover crops to help improve soil health, slow erosion and increase soil organic matter all promote healthy crops and livestock, as well as contribute to a healthy ecosystem. All of this helps support a healthier, more sustainable environment.

The challenge for the agriculture and agri-food sector will be to mitigate greenhouse gases while adapting to the impacts of climate change without jeopardizing food security. To do so, Canadian agriculture producers and food processors will need government support in transitioning their operations to be more sustainable, and they will also require the government to continue engaging with the industry as they seek to change decades-long practices and procedures.

On that note, I would like to commend the government for its recently published discussion document on reducing emissions arising from the application of fertilizer in Canada's agriculture sector. This document addresses one of the measures put forward in the government's strengthened climate plan, which is a national target to reduce absolute levels of greenhouse gas emissions arising from fertilizer application by 30% below 2020 levels by 2030. This is an important measure. While many in the agriculture sector are already working to improve nutrient management and reduce emissions associated with crop production, it is important to note that fertilizers are responsible for a growing share of overall agricultural emissions.

I was pleased to see that the document discusses the 4R Nutrient Stewardship approach developed by Fertilizer Canada, as it was raised by a large number of stakeholders during the first phase of consultations as a pathway for achieving emission reductions. This is exactly the type of ongoing consultation and collaboration that is needed going forward.

I hope that the officials from Environment and Climate Change Canada, in addition to those of Agriculture and Agri-Food Canada, will continue to strengthen and enhance their relations with Canada's agricultural community. As farmers and the agricultural community at large are the stewards of our land, they must be involved in the conversation around protecting our environment. Most importantly, they are willing to be partners in that conversation and those efforts to safeguard Canadian ecosystems.

Honourable colleagues, I am pleased to see that steps are being taken to update the Canadian Environmental Protection Act, especially after so much has changed since 1999, including our understanding of the environment. However, as I mentioned earlier, the agricultural community has some concerns about the language and use of some of the matters included in Bill S-5, and we all believe these issues should be investigated further by both

the committee and government. Further, it is my hope that this investigation will lead to amendments to this bill in committee and, therefore, before it reaches the other place.

We are all well aware that our world continues to change. With it comes changes in industry, science and the environment. It is my hope that Bill S-5 will give Canadians a well-thought-out and integrated plan for the assessment of substances insofar as it remains committed to the risk-based approach.

It is also my hope that the public and private sectors, as well as everyday Canadians, will continue working alongside and supporting the agricultural industry as they work to adapt to a changing environment and seek to strengthen and enhance their practices. It is not enough to tell farmers what needs to be done to make their operations greener and more environmentally friendly. It must be a collaborative effort that will keep Canada's agricultural industry strong for generations to come.

Thank you. *Meegwetch.*

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

Hon. Senators: Agreed.

(Motion agreed to and bill read a second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Kutcher, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.)

ADJOURNMENT

MOTION ADOPTED

Hon. Patti LaBoucane-Benson (Acting Legislative Deputy to the Government Representative in the Senate), pursuant to notice of April 6, 2022, moved:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, April 26, 2022, at 2 p.m.

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

Hon. Senators: Agreed.

(Motion agreed to.)

• (1620)

FROZEN ASSETS REPURPOSING BILL

SECOND REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Foreign Affairs and International Trade (*Bill S-217, An Act respecting the repurposing of certain seized, frozen or sequestrated assets, with amendments*), presented in the Senate on April 5, 2022.

Hon. Peter M. Boehm moved the adoption of the report.

He said: Honourable senators, I rise today as Chair of the Standing Senate Committee on Foreign Affairs and International Trade to explain amendments to Bill S-217, as adopted by the committee.

Bill S-217, An Act respecting the repurposing of certain seized, frozen or sequestrated assets, otherwise known as the frozen assets repurposing act, or FARA, was referred to the committee on March 1 after being introduced in the Senate on November 24, 2021, by Senator Omidvar.

The committee began its study on March 24 and welcomed three panels of officials and experts over two meetings. We completed clause-by-clause consideration on March 31.

I wish to thank all the witnesses, especially the bill's sponsor, and all committee members and staff for their work in ensuring the committee discharged its duties effectively and in a timely manner. This was very important, honourable senators, given the grave geopolitical conflicts, wars and refugee and humanitarian crises we see all around the world.

Honourable senators, as stated in the summary of Bill S-217, it:

> . . . provides for the reporting and disposition of assets seized, frozen or sequestrated under the *Special Economic Measures Act*, *the Freezing Assets of Corrupt Foreign Officials Act*, and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law).*

The committee adopted two amendments based on recommendations of expert witnesses. Both were moved by Senator Coyle and fully supported by the bill's sponsor, Senator Omidvar. The first amendment is to clause 2 and the second amendment to clause 6.

Ultimately, colleagues, both amendments have the effect of strengthening the bill by harmonizing its language and conditions for repurposing assets with that found in its enabling legislation, the Special Economic Measures Act, also known as SEMA.

These amendments, if approved by the Senate, will help to ensure that courts tasked with repurposing assets frozen in Canada are able to do so fully and in the fundamental spirit of Bill S-217. Therefore, I move the adoption of the report.

Thank you, colleagues.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

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

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

PANDEMIC OBSERVANCE DAY BILL

FIFTH REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology (*Bill S-209, An Act respecting Pandemic Observance Day, with an amendment*), presented in the Senate on April 5, 2022.

Hon. Ratna Omidvar moved the adoption of the report.

She said: Honourable senators, Bill S-209, An Act respecting Pandemic Observance Day, would designate March 11 of every year as an annual pandemic observance day. Bill S-209 was referred to the Standing Senate Committee on Social Affairs, Science and Technology on December 9, 2021. Over the course of two meetings, the committee heard from the sponsor of Bill S-209, our colleague the Honourable Senator Mégie, in addition to eight witnesses representing six different organizations. On behalf of the committee, I wish to thank the sponsor and all witnesses who assisted the committee in our study of the bill.

Based on the testimony received, the committee is recommending one amendment to strengthen the preamble of the bill, explicitly acknowledging the disproportionate effect of the pandemic on certain populations, and adding language around the intent of pandemic observance day. Many witnesses discussed the disproportionate impact of the COVID-19 pandemic on vulnerable populations, including Indigenous peoples, racialized communities, elderly people and members of the LGBTQ2+ communities. The committee also heard the importance of validating diverse lived experiences by including more specific language in the bill.

As amended, the preamble now acknowledges the multi-dimensional effects of the pandemic on every person in Canada in addition to stating that this pandemic has worsened the various forms of inequality in Canada and has had a disproportionate impact on vulnerable people within society and members of historically disadvantaged groups.

The committee heard from the bill's sponsor, the Honourable Senator Mégie, that pandemic observance day would have three purposes: recovery, remembrance and preparation for the future. The committee heard from witnesses that they appreciated this intent and found that it could be stated more explicitly in the bill.

The preamble, as amended, emphasizes that the pandemic observance day would give the Canadian public an opportunity to commemorate the efforts to get through the pandemic, to remember its effect and to reflect on ways to prepare for any future pandemics.

Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

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

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

FIGHTING AGAINST FORCED LABOUR AND CHILD LABOUR IN SUPPLY CHAINS BILL

FIRST REPORT OF HUMAN RIGHTS COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Standing Senate Committee on Human Rights (*Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff, with amendments and observations*), presented in the Senate on April 6, 2022.

Hon. Salma Ataullahjan moved the adoption of the report.

She said: Honourable senators, the committee presented its report, which contains three amendments. I am providing you with the effects of these amendments. Bill S-211 will contribute to the fight against forced labour and child labour by imposing reporting obligations on certain private entities and government institutions. Similar supply chain transparency legislation has been adopted in other jurisdictions, including the United Kingdom and Australia.

The transparency approach encourages the adoption of good practices by giving consumers, shareholders and other stakeholders the information that they need to make informed choices. Clauses 6 and 11 of Bill S-211 set out the specific information that must be contained in annual reports. The

required information is similar for private entities and government institutions. It includes but is not limited to any information on any relevant policies, due diligence processes, employee training or measures taken to remediate forced and child labour. The committee heard from several witnesses that forced labour and child labour arise from complex socio-economic issues. Indeed, child labour often occurs where children need to work to help their families survive. While this bill alone cannot solve these complex issues, it is a starting point that seeks to encourage better practices by both private entities and government institutions.

The first two amendments expand upon the requirements already contained in clauses 6 and 11 to provide information on remediation measures. The effect of these amendments will be to require annual reporting by both private entities and government institutions on any measures specifically taken to remediate lost income for the most vulnerable families affected by measures to address forced labour and child labour.

The purpose of these amendments is to encourage companies and government institutions to think about the impacts of their supply chains on vulnerable families and to ideally go beyond merely avoiding use of forced labour and child labour.

• (1630)

By requiring transparency about good practices relating to remediation, stakeholders will have the information necessary to support good actors, and other actors will be encouraged to adopt better practices.

Finally, for private entities subject to this bill, clause 11 requires that each member of the entity's governing body sign off on each annual report. The committee's third amendment is simply a technical amendment to remove the requirement that such signatures be completed manually. The effect of this will be to allow electronic signatures, thereby simplifying the reporting processes.

I would like to take this opportunity to thank all the witnesses who testified.

I would also like to take this opportunity to congratulate Senator Miville-Dechêne on drafting this bill. This marks the first step toward putting an end to forced labour and child labour in our supply chains. Thank you.

Some Hon. Senators: Hear, hear.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

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

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

DECLARATION ON THE ESSENTIAL ROLE OF ARTISTS AND CREATIVE EXPRESSION IN CANADA BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Bovey, seconded by the Honourable Senator Cordy, for the second reading of Bill S-208, An Act respecting the Declaration on the Essential Role of Artists and Creative Expression in Canada.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Bovey, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.)

[*Translation*]

GOVERNOR GENERAL'S ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Claude Carignan moved second reading of Bill S-221, An Act to amend the Governor General's Act (retiring annuity and other benefits).

He said: Honourable senators, this is a rather complex bill and I need to review my notes. I therefore move the adjournment of the debate for the balance of my time.

(On motion of Senator Carignan, debate adjourned.)

[*English*]

PROHIBITING CLUSTER MUNITIONS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Salma Ataullahjan moved second reading of Bill S-225, An Act to amend the Prohibiting Cluster Munitions Act (investments).

She said: Honourable senators, I first learned of cluster munitions in the 1980s, when Russian troops dropped cluster munitions across Afghanistan, leaving the countryside riddled with unexploded ordnances to this day.

Bill S-225, the cluster munitions investment prohibition act, would create a provision in the Prohibiting Cluster Munitions Act banning investments in an entity that has breached a prohibition relating to cluster munitions, explosive submunitions and explosive bomblets.

Cluster munitions are weapons designed to carry and disperse multiple explosive submunitions and/or bomblets. These weapons can be dropped from an aircraft or fired from the ground or sea by rockets or artillery. They are designed to open in mid-air and release from tens to thousands of submunitions that have the ability to indiscriminately saturate an area on the ground up to the size of several football fields. Anyone within striking areas of cluster munitions, be they military or civilian, has a substantial chance of being killed or seriously injured.

Also, any ordnance that fails to activate upon landing will effectively turn into a landmine on the ground, posing an immediate threat to the population and also for decades after the conflict is over or until the bombs have been cleared and destroyed.

This is my second time introducing this bill. The closest it has come to reality was during the First Session of the Forty-second Parliament in June 2017.

I would like to thank both Senator Jaffer and former Senator Hubley for speaking on this bill in 2017. Your insights, observations and personal experiences have spurred my determination to put an end to investments in cluster munitions in Canada.

My family has witnessed the destruction of these weapons first-hand. At the height of the Russian invasion of Afghanistan, my uncle, an orthopedic surgeon in Peshawar, Pakistan, treated countless casualties of cluster munitions, who, in desperation, had been brought over the border from Afghanistan by any means possible, including on foot, by donkey, pickup truck, car or bus, seeking medical help.

So many years later, cluster munitions are still claiming the lives of Afghan people. Sadly, I fear we may be witnessing this violent past repeating itself in Ukraine.

A few weeks ago, the UN Human Rights Office announced it had received credible reports of several cases of Russian forces using cluster munitions in populated areas in Ukraine. The International Criminal Court has since opened an investigation into possible war crimes, and testimony from survivors of suspected cluster bomb attacks is chilling. Experts also believe cluster bomblets were used in an attack on a kindergarten in the town of Okhtyrka.

These weapons know no borders and do not discriminate between civilians and soldiers on active duty. Cluster munitions were used during the Karabakh conflict, which ended in November 2020. Once again, the cluster munitions attacks caused civilian casualties, as we are currently witnessing in Ukraine.

The UN Office for Disarmament Affairs has made it clear that all types of cluster munitions cause unacceptable harm to civilians.

• (1640)

According to the International Committee of the Red Cross, cluster munitions, generally being free-falling weapons, are vulnerable to the slightest error or gust of wind, which means they can strike well outside the targeted area.

To make matters worse, the high failure rate of cluster munitions can prevent refugees and internally displaced persons from returning to their homes. The looming threat of these weapons also hampers humanitarian, peace-building and development efforts, including the clearance of mines and cluster munitions.

Travis was a U.S. Marine corporal deployed to Iraq. After most of the hard fighting, he decided to stay and volunteer in the removal of unexploded cluster bombs and landmines. On July 2, 2003, he was killed by an unexploded cluster munition. His mother Lynn now speaks out against the use of cluster munitions, saying:

> If even the best trained military personnel can accidentally fall victim to this weapon how on earth do we think we can expect civilians to return to a land littered with them and not fall prey to them.

This, senators, is our biggest fear as we see the conflict in Ukraine.

Despite the Convention on Cluster Munitions' successful implementation in 26 states parties that have since destroyed their stocks of cluster munitions, we still face many challenges in putting an end to the use of these weapons. A total of 16 producers of cluster munitions have yet to commit to stop production in the future, including China and Russia. Consequently, weapons that are unable to distinguish between combatants and civilians are still being manufactured and used in ongoing conflicts around the world, causing a disproportionate number of civilians to be severely injured or killed each year.

According to the Landmine and Cluster Munition Monitor, at least 360 people died or received injuries from cluster bombs in 2020. Casualties from cluster bomb remnants were also higher than for live attacks. Sadly, all recorded victims were civilians and nearly half were children.

Children are particularly at risk of falling victim to cluster munitions because they often mistake unexploded ordnances lying on the ground for toys. In fact, the cluster munitions used in Afghanistan were all disguised as bright toys, and children would reach out to pick them up. The Landmine and Cluster Munition Monitor estimates that 44% of the victims of cluster bombs worldwide are children. The number of children injured or killed by cluster bombs has risen since I last spoke on this bill.

As I just mentioned, drawn by their bright colours and toy-like appearances, children often activate unexploded munitions by picking them up, as did 4-year-old Emam who died from injuries he sustained after picking up a cluster bomblet in 2016 in east Aleppo.

Canada was among the first countries to adopt the Convention on Cluster Munitions in 2008. As of September 2021, a total of 110 states parties are adhering to the convention's comprehensive prohibitions. The convention entered into force on August 1, 2010, and is the sole international instrument dedicated to ending the suffering caused by cluster munitions.

In 2015, Canada ratified the convention and enacted the Prohibiting Cluster Munitions Act. Yet, our current legislation does not reflect our international commitment, and it fails to meet the convention's standards.

In September 2021, the Cluster Munition Coalition, an international civil society campaign working to eradicate cluster munitions and prevent further harm from the weapons, reported that six Canadian institutions had invested a total of US $5.75 million in companies that manufacture cluster munitions.

When I read this report, I was shocked and horrified to learn that Canadian financial institutions were continuing to invest in the production of these insidious weapons of war following the release of a previous report by the Dutch peace group PAX in 2016, which had revealed that four Canadian financial institutions had invested $565 million in cluster munitions manufacturing.

Honourable senators, I believe this is proof that naming and shaming Canadian institutions that continue to invest in cluster munitions manufacturing is not sufficient to uphold our commitment to the convention. We need stronger legislation. Otherwise, it would be hypocritical of us, as Canadians, to pride ourselves on our country's humanitarian work abroad.

I was pleasantly surprised to learn that the Convention on Cluster Munitions' process and substance was modelled upon the Ottawa Convention that banned anti-personnel landmines in the late 1990s.

Unexpectedly, Canada cut its international effort to help clear cluster munitions from Laos in 2012 after contributing more than $2 million between 1996 and 2011. Laos is the most cluster-bomb-contaminated country in the world on a per capita basis. The Vietnam War's legacy in Laos is not an isolated case and 29 countries remain contaminated by cluster munitions. In 2020, casualties due to cluster munition remnants were recorded in six other countries: Afghanistan, Cambodia, Iraq, South Sudan, Syria and Yemen. Sadly, I think we will be adding Ukraine to that list now.

By continuing to allow Canadian institutions and, through them, fellow Canadians to invest in cluster munitions manufacturing, we are complicit in these avoidable deaths and injuries.

Senators, investing ethically has increasingly become an issue that is important to Canadians. In fact, 70% of Canadians believe it is important to invest in companies with strong environmental, social and governance performance.

The Canadian investment community itself has been seeking clarity regarding the issue of investment in cluster munitions, given that there is no definitive prohibition in the current legislation. Many people to whom I have spoken about this bill have been surprised to learn that our legislation does not include an explicit prohibition against investing in companies that manufacture cluster munitions. They have all expressed grave concern that the financial institutions in which they have entrusted their investments would ever invest their money in these weapons.

Investing in companies that produce cluster munitions is an active choice to support weapons that cause devastating harm, mostly to civilians. They are indiscriminate and inhumane weapons that no Canadian financial institution should be investing in. Additionally, as a banned weapon, they are a poor investment. As more countries have ratified the convention, we have seen that the market for these weapons is starting to dry up — we hope.

If the financial resources required to manufacture these weapons were no longer available to the companies that make them, this would be another positive step toward the eradication of cluster munitions. Together we can significantly enhance the protection of civilians during armed conflict, as well as post-conflict reconstruction efforts, in concordance with the spirit of the convention.

A subsequent article in the convention states that there can be no reservations with respect to the legal obligations contained within the convention. They must be accepted in their entirety and without exception. I would also like to mention that Canada played a leading role in drafting Article 21 that established clear limitations with respect to interoperability. Other countries, such as France and Belgium — as well as other NATO and non-NATO states — and the United Nations also value interoperability and do not have such exceptions in their respective laws.

The act in its current form, as stated by former Senator Hubley in 2017, does not go far enough. Bill S-225 aims to bring the Prohibiting Cluster Munitions Act in line with the spirit of the convention. By explicitly prohibiting investments in cluster munitions manufacturing, we would set clear guidelines for Canadian financial institutions that welcomed the idea over a decade ago. Bill S-225 also closes other existing loopholes by

prohibiting Canadian financial institutions from loaning funds to these entities and even prevents them from acting as a guarantor for their loans.

The act has important gaps and has received international criticism. When the Standing Senate Committee on Foreign Affairs and International Trade studied Bill C-6, an Act to implement the Convention on Cluster Munitions, in 2014, it heard from almost 30 witnesses. In addition to the need for an explicit prohibition of investment in cluster munitions producers, a section on joint military operations also raised many concerns. The act was also publicly denounced by the International Committee of the Red Cross, and the International Committee to Ban Landmines and Cluster Munitions called it the worst legislation of any state party to the convention. Simply put, the act fails to meet the standards of the convention.

Many countries, including common law countries, have already enacted legislation prohibiting investments in companies that produce cluster munitions. One of the most effective ways to end the production of cluster munitions altogether is to cut financial ties to companies who produce them. This can only be achieved through explicit and definitive legislation.

• (1650)

In 2016, former minister of foreign affairs, the Honourable Stéphane Dion, was optimistic about Canada's role in disarmament and peace building in an address at a conference marking the twentieth anniversary of the start of the Ottawa Process. He said:

> Under Justin Trudeau's leadership, Canada will again be a leader in disarmament, a leader that works with its international partners to pursue pragmatic but important change. . . .
>
> Canada, as a determined peacebuilder, is committed to making the possible a reality.

Honourable senators, Canada has been a global leader against landmines but has lost its way. The future envisioned by the Honourable Mr. Dion did not come to fruition under the current government.

This is our chance to become leaders against the production and use of cluster munitions by drying up the financial resources to build these weapons. Thank you.

(On motion of Senator Petitclerc, debate adjourned.)

CONSTITUTION ACT, 1867

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Tannas, for the second reading of Bill S-228, An Act to amend the Constitution Act, 1867 (property qualifications of Senators).

Hon. Paula Simons: Honourable senators, I rise today to speak to Bill S-228, An Act to amend the Constitution Act, 1867 (property qualifications of Senators).

I vividly remember the day three years ago when I got that message from Ottawa asking me to provide proof that I was qualified to be a senator, that I owned $4,000 worth of real property.

As it happens, I was on holiday outside the country and I had to scramble to pull together all the necessary documentation to prove I owned my house. I needed to provide a land title certificate from the Alberta Land Titles Office. I needed to provide a property tax assessment from the City of Edmonton. I needed a copy of my mortgage agreement with my bank and a copy of my Alberta driver's licence to prove that my official legal address matched the address on all those other documents, all to prove that I actually lived in the house that I owned.

I was lucky. I did indeed own the little house where I lived. While my lawyer and I hustled to round up all the necessary documentation as quickly as possible, I wondered, why exactly was a $4,000 property requirement still a thing?

Since I speak to a lot of school groups about the Senate, and they often ask me that same question, I set out to find an answer. Here's some of what I tell students when they ask me.

To understand the origin of the property qualification, it's necessary to understand just how tumultuous a time the sixties actually were. I don't mean the 1960s; I mean the 1860s.

It was a decade of seismic shifts in political power, a decade that saw the Russian Empire free its serfs and the United States abolish slavery. It was a decade when Mexico threw off its French imperial occupiers and executed its French emperor, Maximilian I; a decade when Spain deposed its Queen Isabella in its Glorious Revolution; a decade where Italy became a free and united nation, thanks to the revolutionary leadership of Giuseppe Garibaldi.

Of course, 1867 was the year Karl Marx published *Das Kapital*. It was the year of the Fenian Uprising in Ireland. And it was the year the government of Prime Minister Benjamin Disraeli signed the second Reform Act, which enfranchised a

million new British voters, including thousands of urban working men, effectively doubling the number of British men who had the right to vote.

It was against that backdrop that the British North America Act was written and that Canada became a country, which is essential to understanding why we have a Senate in the first place and why one of the key qualifications to be a senator was that you owned a significant amount of land.

Now, $4,000 isn't a lot of money now, but back then it was roughly the equivalent of owning a $1 million worth of property.

In a time of social upheaval and worldwide worker revolts, in a time when elites were rightly nervous about their futures, it's no wonder the architects of Canada's Confederation were keen to set up a form of government that would protect the interests of the landed and the wealthy.

Canada, after all, could have had a unicameral system of government, as our provinces do, with only a single House of Commons. Instead, the powers that be opted for a bicameral system, with an upper chamber modelled on the British House of Lords, which safeguarded the rights of the hereditary landed gentry. Except, of course, the four Canadian colonies that made up that embryo Canada didn't have dukes or barons or earls. We had no hereditary nobility here at all except a few odd remittance men.

Since we couldn't have a House of Lords, it was decided we should have a Senate, an upper body named for the Senate of ancient Rome.

Who would our senators be? Well, the Latin root for "Senate" is "*senex*," meaning old man, so our senators would be older men.

Senators in ancient Rome were appointed, not elected. They were also supposed to be men of outstanding character, imbued with Roman civil virtues. They were meant to be men of gravitas, dignitas, humanitas.

In the days of the Roman Republic, they also had to be rich or at least independently wealthy since Roman senators served unpaid. It was the first Roman Emperor Augustus who added a property qualification. Augustus decreed that no man could sit in the Senate unless he owned property worth 1,200,000 sesterces.

It's probably foolish to try to translate that into contemporary currency, but some who have tried, nonetheless, translate 1 million sesterces into roughly $1 million, though I'd take that with a grain of salt — a fitting expression, since the words "salary" and "salt" come from the same Latin root.

To return to 1867, it's fair to say that the original architects of our bicameral Parliament expressly intended our Senate to mirror its Roman namesake, to the extent that appointed Canadian senators would represent the interests of the wealthy and the landed. Sure enough, when the first 72 senators were called to sit in Canada's first Parliament, they were a collection of wealthy seigneurs and shipping barons, bankers and gentlemen farmers, men of wealth and property. To judge by their photos, you might well assume that ownership of an enormous pair of side whiskers or a giant moustache was also a requirement for the job — a more ornate collection Victorian facial fuzz you could never hope to see.

My friends, it is not 1867 anymore. Victoria isn't on the throne and neither is the Emperor Augustus. Our Constitution is a living tree, capable of growth and expansion within its natural limits. It is in a continuous process of evolution.

That's what Lord Sankey, the British Lord Chancellor, wrote in 1929 when he ruled, in the Persons Case, that Canadian women were entitled to sit in the Canadian Senate. It was a radical change to the qualification rules, and it was five formidable, flawed, unyielding Alberta women — Henrietta Muir Edwards, Louise McKinney, Irene Parlby, Nellie McClung and Emily Murphy — who fought that fight and forever changed the make-up of the Senate.

The first woman, Cairine Wilson, was appointed to our Senate in 1930. While it took a long time, we are now at effective gender parity in this chamber.

Yes, there is indeed a precedent to change the qualifications to sit in the Senate. In 2022, it is anachronistic — bordering on offensive — to think of this chamber as a defender of the rights of rich property owners.

Senator Patterson has already done an excellent job of outlining the ways the property ownership provisions discriminate against the residents of Nunavut, where much land is held in common, and against people who live on First Nation reserves or in Métis settlements.

In 2022, when anyone can apply to be a senator, it should surely be unconscionable to have a system designed to discriminate against Indigenous peoples in this way.

It's not only First Nations, Métis and Inuit Canadians who may be precluded from applying to be senators under the current rules. Given the stratospheric property prices in Vancouver and Toronto, property ownership in some of Canada's largest cities may soon be out of the reach of a generation. If we become a society where even the most accomplished urbanites are primarily renters, not owners, we could disqualify all kinds of talented Canadians from Senate service.

Let me quote the words of a truly great senator from Edmonton, the delightful Tommy Banks, of blessed memory. This is from a speech he gave to the Senate on this issue in January 2009. Banks joked that:

> There was perhaps an apocryphal story that one senator-to-be sought to qualify by having bought a cemetery plot, which was seen to be not entirely in order.

Then he added:

> There have been instances in the past in which persons considering appointment to the Senate have actually bought the garage of someone else. That is a fact.

> This is a preposterous requirement. It is antediluvian and it has no place in the requirements for being named to this place in the 21st century. . . .

To which I say, hear, hear.

[*Translation*]

That said, it will not be simple to get Senator Patterson's amendment adopted. Yes, the Supreme Court ruled in 2014 that such an amendment could be made unilaterally by the federal Parliament without the agreement of the provinces.

However, I should point out that Quebec is in a unique situation. It's the only province in which senators are assigned to a specific division of the province and are required to own property in that division. According to the Supreme Court's reasoning, we can't really do this if the Government of Quebec hasn't agreed.

• (1700)

I don't see any real reason why Quebec would oppose this, given that these sections are so archaic that they don't even include the northern half of the province. I, of course, can't speak for Quebec, but until Quebec is consulted and agrees, I think it will be hard for us to move forward.

[*English*]

That said, I want to thank Senator Patterson for continuing the work of my Edmonton predecessor, Senator Banks. It is time to find a way to extinguish a property requirement, which could certainly be seen as classist if not racist, and to ensure that no otherwise qualified candidate is prevented from applying for a position in the Senate simply because they aren't "landed."

And if we are worried that we are breaking with tradition and disrespecting our history, well, let me quote the words of another Roman Emperor, the Emperor Claudius.

In AD 48, Claudius shocked the Roman Senate by deciding to appoint senators from Gaul, what is today the territory we call France. Many senators were appalled at the idea of appointing these French barbarians from the provinces into the Senate of Rome.

According to the Annals of Tacitus, the Emperor had this response to these Roman hidebound folks, said the emperor:

> Everything, senators, which we now credit as ancient and established, was once new: plebeian magistrates followed patricians; magistrates from Latium followed plebeians; magistrates from all the other races of Italy after the Latins. This thing, too, will become the custom, and what today we defend by means of precedents will be a precedent itself.

Honourable senators, if our namesake institution could adapt to the times and allow into the Senate new and worthy members who didn't meet the old-fashioned qualifications, well, I think we should be able to do the same.

When in Rome, as they say, do as the Romans.

Thank you, *hiy hiy* and *gratias*.

Some Hon. Senators: Hear, hear.

Hon. Marty Deacon: Senator Simons, thank you for that entertaining aspect of the history. I think it's really important to know around this bill.

My question for you relates to the thorough historical perspective you did right up to the work of Senator Banks.

As you have been doing this work, beyond the issues that you describe around Quebec and the will to make a change, are there any other barriers or things that you learned along the way that could stop us from moving forward on this given the issue that you just described at the end of your speech? Is there anything else in the way?

Senator Simons: I think there is consideration, because I think it is important that we live in the provinces that we represent.

And I spoke to one constitutional law professor, Eric Adams, who is Vice Dean of the Faculty of Law at the University of Alberta. I asked him if I should be concerned that eliminating the property requirement might make it easier for people not to live where they say that they do.

His question to me was, "Does the property requirement actually make them live where they say that they do?" And I had to say that, no, it didn't, and he told me that if it is not actually a safeguard now, getting rid of it won't functionally make any difference.

As far as the other constitutional questions, you know, I have been pretending to know something about the law these last couple of speeches. But this place is filled with actual constitutional law experts who could answer that question better than I.

[*Translation*]

Hon. Pierre J. Dalphond: Thank you very much, Senator Simons, for your very interesting speech and history lesson. You suggested that we wait for the situation in Quebec to be addressed, but maybe what we could do is include a clause at the end of Senator Patterson's bill stating that the constitutional amendment proposed in the bill would take effect only when Quebec adopts a similar motion for senators from Quebec. This way, we could get the system set up, and as soon as the Government of Quebec says yes, we could make the change.

Senator Simons: That might be a good idea. That request could be addressed to Senator Patterson, or maybe you want to move a motion in amendment yourself.

(On motion of Senator Martin, debate adjourned.)

[*English*]

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Claude Carignan moved second reading of Bill S-234, An Act to amend the Canadian Environmental Protection Act, 1999 (final disposal of plastic waste).

He said: Honourable senators, I rise to speak to my bill, Bill S-234, An Act to amend the Canadian Environmental Protection Act, 1999 (final disposal of plastic waste).

To recall the words of Senator Frum, who spoke to the precursor to this bill in the last Parliament, what it does is to amend the Canadian Environmental Protection Act to prohibit the export of plastic waste for final disposal from Canada to any foreign country.

[*Translation*]

In effect, Canada would no longer send any of its plastic waste to a foreign country unless it will be recycled or otherwise reused.

I should specify that the list of plastics in schedule 7 was designed so that it can be amended by order in council if necessary. In addition, the penalties set out in the law would apply to any individual or corporation violating the law.

[*English*]

As those of you who were here will recall, this bill was first introduced in the last Parliament as C-204 and made it as far as second reading in the Senate.

It was sent over to us in June 2021 with the full support of the Bloc, the NDP, the Greens and, of course, the Conservatives. We were also led to believe at that time that many Liberal MPs quietly supported it as well.

They are the elected members, honourable senators, and it bears keeping that in mind as we consider this successor bill as it is identical to the bill that arrived here last June as amended by the committee in the House.

[*Translation*]

This also means that I have the opportunity to comment on the bill after hearing speeches by numerous speakers in both houses. That is why I can state with certainty that if there is one thing everyone agrees on, it is the fact that getting rid of plastic waste is a problem, a big problem.

I would like to share what Senator Gold, who opposed the bill in the previous Parliament, said about it, and I quote:

> . . . the world is facing a challenge with managing plastic waste responsibly. Challenges in domestic management of large volumes of plastic waste often result in releases to the environment or landfilling, posing a serious global environmental problem and lost economic opportunity. There is simply no denying that reality.

• (1710)

Senator Gold is right. Although this is a global problem, it is mainly present in the developing world. As our former colleague, Senator Frum, pointed out in her speech on the predecessor to Bill S-234, only 0.03% of plastic waste is mismanaged in Canada. That is a minuscule number compared to countries such as Turkey, which accounts for 1.53% of mismanaged plastic waste; Vietnam, 5.76%; Malaysia, 2.95%; Thailand, 3.23%; and India, 1.88%.

Senator Frum pointed out that these are small percentages individually, but they add up to a significant percentage, and in each case are all orders of magnitude higher than Canada.

From another perspective, according to Our World in Data, Canada mismanaged 23,587 tonnes of plastic waste in 2019. That seems like an enormous amount, but countries such as the United Kingdom and France, which are geographically the size of a small Canadian province, mismanaged 29,914 tonnes and 27,780 tonnes of plastic waste respectively in 2019. Spain mismanaged about 20,000 tonnes.

These numbers are a far cry from what is happening in the developing world, just across the Strait of Gibraltar from Spain on the African continent. Morocco, for instance, inadequately manages more than 10 times as much plastic waste as Canada, or 295,000 tonnes in 2019. Algeria has 764,578 tonnes of mismanaged plastic waste; Egypt a staggering 1.44 million tonnes; the Democratic Republic of Congo, 1.37 million tonnes; and what can we say about Tanzania, with 1.72 million tonnes of mismanaged plastic waste?

Turning to South America, Chile mismanaged 30,767 tonnes of plastic waste in 2019. In neighbouring Argentina, the figure was nearly 500,000 tonnes that year. Brazil, meanwhile, South America's largest country, which is just a little smaller than Canada, mismanaged a staggering 3.3 million tonnes of plastic waste in 2019.

Lastly, there is Asia, as the sponsor of the previous version of Bill S-234 noted in the other place. From 2015 to 2018, Canada sent nearly 400,000 tonnes of plastic waste to Thailand, Malaysia, Vietnam, India, Hong Kong, China and the United States.

If we look at the most recent data on mismanaged plastic waste in these countries, we see that Thailand mismanaged 1.36 million tonnes of plastic waste in 2019; Malaysia, 814,454 tonnes; Vietnam, 1.11 million tonnes; India, 12.99 million tonnes; and China, 12.27 million tonnes.

Honourable senators, the speeches from Senator Frum and Scot Davidson informed us that China, which used to be a destination of choice for plastic waste, banned imports of this material at the end of 2017. Canada simply turned to other countries in Southeast Asia and the developing world to handle its plastic waste.

Even though the Trudeau government adopted a zero plastic waste policy in Canada — bearing in mind that our plastic waste accounts for a minuscule part of the global problem and only 0.03% is mismanaged — it just exported the problem to those parts of the world where plastic waste is mismanaged the most.

While the government brags that its Oceans Protection Plan makes Canada a world leader in ocean protection, we continue to ship plastic waste to parts of the world that are the primary sources of the plastic pollution dumped into our oceans.

Do you want to know where the plastic polluting our oceans comes from? Well, it comes from our rivers. A project called The Ocean Cleanup estimates that 1,000 rivers are responsible for 80% of the plastic in our oceans. None of those rivers is in Canada, and only one is in North America. The rest are in Asia, Africa, Central America, and South America.

What about the rivers that transport the most plastic waste to our oceans? The vast majority of them are in Asia, and some are in East Africa and the Caribbean. The 10 rivers responsible for dumping the most plastic pollution into our oceans are all in Asia. Seven of them are in the Philippines, accounting for more than 10% of the plastic that rivers dump into oceans, two are in India, and one is in Malaysia.

Consequently, prohibiting the use of plastic straws in Canada contributes nothing to solving the problem of plastic pollution. That is a perfect example of virtue signalling, a great example of a government that does something not because it is hard, but because it is easy. The government is twisting the famous words uttered by John F. Kennedy when he explained why the United States would launch a mission to the moon.

What's more, by giving the false impression that we are helping to resolve a problem, we are making it worse. We are doing the same thing when we draw people's attention away from the hard work required to solve the real problem in places such as Asia, which is the source of 81% of all plastic that ends up in the ocean. Yet that is where we are sending our plastic waste, while banning the use of plastic straws in Canada.

Some will say, as others already have, that Canada signed and ratified the Basel Convention, which, through amendments made in 2019 to Annexes II, VIII and IX, added plastic to the list of imported or exported hazardous waste covered by the treaty. According to that argument, the thing that the bill seeks to make Canada do is something that Canada is already doing pursuant to the Basel Convention. Therefore, Bill S-234 would be redundant.

This type of reasoning stands in stark contrast to the arguments used to defend Bill C-15 on the United Nations Declaration on the Rights of Indigenous Peoples, which received Royal Assent on June 21, 2021. In that case, rather than seeing Bill C-15 as redundant, the government argued that it was important because it enshrined in Canadian law the fact that Canada was adhering to the UN Declaration. Also, it is worth noting that the list of plastics in Schedule 7 to Bill S-234 is taken from Annex IV, section B, of the Basel Convention and that Bill S-234 improves on the Basel Convention by closing the "loophole" that allows Canada to export plastic waste to the U.S.

This significantly strengthens our obligations under the Basel Convention, as recent events have demonstrated. According to a Canadian Press article published early this month, and I quote:

> In the year since new rules to slow global exports of plastic waste took effect, Canada's shipments rose by more than 13 per cent, and most of it is going to the United States with no knowledge of where it ultimately ends up.

The Basel Convention does not prevent these shipments. Bill S-234 does.

The Minister of the Environment, Steven Guilbeault, recognizes that there is a problem and has been critical of Canada's lackadaisical approach to exports of plastic waste. He said that Canada "clearly has to do better." I agree with him, which does not happen often.

Between 2017 and 2019, Canada was sending more than 60,000 tonnes of plastic waste every year to the United States. In 2020, that increased by more than 83,000 tonnes. Some will say that this plastic was on its way to be recycled, but we do not actually know where this waste ends up. The United States has not signed the Basel Convention. As stated in the Canadian Press article:

> The agreement [between Canada and the United States] is allowed under Basel rules, but because the U.S. is not bound by the convention, it can do what it likes with the waste, including shipping it anywhere else it wants.

• (1720)

[*English*]

Honourable senators, Canada has long been a laggard when it comes to plastic waste. In fact, Canada became famous for this in 2019 when it got into a diplomatic dispute with the Philippines over garbage shipped to that country that had been falsely labelled as plastic waste destined for recycling. Such was the outrage of the Philippines's president that he threatened Canada with war over it.

[*Translation*]

Fortunately, war with the Philippines was averted, but it was very embarrassing when 69 containers filled with waste arrived at the Port of Vancouver in 2019.

That same year, Malaysia protested against waste being sent to the country and demanded that Canada, the United States, France, Japan, Australia and Great Britain take back some 3,000 tonnes of plastic waste.

Allow me to repeat what I said earlier. Eight of the top ten rivers responsible for transporting plastic waste to our oceans are in the Philippines and Malaysia. When MP Scot Davidson spoke to his bill prohibiting the export of plastic waste, he very explicitly described the situation in Malaysia and referred to an episode of CBC's *Marketplace*. He said that the episode, and I quote:

> . . . highlighted the conditions of the small northern Malaysia village of Ipoh, which had become a primary destination for the processing of Canadian plastic waste. The report describes towering heaps of burning plastic garbage, chemical and microplastic runoff polluting local waterways, and mounds of poorly contained Canadian plastic. The residents of Ipoh were outraged by the invasion of foreign plastic waste and the impact it was having on their health and the local environment. Pleading, they said, "We don't want to be the next cancer village." This is just one example of a situation that is becoming all too common.

I do not want minimize the efforts that developing countries are making or blame anyone whatsoever. As Mr. Davidson pointed out, many developing countries are now rejecting plastic imports from abroad, having struggled to properly manage the sheer quantity of plastics coming from around the world since China's ban took effect.

It was only after the national embarrassment caused by the incidents in the Philippines and Malaysia that the current government decided to ratify the amendments to the Basel Convention. I would like to point out that 98 other countries ratified this convention before our so-called global leader on plastic pollution did so.

Honourable senators, some countries, such as New Zealand and Australia, have already adopted legislation similar to the bill before us. Other countries, such as the United Kingdom and certain EU countries, are considering bills similar to Bill S-234. However, the Liberal government has opposed these measures at every stage of the legislative process, choosing instead to grandstand about banning plastic straws and single-use plastics in this country.

The time has come to have this chamber pass a law. We often hear that we must bend to the will of elected officials. Well, it is the will of the majority in the other place to pass this bill. As I mentioned, the Bloc Québécois, the NDP, the Green Party and the Conservative Party supported this bill in its previous iteration.

In her speech at second reading of Bill C-204, Bloc Québécois MP Monique Pauzé excoriated the government and condemned its lack of integrity on the international stage with respect to the management of plastic waste. I quote:

> . . . before even considering exporting its plastic waste, Canada has a duty to rethink how materials circulate in the economy. Canada must do the work here first and take the necessary steps to ensure that materials are managed properly in order to stop the reprehensible act of dumping. There is nothing acceptable, either morally or otherwise, about sending our waste to India, Thailand or Taiwan. . . .

Ms. Pauzé added:

> Banning six single-use plastic products was necessary, but it is not the most ambitious move. It is a drop in the bucket of what we should be doing to properly manage plastic waste.

NDP MP Laurel Collins also criticized the government's slow approach to reducing plastic waste exports. She said, and I quote:

> . . . the Liberals have been dragging their feet. They were previously dismissive of the idea of banning plastic waste exports entirely. Only after Australia planned to ban plastic waste exports in 2019, did the Liberals say they would look at what else Canada could do to reduce the amount of Canadian garbage that is ending up overseas.
>
> The Liberals initially, as I mentioned, refused to sign on to the important amendments to the Basel Convention. Parties to the convention agreed by consensus to the amendments in 2019, but Canada continued to fight against these important amendments. When it was formally notified by the United Nations in March 2020 that Canada's laws would not be in compliance, the government asked for continuous delays.

[*English*]

Honourable senators, clearly the majority of elected members in the House support this bill and wish it to become law. The only ones who don't — who say it is redundant, given our Basel commitments — are the Liberals.

[*Translation*]

I would like to conclude my speech with a quote from James Puckett, executive director of the Basel Action Network, who testified in 2021 before the House of Commons Standing Committee on the Environment about Mr. Davidson's bill:

> It's appropriate, in our view, to consider the U.S. and Canada together in this mess, because late last year the Canadian and U.S. governments secretly concluded a deal to ignore the Basel Convention's recent decision to control trade in contaminated and mixed plastics. Rather, the two countries wanted to allow the trade between them to remain opaque and uncontrolled.

> This bilateral pact was condemned by the Center for International Environmental Law, as it ignores Canada's obligations under the Basel Convention. Further, it allows Canadian traders to use the United States, which is not a party to the Basel Convention, as a pivot point to export Canadian plastic waste via U.S. ports to Asia, thus undermining Canada's requirements under the convention.

Colleagues, this bill may not solve the problem of mismanagement of plastic waste that ends up in the ocean, but it is a legislative statement, and it does improve on our obligations under the Basel Convention. I hope you will agree to refer it to a committee for further study for the good of our oceans. Thank you.

Some Hon. Senators: Hear, hear.

(On motion of Senator Petitclerc, debate adjourned.)

• (1730)

[*English*]

ENACTING CLIMATE COMMITMENTS BILL

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Rosa Galvez moved second reading of Bill S-243, An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts.

She said: Honourable senators, I stand before you to introduce Bill S-243, An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts, CAFA for short. CAFA is an efficient legislative tool to attain coherence, increase transparency and implement accountability while protecting the finance system from climate risks and aligning finances with our national and international climate commitments. These aspects are essential to facilitate an orderly transition to a low-carbon economy, which is already under way and accelerating around the world.

This legislative initiative is the natural and logical progression of climate action following the adoption of the Canadian Net-Zero Emissions Accountability Act, which I sponsored here in the Senate, but also to put Canada at the right place in the race for a clean industrial revolution to increase the chances that we remain a prosperous, competitive nation.

In this speech, I will provide context in terms of finance and climate risks which justifies the objectives and content of the bill. I will describe the work and process that led us to this proposal. Finally, I will dive into the bill itself and the problems it solves.

The Intergovernmental Panel on Climate Change, composed of the world's leading climate scientists, has now published all three sections of its landmark Sixth Assessment Report addressing the physical basis of climate science, the impacts of the climate crisis and the pathways for the world to reduce its emissions to a safe level.

They found that countries were falling behind on the policies and actions needed, that financial flows are three to six times lower than the levels needed by 2030, and that drastic changes will be needed to all aspects of the global economy. Avoiding the worst consequences is still possible, but only if governments take immediate and decisive action such as halving global emissions by 2030. Fortunately, the report says mitigation options are readily available, as low as US$100 per tonne of CO_2 equivalent or less.

During the release of these reports, the United Nations Secretary-General António Guterres did not mince his words. He described the second report as an "atlas of human suffering and a damning indictment of failed climate leadership." On Monday, he said that "the truly dangerous radicals are the countries that are increasing the production of fossil fuels."

Colleagues, we are the decision makers; we are the leaders. I don't know if you have an idea how depressing it is for scientists, health practitioners, young generations, concerned citizens, responsible corporations, workers for just transition, Indigenous peoples, racialized communities affected by pollution and women and girls disproportionately impacted by climate change to witness such a destructive path for our planet.

By now, several points should be very clear: They see us as enablers of the crisis. They have lost confidence in our democratic process. Extreme weather events are more frequent, destructive and expensive. Climate risk is systemic and growing. Further delay in climate action is dangerous. No, this is not a moralizing speech; these are just the facts.

Recently, the U.S. Office of Management and Budget assessment found that climate change could provoke a 7.1% annual revenue loss — equivalent to US$2 trillion per year — by the end of the century. That means, "Future damages could dwarf current damages if greenhouse gas emissions continue unabated."

Meanwhile, a study by the Swiss Re Institute estimates that Canada, along with the U.K. and U.S., would lose 6% to 7% of its annual GDP by 2050 with 2 to 2.6 degrees of warming.

[*Translation*]

The Paris Agreement was adopted by 196 nations in 2015. Its goal is to limit global warming to well below 2 degrees Celsius, preferably to 1.5 degrees Celsius, compared to pre-industrial levels. In November, Canada submitted its Nationally Determined Contribution, or NDC, at COP26 in Glasgow. Canada has committed to reducing its emissions by 40% to 45% below 2005 levels by 2030, a commitment that was formalized last year with the passage of the Canadian Net-Zero Emissions Accountability Act.

COP26 was an opportunity for countries to submit ambitious NDCs while addressing the issue of financing the transition. It did not meet all of its objectives, but several promising initiatives emerged, including the Glasgow Financial Alliance for Net Zero, led by former Bank of Canada governor and the UN Special Envoy on Climate Action and Finance, Mark Carney. The alliance is a group of financial actors that are committed to putting climate change at the centre of their work. I support Mark

Carney's efforts. It is clear that we will never achieve our goals without the full and proactive participation of the financial sector.

In Canada, the financial sector is lavishly supporting emissions-intensive industries with billions of dollars in direct funds. Export Development Canada supported the industry by providing between $8 billion and $12.4 billion in financing and insurance annually from 2015 to 2020, which directly contradicts the goals of reducing government subsidies and emissions. Canada's big six banks have provided $694 billion in funding and invested $125 billion in fossil fuels since 2015.

Despite the good intentions behind these international collaborations, there is an obvious contradiction between the financial actors' promises and their actions. Around the world, government policies and technology are changing rapidly as the transition moves forward. Canada has never met its emissions reduction targets, and our financial system is threatened by climate risks. Our financial institutions have to catch up and align their actions with the latest climate science. We have to build on the sustainable finance efforts of developed nations, like the European countries, members of the European Union and the Commonwealth countries. Then we could set off an economic transformation that will fuel future prosperity sustainably, by preserving our country and planet the way our generation experienced it.

[*English*]

Currently, our financial sector is facing an increasingly volatile climate and uncertain future, leaving it vulnerable to major risks. These risks, however, are not reflected in market prices, tilting capital flows toward riskier, emissions-intensive assets and away from low-carbon assets. If market expectations change suddenly due to an acceleration in global policy or a technological breakthrough or a series of destructive weather events such as the ones we have now, it could cause massive repricing. In this scenario, billions of dollars' worth of emissions-intensive assets could become stranded, resulting in losses that could then cascade through the entire financial system and trigger instability or widespread collapse.

Half of the world's fossil fuel assets could become worthless by 2036 in a net-zero transition, and three quarters of Canadian oil is unburnable in a world where warming is limited to 2 degrees. Those who are slow to decarbonize will suffer, while early pioneers will profit.

Initiatives like the Task Force on Climate-related Financial Disclosures aim to improve and increase reporting of climate-related financial information through voluntary disclosures, hoping that investors would have a greater overview of the impacts on climate of their investment portfolios. Unfortunately, the lack of legislative framework and enforcement provokes an inconsistent application. Those who do disclose find themselves at a disadvantage compared to those who don't and end up being penalized by investors.

• (1740)

While the climate crisis poses incredible risk to the financial sector, the opposite is also true. Combined, these two opposite effects are termed "double materiality." Through its massive investments in high-emitting industries, the financial sector is enabling the further increase of emissions in the atmosphere. These financed emissions add to the burden of the climate crisis.

In 2015, Morgan Stanley Capital International assessed the carbon footprint for several of its indexes and found that a US $1 million investment could be associated with as much as 439 tons of CO_2 equivalent.

How can an individual financial institution address this conundrum? The financial sector is on the front line of climate risk, and despite their continued support of fossil fuels, the sector, along with major international corporations, rushed to announce decarbonization commitments to prove their willingness to change. Yet, these pledges lack transparency or accountability. At best, they bring us false comfort that climate action is under way. At worst, they are a deliberate attempt at greenwashing to delay substantial climate action.

There are still no clear standards or enforcement measures that would bring much-needed transparency to these pledges. Certainly, we applaud those private sectors who have set and are making meaningful progress toward ambitious climate targets. Bill S-243 is in full support of them. But individual corporations have neither the responsibility nor the incentive to ensure that their peers and competitors follow suit. They cannot ensure an orderly and comprehensive transition of the economy on their own let alone take responsibility for reducing the climate risk posed to the entire financial sector. Only the government can fulfill this function.

These are the issues that my proposed legislation solves. So how was Bill S-243 developed?

In September 2020, I invited several experts to the Senate to provide their insights on how to develop a more equitable and resilient economy after recovering from the pandemic. These experts included Dr. Peter Victor, economist and professor emeritus at York University; Dr. Cameron Hepburn, director of the Smith School of Enterprise and the Environment at Oxford University and also Dr. Joseph Stiglitz, laureate of the Nobel prize in economics and former chief economist at the World Bank. This webinar, along with our research on various advocated approaches to post-pandemic economic recovery, resulted in the publication of a white paper called "Building Forward Better: A Clean and Just Recovery from the COVID-19 Pandemic."

Last summer, we adopted the Canadian Net-Zero Emissions Accountability Act, a legally binding accountability framework for the government to attain net-zero emissions by 2050, and it allowed for important debate in this chamber.

In January, the Bank of Canada and the Office of the Superintendent of Financial Institutions, or OSFI, published the final report on the Climate Scenario Analysis Pilot to better understand the risks to the financial system that could arise from a transition to a low-carbon economy. It emphasizes the systemic nature of climate risk threatening the economy and the whole financial system, and it recognizes the need to build up capacity to assess these risks. Regrettably, it falls short of making significant recommendations for proactive climate action by financial institutions. The window for action is getting smaller, and the climate emergency does not give us the luxury of time.

Within the context of these developments, my office and I have worked on a white paper for the past several months that seeks to provoke the next logical progression in the transition. Based on international best practices and leading thinkers in economic policy, climate science and sustainable finance and on exchanges during COP26 and the GLOBE summit, we identified the gaps in the Canadian financial landscape and proposed a set of recommendations.

These recommendations define what leapfrogging from laggard to leader would look like for Canada in terms of ensuring a climate-aligned, stable, low-carbon financial system. These findings, recommendations and feedback so far can be found in the white paper published last month called *Aligning Canadian Finance with Climate Commitments*.

The feedback so far has been inspiring, and I sincerely thank all my colleagues who have taken the time to read and respond to my analysis, discussion and recommendations.

Rich with this knowledge, Bill S-243 was co-designed through collaborations and consultations led by Karine Péloffy from my office and Professor Amr Addas of the Concordia University Sustainability Ecosystem, supported by the Trottier Family Foundation. We organized a series of consultations and working-group meetings. We convened over 40 national and international experts in sustainable finance from various backgrounds. They represented investment entities, pensions, think tanks, law firms and academia and brought together both finance and climate expertise in the hopes of developing a stringent, measured and coherent solution to help our financial sector align with our climate commitments.

During these consultations, we received exceptional feedback, which is synthesized in a "What We Heard" discussion paper that was released earlier today. These consultations sought to obtain advice on fiduciary duties of directors, reporting and planning from institutions, capital adequacy requirements, disclosures, technologies and how they are used and much more. The resulting feedback is directly reflected in this bill proposed today.

Bill S-243 complements the Canadian Net-Zero Emissions Accountability Act, increasing structure, coherence and efficiency in attaining our committed goals by bringing the financial sector into the race to net zero — the last crucial piece to activate the transition machine.

Countries like the United Kingdom and New Zealand have already legislated the requirement for mandatory climate disclosures for many of their financial institutions. The White House issued an executive order in May 2021 which, along with recognizing the risks to the stability of the financial system caused by climate change, established a policy ". . . to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk . . . ." In October 2021, the order was followed by a roadmap to build a climate-resilient economy, which embodies the precautionary approach while aiming to mobilize ". . . public and private finance to support the transition to a net-zero U.S. economy . . ." and safeguard " . . . the U.S. financial system against climate-related financial risk . . . ."

Recently, the U.S. Securities and Exchange Commission proposed new rules that make it mandatory for companies listed on American stock exchanges to report the full scope of their emissions. These changes would put Canadian companies trading on U.S. exchanges at a great disadvantage, unable to meet American investors' standards and expectations.

While other G20 countries have a much larger portfolio of clean energy options, including tidal, wave, hydro, gravity, wind, solar and nuclear energy, we are sadly still developing the expensive, complex, polluting and socially divisive energy of the past. Put simply, Canadian policy is behind, and our misguided actions are having a major impact on our international competitiveness. We must act with the legislative tools at our disposal.

These are the urgent reasons why I introduced Bill S-243, which aligns the activities of federal financial institutions and other federally regulated entities with the superseding economic and public interest matter of achieving our climate commitments. It aims to make timely and meaningful progress toward safeguarding the stability of both the financial and climate systems. It recognizes the systemic risks posed to all sectors of the economy by not aligning financial flows with climate commitments.

• (1750)

So what is alignment? Climate commitments refer to our obligations and commitments under the United Nations Framework Convention on Climate Change, the Paris Agreement and the Canadian Net-Zero Emissions Accountability Act with attention to meeting the 1.5-degree target with no or low overshoot, avoiding carbon lock-in, preserving natural carbon sinks and enhancing resilience.

To be considered aligned with climate commitments involves contributing to the realization of climate commitments; avoiding inconsistency with those commitments; avoiding contribution to prolonging the impacts of climate change or disturbing natural carbon sinks, and producing overall positive climate impacts while respecting the right of Indigenous peoples, using the best available science and not hindering other social and environmental goods. To achieve this, the bill comprises seven important measures.

The first measure addresses an issue that we heard often during our consultations: that fiduciary duty technically includes consideration of climate risk. However, in practice, the risk is ignored or under-represented.

The Expert Panel on Sustainable Finance recommended in 2019 that the federal government, ". . . clarify that fiduciary duty . . . does not preclude the consideration of relevant climate change factors."

In addition, Queen's University's Institute for Sustainable Finance's September 2021 report surveyed sustainable finance experts and highlighted the need for clarifying the scope of fiduciary duty, which was, ". . . widely recognized as a crucial initiative to act on in the near term."

Former Supreme Court Justice McLachlin also recognized that corporations have a duty beyond just the bottom line. She said:

> Corporations must take environmental impacts of their activities into account in making a decision . . . Corporations, public and private, must consider the interests of all their stakeholders. Like all good citizens, corporations must respect the environment, relations with Indigenous peoples, and the diversity of modern societies.

The climate-aligned finance act, therefore, creates a duty for directors, officers and administrators to exercise their powers and functions in a way that enables their organization to be in alignment with climate commitments.

The second measure is the alignment of various federal-adjacent organizations with climate commitments. This set of straightforward amendments requires the Bank of Canada, the Office of the Superintendent of Financial Institutions, the public sector, the Canada Pension Plan and key Crown corporations, such as Export Development Canada, to perform their duties in a manner that is aligned with our climate commitments.

The third measure is an obligation for setting targets, planning and reporting on climate commitment alignment for federally regulated organizations unless they have no or negligible emissions. These reporting entities include federally regulated financial institutions, parent Crown corporations, federally incorporated companies and other federally regulated entities, such as railways and airlines. Their targets and plans must apply to all emissions in their value chain, represent the best available science and be aligned with the climate commitments. Federal financial institutions — including banks, insurance companies, pensions, the Bank of Canada and some key Crown corporations — will be subject to additional requirements, such as the consideration of their financed emissions in their targets and plans.

Colleagues, we required this from the government last year with the Canadian Net-Zero Emissions Accountability Act. Now it is time to extend a similar requirement to the financial sector.

The fourth measure is ensuring certain boards of directors have the climate expertise they need for the transition and that conflicts of interest are avoided. This bill establishes a definition of climate expert and requires that major Crown corporations have at least one climate expert on their board. The conflict of interest provision will be introduced in two steps. For the first four years after coming into force, board members associated with an organization that is not in alignment with climate commitments would have to declare their conflicting activities in the reporting entity's annual climate commitments alignment report. From the fifth year onwards, such individuals will not be eligible for board appointments. We have heard that all financial boards are populated with the same few hundred people. This measure aligns with the trend of bringing diversity and wider expertise to boards.

The fifth measure is the establishment of capital adequacy requirements that better reflect the microprudential and macroprudential risks generated by financial institutions. When financial institutions invest in non-transition-ready sectors, ripples of financial risk are generated and propagated throughout our financial system. Requiring banks to hold more capital — an amount proportional to their investment in emissions-intensive operations, for example — would cause banks to internalize the costs of those systemic risks that their financial activities generate.

[*Translation*]

To that end, the bill requires the Superintendent of Financial Institutions to develop new guidelines for capital adequacy for financial institutions with respect to climate commitments. The first guidelines would apply to entities governed by the Bank Act and would be published in the year following the entry into force of the legislation. A second set of guidelines would then be developed for funding requirements and investment policies with respect to climate commitments by pension funds, insurance companies and other entities that report to the superintendent.

The sixth measure would have the government develop an action plan for aligning financial products with climate commitments. Full alignment requires a global approach that exceeds the scope of a Senate private member's bill. The federal government has considerable powers and the constitutional jurisdiction required to act on these issues.

Finally, the seventh measure guarantees the holding of timely public review processes on the progress of the implementation to ensure iterative learning.

The bill requires that two reports be presented. A document tabled every year in Parliament by the Office of the Superintendent of Financial Institutions will report on the progress made by the entities under its jurisdiction in implementing the requirements. The Minister of Finance will table a similar report for Crown corporations.

Within one year of the act coming into force, a single report will be co-developed by the Bank of Canada, the Office of the Superintendent of Financial Institutions and representatives of Indigenous peoples based on the consultations that will have taken place to obtain Indigenous peoples' perspectives on such matters as long-term investment and the resilience of the financial system. Another report will be prepared by the Bank of Canada on monetary policy in relation to climate change, and it will be developed in consultation with persons with climate expertise. These reports will also be tabled in Parliament.

An independent review of the provisions of the act and their administration shall be carried out every three years in consultation with persons with climate expertise, followed by a report that will also be tabled in Parliament.

I also want to mention a recurring theme in the bill. Based on comments made by representatives of Indigenous peoples, the Climate-Aligned Finance Act recognizes their interests in the following ways. First, the preamble of the act refers to the UN Declaration on the Rights of Indigenous Peoples and the disproportionate impacts of climate change on these peoples. Second, climate expertise includes "Indigenous ways of knowing, being and doing." Third, the definition of the term "alignment with climate commitments" includes respect for the rights of Indigenous peoples, including those set out in the UN Declaration on the Rights of Indigenous Peoples. Finally, the Bank of Canada must prepare a joint report with representatives of Indigenous peoples on their perspectives.

• (1800)

[*English*]

The Hon. the Speaker: Honourable senators, it is now 6 p.m., and pursuant to rule 3-3(1) and the order adopted on November 25, 2021, I am required to leave the chair unless it is agreed that I not see the clock and we continue on. If I do not hear a "suspend," we will continue.

Senator Galvez, please continue.

Senator Galvez: In conclusion, the financial sector is not exempt from the impacts of climate change; it's — quite the opposite. Traditional tactics to solve economic problems have not helped the climate crisis. In fact, past approaches have advertently or inadvertently worsened the climate crisis by supporting polluting industries.

Canadians need the financial sector to act according to this climate reality. Meridional Canada warms twice as fast as the planet's average, and the Arctic three times as fast. We must, therefore, accelerate transition in an orderly manner.

The Bank of Canada, having just released the results of its first exercise to understand the risks to the Canadian financial system, is falling behind in the race to net zero. Several national and international organizations and jurisdictions are not only leading this reflection but are proposing policies and legislative tools, with some already being implemented. Canada must follow suit if we aim to remain a competitive, prosperous, sustainable economy for this and future generations to come.

I look forward to having a robust debate with you in this chamber and with society at large. I expect that our fellow colleagues, bankers, economists, auditors and anyone with interests in developing a sustainable economy in a healthy environment for Canadians will bring perspectives and positive contributions to this debate. I imagine a few committees will be interested in aspects of this bill, particularly the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on National Finance, but also the Standing Senate Committee on Energy, the Environment and Natural Resources. I look forward to hearing from experts during committee studies, and I remain open to improvements that could strengthen this legislation.

Thank you, colleagues. *Meegwetch*.

The Hon. the Speaker: Senator Galvez, will you take questions?

Senator Galvez: Yes.

Hon. Marilou McPhedran: Senator Galvez, thank you for this initiative.

I want to frame my question as a result of a recent report from the Sierra Club and six other non-governmental organizations that reported fossil fuel financing from the world's 60 largest banks reached US$4.6 trillion in the six years since the adoption of the Paris Agreement. As you noted, the latest report from the UN Intergovernmental Panel on Climate Change, released just three days ago, warns us that the time is now — that we just don't have any more time.

I note that in the Sierra Club report, three Canadian big banks are specifically named among the "dirty dozen" of the top international fossil fuel financiers from 2016 to 2021. Number 5 on that list is RBC, number 9 is Scotiabank and number 11 is TD.

Senator Galvez, could you please inform us as to your intention with this bill in responding to that kind of factual demonstration of how banks are not acting now or rapidly in the way the experts say must happen?

Senator Galvez: Thank you so much for the question, Senator McPhedran.

I can tell you that this is a concept of double materiality. That means that, on one hand, the financial sector acknowledges and says that the climate risk is systemic and, whether it is through the transition or the physical risk with all these extreme weather events that have been very destructive, they turn assets into stranded assets. On the other hand, they are financing the fossil fuel industry. They call this double materiality.

Now, the standards on sustainability — and this is on a global scale — they are saying this concept needs to be studied and the disclosure cannot only be voluntary. It has to be more complete in order to assess the risk more precisely and to apply the remedy because the risk, as you were saying, is there, and it's growing; it's alarming. It can bring us to a very difficult point of a different nature than other financial crises. People tend to think this could be very similar to the 2008 financial crisis, but it's not. This is an external crisis coming from several factors that are cumulative and convergent.

I hope I answered your question.

Senator McPhedran: Thank you.

[*Translation*]

Hon. Lucie Moncion: The financial sector recognizes the existence of black swans. Could you tell us about black swans that are specific to the environmental crisis?

Senator Galvez: Are you referring to the issue of greenwashing?

Senator Moncion: I am referring to environmental disasters that occur suddenly and were not expected. In the financial system, a black swan is an economic disaster that was not expected, such as the situation in 2008. We now speak of black swan events associated with climate change.

Senator Galvez: You reminded me that at some point we were talking about "unknown unknown" risks. We were talking about radical uncertainty. As an engineer, I know how to manage risk when we are able to measure it, model it, and predict it. That is what we do in engineering when we adapt our infrastructure.

The problem, financially speaking, is that according to experts, this risk is unknown. We cannot really measure it, because these factors are convergent, cumulative and exponential, and they are truly very difficult to predict. That is why experts are telling us that we must use microprudential and macroprudential approaches to ensure we can resolve the problem both on an individual entity level and on a systemic level, because the risk is systemic.

Hon. Julie Miville-Dechêne: First, very briefly, I want to congratulate you for the boldness, the determination and all the work behind your bill. I believe that we will indeed have a robust debate.

For the past few years we have been hearing about initiatives to make financial institutions and businesses more transparent. I understand that your bill goes much further, suggesting that these disclosures are inadequate.

Could you explain why these disclosures do not work and how your bill affects existing initiatives to enhance climate disclosures made by businesses?

Senator Galvez: Thank you very much for your question and for appreciating the work that has been done.

So far, the reporting of climate risks is just a recommendation and it is voluntary. Experts have said that just 9% of the entities monitored produced a report on their climate risks. Among that 9%, just 2% took action in response to the risks they identified.

• (1810)

There is another criticism that, because there are no strict requirements or guidelines to disclose these risks, this ultimately just serves as a sort of greenwashing. Some entities are taking advantage of this situation to overstate how much they are doing, but no one can validate the claims.

Our bill seeks to improve the disclosure of climate risks, but it goes much further than that, because the entities must prove that their efforts are in line with climate commitments. This means that they not only have to disclose the risks, but also have to offer solutions. Disclosure and solutions became mandatory with our bill.

Hon. Clément Gignac: Senator Galvez, I echo Senator Miville-Dechêne in congratulating you on your excellent work. As the former governor of the Bank of Canada and the Bank of England said, the energy transition will neither materialize nor succeed without a significant contribution from the financial sector.

You mentioned the three committees that could be interested. I have reviewed the procedures of this chamber, and my understanding is that the leaders will decide. Don't you think this item should be sent to the Standing Senate Committee on Banking, Trade and Commerce? I'm suggesting this quite neutrally because it is my privilege to be a member of the Standing Senate Committee on National Finance, the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on Energy, the Environment and Natural Resources.

You're talking about amending the Financial Institutions and Deposit Insurance System Amendment Act. A number of bills governing the financial sector were mentioned. Do you have an opinion about this with respect to the committees, given that we know it's the leaders who will make the decisions and decide which committees should study your bill?

Senator Galvez: I don't know whether you follow budget news, but the issue of sustainable finance is one aspect of the budget. That's good, and I would point out that in the last election, several of the political parties' platforms included sustainable finance elements to develop, so that's very good.

Ultimately, it is true that this bill may be of interest to the three committees I mentioned, but obviously, as you said yourself, it is not my decision to make. Everyone will speak with their facilitators or leaders and ultimately they will be the ones to decide, but certainly the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on National Finance are the two committees . . .

The other reason I can say this is because our bill is agnostic when it comes to technology. It does not say whether or not to use a certain technology. We are asking the entities to show us the efforts they are making to align their activities with Canada's

domestic and international climate commitments. So long as they are doing just that, we have nothing to say about the technology they use. I would say that the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on National Finance are the two committees that I would favour.

(On motion of Senator Moncion, debate adjourned.)

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SECOND REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Marwah, seconded by the Honourable Senator Deacon (*Nova Scotia*), for the adoption of the second report of the Standing Committee on Internal Economy, Budgets and Administration, entitled *Senate Budget 2022-23*, presented in the Senate on February 24, 2022.

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

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

FIRST REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Bellemare, seconded by the Honourable Senator Coyle, for the adoption of the first report (interim) of the Standing Committee on Rules, Procedures and the Rights of Parliament, entitled *Amendments to the Rules — Speaker pro tempore*, presented in the Senate on March 29, 2022.

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

Some Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

SCRUTINY OF REGULATIONS

FIRST REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Standing Joint Committee for the Scrutiny of Regulations, entitled *Work of the committee and other matters*, presented in the Senate on April 5, 2022.

Hon. Yuen Pau Woo moved the adoption of the report.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

THE SENATE

MOTION TO RESOLVE THAT AN AMENDMENT TO THE CONSTITUTION (SASKATCHEWAN ACT) BE AUTHORIZED TO BE MADE BY PROCLAMATION ISSUED BY THE GOVERNOR GENERAL WITHDRAWN

On Motion No. 32 by the Honourable Brent Cotter:

> WHEREAS section 43 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada 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;
>
> NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

AMENDMENT TO THE CONSTITUTION OF CANADA

1. Section 24 of the *Saskatchewan Act* is repealed.

2. The repeal of section 24 is deemed to have been made on August 29, 1966, and is retroactive to that date.

Citation

3. This Amendment may be cited as the *Constitution Amendment, [year of proclamation] (Saskatchewan Act)*.

Hon. Brent Cotter: Honourable senators, pursuant to rule 5-10(2), I ask that Motion No. 32 be withdrawn.

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

Hon Senators: Agreed.

(Notice of motion withdrawn.)

(*At 6:20 p.m., the Senate was continued until Tuesday, April 26, 2022, at 2 p.m.*)

CONTENTS

Thursday, April 7, 2022

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY

CONTENTS

Thursday, April 7, 2022