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(HANSARD)

Thursday, June 16, 2022

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Thursday, June 16, 2022

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

Prayers.

SENATORS' STATEMENTS

NATIONAL INDIGENOUS HISTORY MONTH

Hon. Dennis Glen Patterson: Honourable senators, I rise today during National Indigenous History Month to honour Jose Amaujaq Kusugak, originally from Repulse Bay, now Naujaat, who settled in Rankin Inlet, Nunavut, in 1960 and is one of three Indigenous leaders honoured by Canada Post this month with a postage stamp bearing his image and his name in English and Inuktut. Two other Indigenous leaders similarly honoured by Canada Post this month are Harry Daniels, who lobbied to have Métis and non-status Indians recognized in section 35 of Canada's repatriated Constitution, and Chief Marie-Anne Day Walker-Pelletier, who led the Okanese First Nation in Saskatchewan for almost 40 years.

The Jose Kusugak stamp was unveiled in Rankin Inlet, Nunavut, this week by Canada Post with Jose's family and namesakes present. His widow, Nellie Kusugak, an educator and former commissioner of Nunavut, spoke at the event as well, noting that Jose's mother had urged him to serve Inuit — a cause to which he devoted his life. He made his mark in many ways, from being a teacher of Inuktut language and history at the University of Saskatchewan Language Centre and later at the Churchill Vocational Centre in Manitoba. His work with the Inuit Cultural Institute in the 1970s led to the creation of the dual writing system widely used in Nunavut today, a mix of syllabics, in which his name appears on the new Canada Post stamp, and Roman orthography. Also, he had a notable career in broadcasting working for CBC North, where he enthralled listeners, and the Inuit Broadcasting Corporation.

He was president of the national Inuit organization Inuit Tapiriit Kanatami. And as president of Nunavut Tunngavik Incorporated in the late 1990s, he played a pivotal role in the implementation of Nunavut, including persuading the federal government to sole source a contract for the building of a new legislature in Nunavut's capital, and offices and housing in 10 decentralized communities, which resulted in the creation of Nunavut Construction Corporation, an Inuit-owned, Inuit-led corporation which is now a leader in construction throughout Nunavut.

In a tribute written about Jose by the husband of Governor General Mary Simon, Whit Fraser, Jose was described as Nunavut's "cheerful muse." He was quoted as saying:

> Every situation has a funny side to it. We owe it to our soul and spirit to laugh and see the sunny side of life.

Jose was a loyal Canadian and an Inuk champion who was well known in Nunavut and in national first ministers' meetings for describing Inuit as "First Canadians, Canadians First." Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of guests from the Canadian Helen Keller Centre, the National Deafblind Awareness Month Working Group, CNIB Deafblind Community Services and the Deafblind Ontario Foundation. They are the guests of the Honourable Senators Martin and Marwah.

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

Hon. Senators: Hear, hear!

DEAFBLIND AWARENESS MONTH

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise today, during the month of June, to celebrate Deafblind Awareness Month across Canada. This important month was established in 2015 when the Senate of Canada unanimously adopted a motion to designate June as Deafblind Awareness Month.

This would not have been possible without the support, dedication and tireless efforts of our former colleagues the Honourable Jim Munson, the Honourable Joan Fraser and the Honourable Asha Seth.

Throughout June, Canadians will join together to celebrate the achievements of Canada's individuals who live with deaf-blindness, while also increasing our understanding of the unique barriers they face from being treated as equal members of society.

June is also the birth month of Helen Keller, a heroic woman who lived with deaf-blindness, whose determination and trailblazing leadership made a difference in the entire world. We celebrate the strength, spirit and heart of the more than 65,000 Canadians who are living with and those caring for someone with deaf-blindness. We recognize the challenges they face every day and the perseverance they show every day in living life to the fullest. They are an inspiration to all of us.

New technologies, products and services and rights are helping Canadians with deaf-blindness in their everyday lives. While progress has been made, there is still much work to do to ensure that they feel safe and have the opportunity to enjoy life to the greatest extent possible.

• (1410)

Over the years I have had the opportunity to become aware of the amazing organizations that support the deaf-blind community, namely the Canadian Helen Keller Centre, the National Deafblind Awareness Month Working Group, CNIB Deafblind Community Services and the DeafBlind Ontario Foundation. To each of these noteworthy organizations, thank you for your outstanding leadership, dedication and commitment to serving the deaf-blind community and advocating to ensure these consumers have equal rights and opportunities.

Finally, I would like to acknowledge our former colleague and dear friend the Honourable Vim Kochhar, who inspired me to become part of the deaf-blind awareness community. He is the true champion, a tireless advocate who had dedicated decades of his life to helping others. Vim is the co-founder of Rotary Cheshire Homes, which provides housing to persons who live with deaf-blindness and founded the Canadian Foundation for Physically Disabled Persons, which provides support to persons with disabilities.

Honourable senators, please join me in recognizing June as Deafblind Awareness Month.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Austin Fiala and Will Judson. They are the guests of the Honourable Senator Plett.

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

Hon. Senators: Hear, hear!

WORLD REFUGEE DAY

Hon. Ratna Omidvar: Honourable senators, I rise today to recognize World Refugee Day. This has never been a day for celebration, least of all this year, because this year marks a new threshold of misery, insecurity, heartbreak and displacement for millions of new people.

In Ukraine alone, over 7 million people have fled the brutal and ruthless invasion by Russia. In Afghanistan, we watched in horror as the Taliban returned, resulting in a mass exodus from the country.

All told, today there are over 100 million people who have been displaced. This is a new high. I know that sometimes numbers are meaningless because we hear so many numbers thrown at us, so let me try and put these numbers into some context for you. One hundred million people is more than the entire populations of the U.K., France or Italy, and more than twice the population of Canada. If you pulled together the world's largest cities — New Delhi, Mexico City and Beijing — you would still not get to 100 million. By all accounts, this number is only going to climb because of climate change, climate migration and, sadly, more conflict.

I believe we need to come to grips with this new normal, yet tragic, way of life. Although I appreciate that Canada has worked hard to bring in Afghans and Ukrainians, we know that our response could be better, faster and more humane. We cannot be reinventing the wheel whenever a new crisis arrives, because there will always be a new crisis.

Canada needs to be better prepared, learn its lessons from the past as well as its successes — such as our response to Syrian refugees — and permanently realign the machinery of government at IRCC, Global Affairs Canada and other departments to create a rapid response mechanism which will make us more nimble, responsive and efficient. We owe it not just to the people who have lost their homes, but we also owe it to ourselves. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Robert Plamondon and Hélène F. Fortin, external members of the Standing Committee on Audit and Oversight. They are the guests of the Honourable Senator Klyne.

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

Hon. Senators: Hear, hear!

AUDIT AND OVERSIGHT

EXTERNAL MEMBERS OF COMMITTEE

Hon. Marty Klyne: Honourable senators, I rise today to acknowledge the important contributions of Madam Fortin and Mr. Plamondon, the two external members of the Standing Committee on Audit and Oversight.

Your Honour, I thank you for recognizing their presence here in the gallery, and I'm pleased to speak to you about the work they do as committee members.

As senators know, the Audit and Oversight Committee was established in October 2020, with a mandate to provide oversight on the Senate's internal and external audits. At first glance, it may look similar in function and appearance to other standing committees. However, this committee is unique because it includes two external members who are not senators. It's the first time in the Senate's history that non-senators have been included as members of a committee, and I'm pleased to tell you that their wealth of knowledge has been a great complement to the work we do as a team.

Madam Fortin and Mr. Plamondon are both highly qualified Chartered Professional Accountants who have accumulated decades of valuable experience during their respective careers, and their input into the committee's work has been of tremendous benefit to me and my fellow committee members. Their business experience and expertise have helped us shape how the Senate's audit process should function — a topic that is of interest to everyone in this chamber.

As chair, I have benefited greatly from the knowledge and unique insights that they bring to the table. These two external members add integrity and highly skilled competency to the committee's work, which is of the utmost importance, and their valued contributions benefit everyone in this chamber.

The Standing Committee on Audit and Oversight plays an important role in protecting the reputation of the Senate of Canada, which is strengthened by the engagements of Madam Fortin and Mr. Plamondon.

On a personal note, I hold them both in high regard, and I look forward to continuing the work we do together. I thank them again for their contributions, and I ask all senators to join me in saluting their service. Thank you.

Hon. David M. Wells: Honourable senators, I would like to begin by thanking Senator Klyne for his introduction of our honoured guests. Colleagues, historically, parliamentary committee memberships were exclusive to parliamentarians. It has been like that since 1867. As you have heard, on June 8, 2021, just over a year ago, our Standing Senate Committee on Audit and Oversight appointed our two external members, Mr. Plamondon and Madam Fortin, who are obviously here with us today.

Today, I rise to pay tribute and welcome our new committee colleagues and colleagues of all senators, and I thank them for their excellent work and contributions to the Audit and Oversight Committee over the past year. I recall when we were looking at all the résumés and applications that came in. Senator Dupuis, Senator Downe and I went through many of them. We were looking for people of the highest standard, and I know we succeeded in that endeavour.

It is an honour to work alongside these talented individuals in the service of the Senate and in the service of Canadians by increasing accountability and transparency here in the Senate. Honourable senators, please join me, again, in thanking Mr. Plamondon and Madam Fortin for their valuable contributions to our chamber.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Martin Gabber, Laurie Hewson, Peter Walesch and Elfie Walesch. They are the guests of the Honourable Senator Boehm.

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

Hon. Senators: Hear, hear!

WORLD REFUGEE DAY

Hon. Mobina S. B. Jaffer: Honourable senators, I also rise today to speak on World Refugee Day and to thank Canadians for opening your doors and your hearts to my refugee family and many other South Asians who fled Uganda 50 years ago.

In June 1972 — 50 years ago — I was a student living in London, England, with my three siblings. My mother was visiting and was with us when we received the worst phone call of our lives, informing us that my father, a Ugandan member of Parliament, had been killed by President Idi Amin's soldiers.

Our world came crashing down, but my mother did not give up hope. The next day, we heard a knock on the door. It was my father, Sherali Bandali Jaffer, who had fled Uganda to come to England. We could not believe our eyes. My father never shared the details of how he escaped with us, but we know that he had help from his friends in the military. Many of his colleagues were not so fortunate.

My husband and I went back to Uganda and were there on August 3, 1972, when the president declared that he would be expelling all Ugandan Asians. My husband and I were in the process of leaving Uganda when the army showed up at my in-laws' home. I will never forget that day.

• (1420)

Young military men had four guns pointing towards my husband — two facing his head and two poking his stomach, forcing him into a jeep. Luckily for us, the police arrived and insisted that my husband be taken to the police station and not army barracks. Luckily, my husband, Nuralla, was released later that day and we left Uganda as soon as we could.

His Highness the Aga Khan and his uncle Prince Sadruddin, who was the UN High Commissioner for Refugees at the time, intervened. They convinced former prime minister Pierre Elliott Trudeau and several other global leaders to help us. We were fortunate to be rescued so quickly and are forever grateful to Canadian immigration officials like Mike Molloy, who came to Uganda and quite literally saved our lives.

My story is not unique. Hundreds of refugees before me and after me have had similar experiences.

Honourable senators, on this World Refugee Day let us not forget the women, men and children languishing in refugee camps all over the world. They have lost everything, and we are in a privileged position to provide them with something that they long for: hope. Hope for a brighter future for themselves and for their families.

I will forever remain indebted to Canadians for opening their doors to me and my family when we needed you. I hope that we can keep our hearts and our doors open to refugees around the world and give them hope for a better tomorrow. Thank you, senators.

Hon. Senators: Hear, hear.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Sara Tessier, Impact Manager for Formerly Incarcerated Persons at the NorthPine Foundation, and her partner Megan Conrad. They are the guests of the Honourable Senator Pate.

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

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

BILL TO GIVE EFFECT TO THE ANISHINABEK NATION GOVERNANCE AGREEMENT AND TO AMEND OTHER ACTS

BILL TO AMEND—FIFTH REPORT OF ABORIGINAL PEOPLES COMMITTEE PRESENTED

Hon. Brian Francis, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, June 16, 2022

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

FIFTH REPORT

Your committee, to which was referred Bill S-10, An Act to give effect to the Anishinabek Nation Governance Agreement, to amend the Sechelt Indian Band Self-Government Act and the Yukon First Nations Self-Government Act and to make related and consequential amendments to other Acts, has, in obedience to the order of reference of June 14, 2022, examined the said bill and now reports the same without amendment.

Respectfully submitted,

BRIAN FRANCIS

Chair

He said: Honourable senators, after the clerk at the table has read the report, I would like to request leave of the Senate to speak very briefly.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Francis: Honourable senators, I only intend to speak very briefly on behalf of the Standing Senate Committee on Aboriginal Peoples. The committee wishes to congratulate the Anishinabek Nation for concluding the historic Anishinabek Nation Governance Agreement and the shíshálh Nation for leading the implementation of its first formal Indigenous self-government agreement in Canada. The committee observed that it took 27 years to negotiate the Anishinabek Nation Governance Agreement, and urges the federal government to ensure continuity in negotiators and staff while supporting negotiation capacity in First Nations communities so that agreements are reached in a timely and efficient manner. *Wela'lioq*, thank you.

BILL TO AMEND—THIRD READING

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

Hon. Patti LaBoucane-Benson: Honourable senators, with leave of the Senate and notwithstanding rule 5-5(b), I move that the bill be read the third time now.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read third time and passed.)

THE SENATE

NOTICE OF MOTION TO EXTEND WEDNESDAY, JUNE 22, 2022, SITTING

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

That, notwithstanding any provision of the Rules, previous order or usual practice, the sitting of Wednesday, June 22, 2022, continue beyond 4 p.m., and the Senate adjourn at the earlier of the end of Government Business or midnight, unless earlier adjourned by motion.

[*Translation*]

CRIMINAL CODE CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

(Bill read first time.)

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

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

CONSTITUTION ACT, 1867

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-14, An Act to amend the Constitution Act, 1867 (electoral representation).

(Bill read first time.)

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

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

[*English*]

CRIMINAL CODE

FIRST READING

Hon. Stan Kutcher introduced Bill S-251, An Act to repeal section 43 of the Criminal Code (Truth and Reconciliation Commission of Canada's call to action number 6).

(Bill read first time.)

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

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

• (1430)

QUESTION PERIOD

PUBLIC SAFETY

CROSS-BORDER TRANSPORTATION OF FIREARMS

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, my question today is once again for the Leader of the Government in the Senate.

Leader, as Statistics Canada reported recently, gun crime has gone up under this NDP-Liberal government, yet their response is to bring forward arbitrary bans, soft-on-crime legislation and a complicated buyback program that is still not operational. Meanwhile, illegal guns continue to pour into Canada across our border with the United States.

An answer to one of my written questions on the Order Paper revealed that between 2016 and 2020 the Canada Border Services Agency seized just 225 prima facie crime guns, or guns suspected or known to be destined for illicit use in Canada.

Leader, does this sound sufficient to you? Are you content with poor results on stopping smuggled guns, which are by far the main source of guns on the street? If your government genuinely wants to tackle gun crime, why are you, under Bill C-5, removing mandatory jail time for criminals who smuggle guns into our country?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. There is a lot in there.

Government is attacking the issue of gun crime in a number of ways. The government does not share your views on the importance or efficacy of the measures, nor does it share your views on mandatory minimums — we'll have an opportunity to debate that.

Is the government satisfied that it has stopped the flow of illegal guns across the border? Of course not. I'm advised, though, that the CBSA last year seized a record number of illegal firearms, and the government, realizing that it has more to do, has invested over $350 million in law enforcement to stop the flow of illegal gun trafficking.

The scourge of gun violence in this country is a serious problem and requires serious responses. That's what the government of the day is providing to Canadians.

Senator Plett: Of course, leader, there is no argument that this government is spending needless amounts — millions and millions of dollars — on what they are doing. That was not even mentioned in my question.

Let's see if you can answer this question without the help of my friend Senator Lankin.

The Prime Minister likes to point to increasing jail time for illegal gun smugglers, from 10 years to 14 years through Bill C-5, as evidence that he is doing something on gun smuggling. A recent answer to a written question on the Order Paper states that for criminal cases between April 2019 and March 2020, where gun smuggling was the most serious offence:

> Of the eight cases, two resulted in convictions and six resulted in stays of proceedings or charges being withdrawn. Of the two cases involving findings of guilt for an offence under section 103, one involved a period of imprisonment of greater than 24 months and one involved a period of probation between 2 and 3 years.

Leader, the Library of Parliament could not find a single instance in the past 20 years when even the current maximum of 10 years had ever been imposed by a court.

So, leader, how does raising the minimum to 14 years achieve anything? They are not even receiving the 10 that exists now. Where is the real action necessary to combat illegal gun smuggling across the border? When does it start, leader?

Senator Gold: The actions have started, and they will continue.

As for what sentences courts hand out, with or without minimum sentences, the government has confidence in the abilities of the courts to follow their constitutional requirement to make sure that punishments are proportionate to the nature of the crime and the circumstances under which the crime has been committed.

I might add that the measures to deal with a cross-border transportation of arms range from illegal smuggling operations of great magnitude to a collector who inadvertently fails to fill out the paperwork after returning from a gun show across the border.

All circumstances should be taken into account by judges in the exercise of their judicial discretion. That's the intent and purpose of Bill C-5.

INDIGENOUS SERVICES

GENDER-BASED VIOLENCE

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

On December 15, 2020, the Trudeau government announced $724.1 million to launch a comprehensive violence-prevention strategy. More than half of this funding was to support at least 38 new shelters and 50 transitional housing for First Nations, Inuit and Métis peoples across the country, including on-reserve, in the North and in urban areas.

On Tuesday, *The Globe and Mail* reported that, as of May 31, none of this funding had been allocated. As well, out of the more than $700 million promised through the strategy, just $12.6 million had been spent on violence prevention, or less than 2% of the total amount announced a year and a half ago.

Leader, could you tell us why this program to support Indigenous women and girls has been such a failure?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. I'm not familiar with the applications for funding nor the circumstances around the provision of funding. This government has done more in the interests of Indigenous women, men, children, families and communities than any other government in Canadian history.

I'll certainly make inquiries about that, but I would add — because I'm in the mood to add a commentary, if I may — that it's passing strange that this government can, literally on the same day, be criticized for shovelling money out the door much too fast and also for not taking the time when it announces funding requirements to make sure the funds are properly allocated to organizations that are properly prepared and organized to receive it. But I digress.

Senator Martin: The NDP-Liberal government says it expects to provide an update on how this funding will be allocated sometime over the summer.

Leader, does your government have a timeline to begin construction on these new shelters and transition housing? Does the Trudeau government commit to having any of these shelters up and running, and serving communities, this year?

Senator Gold: That's a good, serious question. I don't want my previous answer to, in any way, detract from the seriousness of the question and the importance of this issue of providing proper shelter for those for whom it was announced.

I will have to look into the issue and I will report back but, again, it is likely the case that the decisions about the shelters and the nature of shelters would be done in collaboration with the communities within which they would be found. I expect that would be part of the answer I come back with.

CANADIAN HERITAGE

ENGLISH-SPEAKING LINGUISTIC MINORITY IN QUEBEC

Hon. Tony Loffreda: Honourable senators, my question is for the Government Representative in the Senate.

Senator Gold, the federal government's silence on Bill 96 in Quebec is deafening. The business community in Quebec strongly believes in protecting the French language and ensuring its vitality, but they are concerned. They feel the bill goes way too far.

What will the federal government do about Bill 96? When will they start defending the rights of one of the largest linguistic minorities in Canada?

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

The government is committed to protecting and defending the rights of official language minority communities across the country, including English-speaking Quebecers. The Prime Minister has been very clear about his respect for the jurisdiction of provinces in these matters and, at the same time, his serious concerns about the way in which legislation is drafted and, indeed, protected against constitutional challenge. I have every confidence that the government will do the right thing.

• (1440)

I would like to highlight that, within federal jurisdiction, the reforms proposed in Bill C-13, which is in the other house, maintain the rights and protections afforded to Quebec's English-speaking minority.

The government will continue to support the community and their organizations financially. The government will continue to protect the Court Challenges Program to help the community defend their rights in front of the courts, and will continue to help the community strengthen its institutions to maintain and preserve the vitality of our community.

Senator Loffreda: Thank you for your response.

The Prime Minister has said that he has concerns, but hasn't spoken publicly against the bill or taken a position on the matter.

As a constitutional lawyer and expert, don't you feel the "notwithstanding" clause should be the last word used and not the first? Isn't this setting a dangerous precedent in Canada for minorities and their rights across Canada?

In Quebec, the business community has expressed concern. Just the other day, the technology companies sent a letter to the premier expressing concern over retaining and attracting top talent. Many have large import and export markets.

This is a serious concern for the business community, and it's a serious concern for minority rights in Canada. I think the government should take a stronger position.

Senator Gold: Thank you. As Government Representative in the Senate, I'm pleased to answer this. We are all many things. I'm a constitutional lawyer and an English-speaking Quebecer, but I'm answering as the Government Representative.

With regard to the use of the "notwithstanding" clause, clearly the clause is legal. But its consequences, of course, are serious: It suspends the rights and freedoms guaranteed by both the Quebec Charter — in the case of a Bill 96 invocation — and, of course, the Canadian Charter of Rights and Freedoms.

The government is of the view that if a government chooses to use a remedy of this magnitude it must set out and defend the exceptional circumstances that justify the limitation or suspension, indeed, of these fundamental protections.

The government is particularly concerned when governments use the "notwithstanding" clause in a pre-emptive manner, which is the case with regard to Bill 96, before the debate has begun and before the courts have ruled on the scope of the restriction. The Government of Canada has been clear in that regard.

[*Translation*]

FOREIGN AFFAIRS

SUPPORT FOR LGBTQ2+ PEOPLE

Hon. René Cormier: My question is for the Government Representative in the Senate.

Afghanistan was already a dangerous place for LGBTQ2+ people well before the Taliban took back control of the country. Since August 15, 2021, the situation has gotten dramatically worse. According to a Human Rights Watch report, the Taliban have committed multiple acts of gratuitous, unscrupulous violence against LGBTQ2+ people since returning to power.

In August 2021, Canada confirmed that it would extend its program to resettle 20,000 Afghans and that a special program would be set up for vulnerable Afghans, including LGBTQ2+ people.

Senator Gold, what is the Canadian government doing right now to bring in LGBTQ2+ refugees from Afghanistan? Rainbow Railroad, an organization that helps LGBTQ2+ people from Afghanistan, says that 300 of them, who are at high risk of persecution, are waiting for emergency evacuation. What is the Canadian government doing to help them?

Hon. Marc Gold (Government Representative in the Senate): I thank the honourable senator for his question.

Canada's door is always open for people who identify as LGBTQ2+ and who are fleeing violence and persecution in their country.

I am told that the government is working closely with organizations such as Rainbow Refugee, the UN Refugee Agency and other organizations to help sponsor LGBTQ2+ refugees from abroad. The government supports at least 55 service providers to help these people feel at home in Canada.

As to your specific question, dear colleague, I will find out more about Afghan refugees and I hope to get back to you soon.

Senator Cormier: Government Representative in the Senate, thank you for that answer, although it fails to reflect the urgency of the current situation.

The same urgency also exists in Ukraine. LGBTQ2+ communities face a number of challenges, including the limited availability of prescription drugs for trans people, how hard it is for them to travel because their ID does not necessarily match their gender, the fact that neighbouring countries in which Ukrainians may find refuge often have discriminatory laws in terms of LGBTQ2+ rights, and the list goes on and on.

Senator Gold, how is the Canadian government helping these individuals in Ukraine?

Senator Gold: I thank the honourable senator for his question.

We all have a role to play in ensuring that these people feel safe and are supported. I don't know the details of the situation in Ukraine, but I will ask the government for clarification on this matter to answer this and the previous question, and I will get back to you as soon as possible.

[*English*]

CANADIAN HERITAGE

IMPACT OF BILL C-11 ON ARTISTS

Hon. David Richards: Senator Gold, I know that Bill C-11 hasn't come forward yet, but I wonder if I could ask two quick questions about it, if you would indulge me.

Hon. Marc Gold (Government Representative in the Senate): Of course.

Senator Richards: The first question is: How hard will it be for writers dealing with Canadian Heritage and the Canadian Radio-television and Telecommunications Commission, or CRTC, to deliver their own original work that does not fit the CRTC's position or Canadian Heritage's new mandate?

Senator Gold: Thank you for the question. Regrettably, colleague, I don't have the answer to that question.

Happily, though, pre-study on the bill in the Senate has begun. I have every confidence that question, and the answer to that question, will be clear as the committee continues its work.

Senator Richards: If this bill is passed, will all artistic or creative platforms, no matter where they are in Canada, be monitored by government officials on a regular basis?

Senator Gold: Again, colleague, I cannot answer that question with any precision.

Again, I invite you and any interested colleagues to participate in the pre-study and certainly when we get the bill, which we will this week, and when the bill is referred to committee at such time as it is when we return in the fall, then I expect that those answers will become clear.

TRANSPORT

COVID-19 PANDEMIC—TRAVEL RESTRICTIONS

Hon. Leo Housakos: Honourable senators, my question is for the Leader of the Government in the Senate.

Senator Gold, from its inception, your government's mandatory use of the ArriveCAN app has caused problems for Canadians because of its inefficiency and unreliability, oftentimes resulting in people ending up in two weeks of forced quarantine because the app simply wasn't working properly. It's a tool that never lived up to its hype, and should never have been mandatory to begin with.

Senator Gold, when will your government get rid of this intrusive, ineffective tool, or will they get rid of it at all? Could it be that this isn't the temporary measure your government claimed and promised that it would be?

Hon. Marc Gold (Government Representative in the Senate): Well, thank you for the question. The government does not share your view of the utility or efficacy of this app. It continues to be an essential and intuitive tool to protect Canadians as we open our borders and fire up our economy. Through the app, our government has streamlined the reopening process. I'm advised that travel is up 707% from peak pandemic as a result.

ArriveCAN only takes a few minutes for vaccinated travellers to complete. Over 99% of air and marine travellers, and 94% of land travellers, have been compliant and, therefore, have provided for increased efficiency.

Senator Housakos: Senator Gold, I know your government doesn't share my views. That's why we have huge backlogs at Immigration, Refugees and Citizenship Canada, enormous lineups at Canadian passport offices and, of course, the only thing your government has really unleashed is terrible inflation that we have not seen in 30 years.

Senator Gold, Canada's largest airport, Toronto Pearson, remains paralyzed because of the doubled processing times caused by the mandatory use of ArriveCAN. At the same time, we have tourism industry representatives and mayors of Canada's border towns calling for its discontinuation because of its negative impact on tourism across the border.

• (1450)

Your government claims it invoked the Emergencies Act over concerns for economic reputation. What about the damage to our economic reputation over the petulant insistence of your government to hold on to this ridiculous app? Is that of any concern to you and your government?

Senator Gold: The government, of course, is concerned that visitors to Canada have an experience that is a good one and enjoy all the wonderful delights that this country has to offer. As we have heard before in this chamber, tourism is up and travel is up. In that regard, the government is very pleased with the progress that we're making in returning to pre-pandemic levels and hope that this increase in tourism, activity and travel benefits the travel and hospitality industries that paid a heavy price, as we all know, during the pandemic.

[*Translation*]

IMMIGRATION, REFUGEES AND CITIZENSHIP

PASSPORT SERVICES

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate.

Today in *Le Devoir*, there was an article entitled "Deux nuits dehors pour un passeport," or two nights outside for a passport. I will read a few quotes from this article to illustrate the current situation, which is totally chaotic, at the Passport Canada offices. The article talks about what is happening at a specific office, but the same thing is happening at the other offices. The article says the following:

> Travellers are concerned that they will not get their passport on time despite having spent two nights outside . . .
>
> The police force . . . confirms having been called at around 3:30 p.m., on Tuesday, to defuse a "dispute" at the service location . . . .
>
> When she decided to renew her passport, Andrée-Anne Nadeau, a resident of Boucherville, was given an appointment by Service Canada at the offices on Boulevard René-Lévesque . . . in Chandler, in the Gaspé.

That is 947 kilometres from Boucherville. It is a 12-hour drive.

The article also quoted the spokesperson for the City of Montreal's police service, who said, "Out of frustration, a suspect allegedly pushed the security officer . . . ."

What is more, the article mentions that "some people tried to cut in front of others in line," which led to altercations. This report includes the comments of a witness, who said, "If there are 400 people in line at 4 in the morning, you sneak in. People are desperate."

Further down in the article, we can read the following:

> The website of the Saint-Laurent passport office always showed a wait time of three hours and 45 minutes on Wednesday. It should have been 30 hours . . . . Almost 200 people were preparing to spend the night in front of the office on Wednesday evening.

This is happening here in Canada, in Montreal, at a passport office. Leader, are you aware that your government's inertia, amateurism and improvisation are creating real chaos for people looking to obtain a passport?

Hon. Marc Gold (Government Representative in the Senate): I am very aware of the frustration. This term is probably not strong enough to describe the situation faced by Canadians trying to renew their passport. It is a serious and enormous problem.

The government is stepping up by funding the hiring of hundreds of additional people who are working overtime and on weekends to try to resolve this problem, which will not be fixed in a few minutes. It will take time for measures to take effect. The government is concerned and is taking the situation very seriously.

Senator Carignan: Leader, if your government is taking the situation so seriously, perhaps you can explain why, three weeks ago, people were still waiting to renew their passports outside the passport office formerly located at 1 Place Laval, in Laval, until a security guard came along and told them that the office had moved. There was nothing to inform people of the move, not even a note on the door.

Leader, do you consider that an appropriate level of customer service in 2022 in Canada?

Senator Gold: I was not aware of that situation. There is no excuse for that, although I do apologize to those who waited at that location. I will try to find out more and get back to you with an explanation as soon as I know more.

[*English*]

ENVIRONMENT AND CLIMATE CHANGE

EMISSIONS REDUCTION TARGET

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, in April I asked Senator Gold a question about Canada's emissions reduction targets and the fact that the NDP-Liberal government did not consult farmers on meeting those targets. Fertilizer Canada's own research shows meeting these targets would devastate the entire sector, costing it $48 billion.

Leader, you were unable to say whether they were consulted or to what extent, but you did say that:

> . . . I can assure this chamber that the government's emissions targets are taken in the spirit and on the basis of advice and reflect Canada's commitment to do its part to reduce greenhouse gases and climate change.

Leader, did the advice you referred to regarding meeting Canada's emissions targets include advice from Environment and Climate Change Canada and Natural Resources Canada, or did the government ignore them while preparing its targets just as it has ignored the farmers and Fertilizer Canada?

Hon. Marc Gold (Government Representative in the Senate): Well, I don't have a different answer from the one you cited before. I do not know the nature of the consultations or advice, and I would not presume to answer given that I don't know.

This government will continue to work to help Canada do its part to achieve reductions in carbon and greenhouse gas emissions while, at the same time, doing so in a way that protects and addresses the economic needs of all sectors, including the agricultural sector.

Senator Plett: Well, I trust that you will get me the answer that I asked for if you don't have the answer today.

A report in *The Globe and Mail* on Tuesday cited confidential government documents on the emissions targets released in March. Those documents, including findings from Environment and Climate Change Canada and Natural Resources Canada, showed the government's targets of an 81-megatonne reduction in emissions from the oil and gas sector by 2030 was completely unrealistic, leader.

The documents showed the industry could only realistically reduce emissions by 43 megatonnes by 2030. Officials at Environment and Climate Change Canada said they would share documents with *The Globe and Mail* showing how the gap between 43 megatonnes and 81 megatonnes would be bridged. Then, of course, they reneged on that promise. This government constantly tells us it relies on science, but it ignores advice from its own experts.

Leader, can you tell us why the government ignored the more realistic figures on its emissions targets? Will you commit to tabling in this chamber the documents promised to *The Globe and Mail* on how a gap of 38 megatonnes would be bridged?

Senator Gold: The government does not ignore the advice. Let me answer your question. I'm advised that the analysis referred to, Senator Plett, is one of the many internal inputs and early inputs that were assessed and considered in the process of developing the plan. The analysis provides a very incomplete picture of internal government analysis. It also does not reflect the final modelling done by the government. The final analysis used as a baseline the latest projections from the Canada Energy Regulator and its trajectory for oil production. The analysis that is referred to also does not incorporate the full scale at which emissions reduction technologies such as carbon capture and storage could reduce emissions. Rather, it focused only on technologies currently available.

I have been further advised that the emissions reduction plan, along with other developing regulatory approaches, shows that, with the right policy signals and the support of frameworks in place, Canada can indeed reach its target of a 40% reduction by 2030, equating to an 81-megatonne cut in pollution.

IMMIGRATION, REFUGEES AND CITIZENSHIP

RESETTLEMENT OF REFUGEES

Hon. Marilou McPhedran: Honourable senators, I wish to ask the Leader of the Government in the Senate a question about the Russian invasion of Ukraine.

What we know is we are seeing that innocent Ukrainian civilians need more support to face the brunt of a vicious world leader defying international law, and the unequal sympathy and treatment that Western countries, including Canada, have shown refugees from other conflict zones.

• (1500)

Minister Sean Fraser told us Canada is ready to welcome Ukrainians and that "there is no limit to the number of applications." We are seeing this disparity between 43,000 Ukrainians and around 16,000 Afghans coming to our country. We have heard unpalatable discourse explaining that this has to do, essentially, with systemic racism.

Senator Gold, how does the government justify the vastly disparate treatment and outcomes in Ukrainian and Afghan resettlement efforts?

Hon. Marc Gold (Government Representative in the Senate): The government is not in the business of justifying the difference. The explanation would be multifold, including the different circumstances — horrible though they are in both cases, in Afghanistan and surrounding area and in Ukraine and surrounding countries — with regard to the ease or difficulty with which the processing of interested refugees could take place.

In that regard, the government continues to do its very best to welcome as many refugees as it can from Ukraine and continue to work to reach higher levels of immigration from Afghanistan.

DELAYED ANSWERS TO ORAL QUESTIONS

(*For text of Delayed Answers, see Appendix*.)

[*Translation*]

ORDERS OF THE DAY

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, after Question Period on Thursday, June 9, 2022, Senator Miville-Dechêne rose on a point of order concerning a possible breach of confidentiality of an in camera meeting that took place earlier that week. I wish to thank the honourable senator for raising this matter, as well as all senators who contributed to the debate on the point of order.

Colleagues, the discussion pertained to items that may have been under discussion in committee. We do not have access to in camera proceedings and do not know what was said or done in the committee. Different facts were placed before us. In my opinion, this would be best discussed by the committee. As stated in paragraph (a) of Appendix IV of the *Rules of the Senate*, "[i]f a leak of a confidential committee report or other document or proceeding occurs, the committee concerned should first examine the circumstances surrounding it." The committee can then take the appropriate follow-up measures.

I wish to remind all honourable senators that the deliberations and any proceedings related to in camera meetings are confidential, and your cooperation in being careful on this point is greatly appreciated.

BUSINESS OF THE SENATE

Hon. Raymonde Gagné (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: third reading of Bill S-4, Bill S-6, Bill C-24, Bill C-25, followed by the consideration of the third report of the Standing Senate Committee on National Security and Defence, followed by all remaining items in the order that they appear on the Order Paper.

BILL TO AMEND THE CRIMINAL CODE AND THE IDENTIFICATION OF CRIMINALS ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (COVID-19 RESPONSE AND OTHER MEASURES)

THIRD READING—DEBATE ADJOURNED

Hon. Pierre J. Dalphond moved third reading of Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures), as amended.

He said: Honourable senators, today, I have the honour of opening the debate at third reading of Bill S-4, An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts regarding the COVID-19 response and other measures.

This bill proposes to amend the Criminal Code and other acts in response to difficulties with the administration of the criminal justice system that came to light during the COVID-19 pandemic, particularly with regard to the use of new technologies. It complements Bill C-75, which we passed in 2019.

Before I summarize the amendments, I would like to sincerely thank the members of the Legal and Constitutional Affairs Committee for their comprehensive study of this bill. I also want to thank the witnesses. The committee heard from over 20 witnesses who generously shared their time and expertise with us. The committee members also had access to many documents, including briefs prepared by individuals and organizations with an interest in how the criminal justice system works. The committee devoted two meetings to the clause-by-clause consideration of the bill.

As the chair of the committee, Senator Jaffer, said yesterday, the committee proposed two amendments and made a number of observations that I hope will guide the Department of Justice and members of Parliament in the next steps.

Finally, I want to acknowledge the many constructive exchanges that we had with Senator Carignan, the bill's critic.

Since many of the COVID-19 measures have now been lifted, you may be wondering whether this bill is still necessary. It is still just as relevant. It will enable the criminal justice system to make permanent the options for using technology in court processes that were developed or improved during the pandemic. Making these options permanently available to accused persons, inmates and other stakeholders in the criminal justice system will make our system more flexible, which I hope will help reduce court delays.

When it comes to the use of new technology, as many witnesses and members of the committee, including Senator Wetston, pointed out, it is impossible to go back to a justice system that relies on old practices that ignored the potential of new technologies and often placed unnecessary burdens on stakeholders in the criminal justice system.

For example, why insist that a police officer go to a courthouse to give a judge a written application for a warrant? That officer then has to wait in the hallway to find out whether the judge approved the application, after merely reading through the documentation, and to get the appropriate paperwork. It would be much more effective to use email for this sort of thing.

Similarly, the criminal justice system can also no longer insist that every document be submitted in hard copy or cling to unnecessarily long or costly work practices.

Why insist that hundreds of prospective jurors show up at the same time and at the same place for pre-screening when that process can be completed virtually, either in whole or in part? Why require an accused who is not represented by a lawyer to travel hundreds of kilometres from home simply to enter a guilty plea for a summary offence? There again, the use of technology that would allow the accused to attend virtually would be in the best interests of justice and the accused.

Bill S-4 responds to these and other similar issues by specifically authorizing the use of technology.

I would add that having accused persons and other stakeholders attend virtually is not a new practice introduced by Bill S-4. As a result of the passage of Bill C-75 in 2019, the current Criminal Code already includes Part XXII.01, Remote Attendance by Certain Persons. What we are doing by passing Bill S-4 is building on and adding provisions to that part.

What is more, in response to the pandemic, since March 2020, the courts have demonstrated creativity by relying on paragraph 650(2)(b) and section 715.23 of the current Criminal Code to authorize accused persons to attend court proceedings virtually in many situations.

• (1510)

[*English*]

In March 2020, when the COVID-19 pandemic became a public health emergency of international concern, many courts were able to rely on the remote-appearance provisions that were expanded or introduced by Bill C-75 in 2019 and which had just come fully into force.

However, the pandemic has made it evident that more legislative clarity and additional mechanisms were needed. Bill S-4 will provide just that.

Former Chief Justice MacDonald, who testified before the committee on behalf of the Action Committee on Court Operations in Response to COVID-19, a special committee co-chaired by the Chief Justice of Canada and the Minister of Justice, put it succinctly when he referred to Bill S-4 before the committee as:

> . . . another important tool in the kit for judicial discretion in terms of ensuring that access to justice is as good as it can be in this country.

At the committee, all of the original provisions of the bill were carried as introduced. However, the provisions that attracted significant commentary and debate by witnesses and committee members were the bill's proposals to allow accused persons to be able to appear remotely for the entirety of their preliminary inquiry or trial, regardless of whether witness evidence is presented.

Some committee members have expressed concerns about the ability to assess the credibility of witnesses remotely, about consequences of technological issues arising during hearings and about the potential impact of remote participation on the culture and tradition of our judicial system.

Yet we heard from many witnesses that these considerations should not be raised as reasons to oppose a greater use of remote participation. Chief Justice MacDonald in particular stated that judges have been assessing the credibility of witnesses remotely for years, and they have never intended to "sacrifice the accused's rights or anyone's rights in a trial at the altar of efficiency."

Shelley Tkatch, an Alberta Crown lawyer with over 30 years of experience, emphasized how remote proceedings have improved the experiences of vulnerable witnesses by reducing the traumatic impact of testifying in open court.

We also heard from defence counsel Michael Spratt that remote proceedings can actually enhance credibility by providing judges with a clearer view of a witness's face, and by eliminating some of the systemic problems associated with putting too much emphasis on an individual's demeanour.

The committee also heard from a representative of the Indigenous Bar Association, Alain Bartleman, that Bill S-4 will offer an alternative to an individual asked to appear in person in a city located several hundred kilometres away from home. Indeed, he said that Bill S-4 will provide to the accused ways to minimize individual problems, including substantial financial costs to travel to the courthouse. According to him, access to justice would therefore be improved.

He also said that this bill could address some in-person concerns, or at least sidestep them, most notably translation services:

> I can count on one or two fingers the number of times in which the courts have been able to properly find individuals with the appropriate linguistic competencies for . . . some dialects of Indigenous languages. Accordingly, a centralized or technological solution to enable pools of translators to assist would be a boon to the profession and certainly a boon to Indigenous clients — those Indigenous individuals in the justice system who are faced not only with obvious challenges of distance and time but also with simple communication and access to justice.

[*Translation*]

That said, I'll be the first to admit that there will always be hearings where remote participation is not appropriate. Bill S-4 does not allow for remote attendance in jury trials, and nobody is suggesting that remote attendance should be the preferred mode for criminal cases.

On the contrary, I want to emphasize that in-person attendance is the basic rule, as indicated in section 715.21 of the Criminal Code, which is not being amended. I'll quote it here:

> **715.21** Except as otherwise provided in this Act, a person who appears at, participates in or presides at a proceeding shall do so personally.

It's important to remember that the court can order remote attendance only in exceptional situations.

The fact is, the court cannot authorize remote attendance by video conference or telephone unless the accused requests it either for the plea, a preliminary hearing or a trial — except in the case of a jury trial, of course. In other words, it is always up to the accused. In most cases, the Crown's consent is required as well.

Lastly, I should point out that court authorization is always required.

As was the case with Bill C 75, this bill sets out considerations for the court to take into account before authorizing attendance by audio conference or video conference. The court must take into consideration all the relevant circumstances, including the right to a fair and public hearing, the location and personal circumstances of the accused, the suitability of the location from where the accused will appear, the costs associated with appearing in person, and the nature and seriousness of the offence.

The bill also gives the judge the discretion to end the remote attendance at any time. This may be the case if technical problems arise, for example.

[*English*]

After debate, the majority of the members of the committee concluded that it was not necessary to try to spell out in more detail the circumstances to consider and that judicial discretion is and remains key here and that judges are best placed to determine, on a case-by-case basis, if remote attendance is appropriate considering all relevant circumstances.

During the committee's study of the bill, there was a consensus on the importance that a request for remote attendance by an accused result from an informed and free decision. This concern was particularly true for self-represented accused. That is why this bill further proposes safeguards for those accused persons who do not have legal representation.

Before authorizing a remote appearance for an accused or an offender who does not have access to legal assistance during the proceedings, the bill will require courts to be satisfied that the accused or offender are able to understand the proceedings and that any decisions made by them are voluntary.

Of course, if an accused appearing remotely is represented by counsel, the court must ensure that the accused has the opportunity to consult privately with counsel, and this is also provided for in the bill.

On this aspect, we heard from the Canadian Association of Elizabeth Fry Societies, represented by Ms. Emilie Coyle about the lack of appropriate rooms in jails and penitentiaries for inmates to consult remotely with counsel or to appear remotely in a way that privacy and full participation in the legal proceedings are ensured.

In this regard, Ms. Coyle shared with the committee that she visited a federal institution where the conference room was not soundproofed and where interference from the communication system was more audible than the voices of the participants in the court room.

These things must be addressed before an authorization is given by a judge, and I hope that the Department of Justice and the Attorney General will look at these things to make sure that penitentiaries are properly equipped with the necessary equipment and proper rooms for inmates to participate in their trial in privacy and with full opportunity to consult with counsel.

• (1520)

[*Translation*]

Another aspect of the bill that received unanimous support, including from the Royal Canadian Mounted Police and the Canadian Association of Chiefs of Police, is the proposed expansion and update of the current telewarrants system. These proposals respond to the calls issued by many stakeholders, including the Uniform Law Conference of Canada, the Steering Committee on Justice Efficiencies and Access to the Justice System, and the Canadian Association of Chiefs of Police, with a view to streamline the telewarrant process and extend its application to a greater number of situations.

[*English*]

Bill S-4 proposes to replace the existing telewarrant provisions with a streamlined and standardized process that will apply to a wider variety of search warrants, investigative orders and authorizations, and that will remove certain restrictions relating to types of offences, applicants and levels of court, while maintaining the current safeguards for issuance of the underlying judicial authorizations.

One key element of the proposed provisions is that where the search warrant application is submitted by means of telecommunication that produces a written document, such as by fax or email, a peace officer will no longer be required to meet the current preconditions if it is impracticable to appear in person before a justice to make an application for a warrant.

However, of course, a police officer could still make an oral application for a search warrant by means of telecommunication — by phone, for example — if he is located in an area where it is not accessible or where access to the internet is not possible or is impracticable.

The bill also provides for a uniform approach to the duties associated with the execution of search warrants and to post-seizure reporting requirements regardless of whether the search warrant was obtained by technological means or by personal attendance. Once more, we are going to formalize the practices.

It is also important to signal that the committee added two new clauses to the bill. The first amendment, proposed by Senator Cotter, will require the Minister of Justice to initiate one or more independent reviews on the use of remote attendance in criminal justice matters no later than three years from the date the bill receives Royal Assent, and report back to each house of Parliament within five years. This significant amendment will provide an opportunity to assess the impact of remote-attendance provisions introduced by Bill C-75 and by Bill S-4 after some years of experience.

The second amendment, which I moved myself, would require a parliamentary review of the impact of the remote-attendance provisions, including, obviously, the reports of the independent reviewers at the start of the fifth year after Royal Assent.

[*Translation*]

Finally, I hope that these measures that have now been added to the bill will reassure certain representatives, mainly those of the Barreau du Québec, who were concerned about the bill's implementation without a careful enough study of the possible consequences. I wish to highlight that the committee included in its report a certain number of observations. It suggested, in particular, that the delays in the criminal justice system be re-examined given the importance of this issue for many of the witnesses we heard from. We all recognize that delays have serious consequences for both the accused and the victims. This is a problem we must tackle on an ongoing basis.

Other observations deal with the importance of ensuring legal interpretation services of good quality, investing in the technology needed to have quality remote appearances, ensuring the availability of facilities in several locations in Canada to guarantee access to remote proceedings for everyone, and putting in place measures to ensure respect for the fundamental rights of the accused persons in custody, those who are marginalized, the victims and the witnesses.

I understand that the bill's proposals reflect the needs of our criminal justice system as formulated by the provinces and territories in the consultations held by the Department of Justice with all stakeholders responsible for the administration of justice, and other key stakeholders in Canada, including the special committee I talked about earlier. Bill S-4 proposes a set of targeted reforms that are reasonable, measured and widely supported by Canada's legal community. For those reasons, I invite all of you to support Bill S-4.

[*English*]

I understand that the observations that were made by the committee should be considered as calls to action for the federal government, the provinces and the territories, as well as other key stakeholders in the criminal justice system across Canada, including counsel and judges.

In conclusion, Bill S-4 proposes a targeted set of reforms that are sensible, measured and broadly supported by the legal community across Canada. For these reasons, I invite you all to adopt third reading of Bill S-4 in the coming days in order to send it to the House of Commons for their consideration and sober second thought, I suppose, by the members of the other place.

Thank you, *meegwetch*.

Hon. Denise Batters: Senator Dalphond, thank you for that explanation.

In your speech, you referenced the testimony of Alain Bartleman from the Indigenous Bar Association, but you did not set out today how Mr. Bartleman had actually made an important proviso when he expressed support, in a general way, for this particular act potentially being quite helpful as an access to justice issue. I asked him about that when he testified in front of the Legal Committee. I'll read this so it's correct. I note that when I was asking him about this, particularly referencing northern Saskatchewan, where I said that many Indigenous people live, of course, and they have had, ". . . drastic problems with the technology." I was wondering if he had any comment about that area. He said:

> Yes, there are technological gaps — major ones — and the Indigenous Bar Association, on the one hand, signals and applauds this act for moving in favour of greater accessibility through video conferencing.

But then he said:

> However, it also notes its concerns that if the promises found within this bill are not matched by concomitant investments into technology — and not simply internet connectivity technology . . . could take quite some time to catch up, but also training in how that technology is used and in developing a measure of comfort with that technology — this effort will be, for lack of a better term, stunted. It will not be as effective as it could be.

Senator Dalphond, as I said then, that's a major qualification that he made on that particular issue, and certainly we have seen that. We saw some dire examples just even in our Senate Legal Committee with a witness from Nunavut legal aid who had a very good office and, you would think, good connectivity, and she had a terrible time.

We have, of course, seen the same problems many times with senators testifying from many different places in Canada, including some of the largest cities, not even necessarily rural or remote locations.

Getting back to what Mr. Bartleman said, would you acknowledge that he acknowledged that the Government of Canada absolutely needs to make major investments in technology, and we haven't really seen those efforts come to fruition yet? I wonder if you have any insight into when the government will actually fulfill their promises on that.

Thank you.

Senator Dalphond: Thank you, Senator Batters, for this excellent question.

I have already acknowledged these challenges in my speech, and I said that it was a call to action for the federal government, the provinces and the territories. As we know, in our constitutional system the administration of justice is a matter which is under the jurisdiction of the provinces and the territories. Therefore, the federal government can assist and can even provide financing, but, at the end of the day, the operation of courthouses — except federal courthouses — will always remain under the jurisdiction and responsibility of the provinces.

Also, remember that the minister, when he appeared before the committee, mentioned that they committed — I forget how many — millions of dollars in the previous budget for improvements to access to justice, and that could be used for that purpose. I certainly agree with you and with the observations made by the committee that not only should we have access to what we call remote attendance for all those who would like to avail themselves of that option, but that option should be made available on an equal basis to all Canadians who would like to use it. Therefore, we must be sure that especially in the Northwest Territories, where the distances are so big, they also have access to quality internet and equipment in order to participate remotely. Otherwise they will have to travel again over long distances sometimes just to appear to plead guilty on a summary conviction charge, which doesn't really make sense.

• (1530)

Thank you for your question and observations. I think the committee also picked it up.

Senator Batters: Senator Dalphond, with respect to the particular issue of broadband technology across Canada, this is a promise the federal government has made a number of different times over the last few years — to improve broadband technology across Canada. Obviously, we're not necessarily just dealing with courthouse administration of justice here. We're dealing with broadband technology so that many different people across Canada can properly access these tools. Mr. Bartleman pointed out the need for a drastic improvement in these major gaps that we see across Canada — not only in rural and remote areas, but certainly that is the most pronounced area.

Since you're the sponsor of this particular federal government bill, and the government has made major promises — including in the last election campaign — about expanding broadband technology, what is the update as to when that is going to happen? How much money will be promised for that and when?

Senator Dalphond: I think maybe the question is beyond even the domain of the justice minister. I know that in the budget, a lot of money was committed to providing access to broadband to all Canadians everywhere, especially in remote areas.

I know that in Quebec, there was an agreement between the federal and provincial governments to extend quality internet access to remote areas all across the province. I hope that similar programs are moving forward. Certainly, I acknowledge — with you — that the Northwest Territories is still not a province but a kind of federal structure, so the federal government could certainly be more precise and send more money in particular to that area to assist in providing broadband.

Maybe that is a question more for the finance minister than for the justice minister. I have the honour to speak on the justice minister's behalf only for this bill, and not the running of his department or the government.

[*Translation*]

Hon. Renée Dupuis: Senator Dalphond, did I understand you correctly when you said earlier that the committee is concerned about the fact that technology is not a quick fix for the future of the court process? The witnesses that we heard from said that technology could be useful in some cases, if some very specific criteria are met — for example, if the accused has a place where they can not only confer with counsel but also do so privately, which is not currently the case.

In fact, did we not hear other witnesses say that technology would not solve all the problems? In some regions of Canada, it is just as difficult to hold an in-person hearing as it is to hold a remote one. We are faced with a situation where it is difficult to travel to the courthouse and just as difficult to hold a remote hearing because the technology is not reliable enough.

Am I correct in saying that you raised this concern and that is why one of the committee's observations involves a request for an impact study? The situation created by the COVID-19 pandemic forced courthouses and the entire judicial system to adapt. However, we need to look very closely and carefully at these impacts over the coming years.

Senator Dalphond: I thank Senator Dupuis for the question and for her very useful comments. I have nothing to add. I made reference to this in my own speech. Senator Dupuis, there's no doubt that the committee's observations on this are important. You made a very significant contribution. I commend Senator Cotter's initiative in proposing that one or more independent committees review the implementation of these provisions after three years. I think we're in a period of transition. As Senator Wetston said, the train has left the station and we can't go back in time, but we can absolutely make adjustments and improvements along the way. That is why these studies are important. Over the next five years, we have a duty as parliamentarians to review this issue and make sure that it progresses in the right direction, without unintended consequences. You are absolutely right.

(On motion of Senator Martin, debate adjourned.)

[*English*]

BILL RESPECTING REGULATORY MODERNIZATION

THIRD READING—DEBATE ADJOURNED

Hon. Yuen Pau Woo moved third reading of Bill S-6, An Act respecting regulatory modernization, as amended.

He said: Honourable senators, before I begin, I would like to take a moment to acknowledge that the land on which we gather is the traditional territory of the Algonquin Anishinaabe people.

I am pleased to open the third reading debate on Bill S-6, an Act respecting regulatory modernization.

The bill has returned to the Senate following pre-study by seven committees, consisting of over 21 hours of testimony from 48 witnesses, the summaries of which were provided to the Senate Standing Committee on Banking, Trade and Commerce, which in turn presented its report on Tuesday, and the report was adopted by this chamber yesterday.

[*Translation*]

I want to thank the members of all the committees for their work on this bill. They made some improvements. The committees also identified some broader questions about the need for faster and more extensive regulatory reforms, to ensure that companies can innovate, prosper and be competitive on the world stage.

[*English*]

Honourable colleagues, businesses are the backbone of Canada's economic success. They create the products, services and wealth that have made our country prosperous. As we emerge from the pandemic, Bill S-6 and its successors will help Canadian businesses by ensuring the regulatory system evolves with changing technologies and that they reflect today's realities.

The modern regulatory system must do two things. First, it must promote business investment and innovation; second, it must ensure the health, safety and security of Canadians and the protection of the environment. That is what Bill S-6 does. It modifies 29 different acts through 46 common-sense amendments to modernize our regulatory system.

For example, the bill proposes a minor change to the Canadian Food Inspection Agency Act that would allow the agency to deliver services and allow businesses to interact with them electronically rather than through paper-based transactions. This will reduce the administrative burden for businesses and allow them to be more flexible in their interactions with the government.

• (1540)

The bill also contains amendments to the Fisheries Act that would clarify that fishery officers have the authority to use alternative measures to taking fishers to court in response to minor violations. This is an authority that was unclear in the existing legislation.

Such a change could not only reduce the number of lengthy and costly court processes, but also ensure small violations do not result in criminal records and the stigma and barriers that come with them. The use of such alternative measures has been supported by the fishing community and Indigenous groups.

In addition, amendments to the Canada Transportation Act would allow regulatory changes stemming from updates to international transportation safety standards to be integrated more quickly. These are just some examples of the 46 amendments included in the bill.

While the individual effect of each proposal may seem small, they have the potential, taken together, to make a real difference to those who are affected. In fact, many of these changes were proposed by Canadians and by Canadian businesses. What's more, all of the proposals are cost-neutral, and the associated risks are low to non-existent. Bill S-6 makes sure our system stays up to date, and sets up Canadians and businesses for success in the years ahead.

As honourable senators know, this bill is meant to be a recurring legislative mechanism. While Bill S-6 is billed as the "second Annual Regulatory Modernization Act," it is in fact the first stand-alone bill under the rubric of yearly updates to regulation that were first announced by the government in 2018.

The Senate can take some pride in being on the ground floor of a process that I hope will grow in ambition, effectiveness and efficiency over the years.

[*Translation*]

The idea of a recurring legislative mechanism for regulatory modernization is a response to the legislative challenges noted by businesses and Canadians during targeted regulatory reviews and consultations.

[*English*]

Business stakeholders such as the Economic Strategy Tables and the Advisory Council on Economic Growth have stressed that having such a regularized mechanism in place is critical to improving Canada's regulatory system.

In addition, the External Advisory Committee on Regulatory Competitiveness, made up of business, academic and consumer stakeholders, has called for further efforts to reduce the administrative burden of regulations and ensure that regulations are future-proofed.

By amending laws that are too inflexible, too specific or simply outdated, this bill is an important reminder of the need for ongoing regulatory review and legislation that stands the test of time. In fact, work on the next annual regulatory modernization bill is already under way and is expected to be tabled in Parliament in 2023.

Let me return to the good work of our committees in their pre-study of this bill. The content of Bill S-6 was sent to the following seven committees: Banking, Trade and Commerce; Energy, the Environment and Natural Resources; Agriculture and Forestry; Fisheries and Oceans; Social Affairs, Science and Technology; Foreign Affairs and International Trade; and Transport and Communications. I want to again thank all committee members for their hard work. As a result of specific feedback from committee work, two sets of amendments were made to Bill S-6.

The Agriculture and Forestry Committee observed that the provisions of what was then Part 6 of the bill should not proceed in isolation, but was better considered as part of broader consultations on the Pest Control Products Act, which began in March 2022. The government agreed, and that section was duly voted down during clause by clause at the Banking Committee.

In addition, I moved two related amendments that responded to concerns raised by the Privacy Commissioner in a letter that he wrote to the Social Affairs, Science and Technology Committee related to the need for memoranda of agreement between Immigration, Refugees and Citizenship Canada and the agencies with which they share the type of information that is spelled out in Bill S-6. I'm pleased to say that both amendments went forward and are contained in the revised bill before us.

[*Translation*]

A number of committees observed that consultation processes for future regulatory modernization efforts should be transparent, interactive and inclusive of all relevant stakeholders, not only those already in the regulatory system, but also potential new entrants. I agree with those observations.

[*English*]

Many of you have also called for a more ambitious regulatory modernization agenda for the government. I also agree with this sentiment. To that end, I organized a briefing for all senators on the Canadian government's overall approach to regulatory reform, within which this bill, the annual regulatory modernization bill, is only a small part. An important takeaway from that briefing is that the Treasury Board Secretariat has recently established a pilot project to make it easier for individuals and organizations to improve Canada's regulatory system. I encourage you to check it out at www.letstalkfederalregulations.ca.

There are many moving parts to regulatory reform, only some of which can be addressed through cleanup bills such as Bill S-6. More substantial changes, however, can only be dealt with act by act, which is time-consuming and sometimes politically charged. That is why I believe that the Senate has a special role to play in advocating for regulatory reform and providing leadership on the need for energy, innovation and persistence on this issue. Perhaps we can consider a special study on how we can improve regulatory modernization in Canada and use it as a marker of the

Senate's ongoing attention in this area. That is for another day, and I know other senators have ideas, and I look forward to hearing from them.

[*Translation*]

Colleagues, your diligent work has been critical in helping to improve this bill and has provided the Senate with an important opportunity to strengthen the regulatory system.

[*English*]

Bill S-6 will help modernize existing rules to make it easier for Canadians to get things done and to set up regulators, stakeholders and Canadians for success. Let's send this bill to the other place as soon as possible with a sticky note marked, "urgent." And then let's turn our minds to improving the regulatory system writ large. Thank you.

Hon. Larry W. Smith: Honourable senators, I rise at third reading in my capacity as critic to speak to Bill S-6, An Act respecting regulatory modernization.

Colleagues, I will offer some brief remarks and highlight some of my concerns based on what I heard at committee from both the government and stakeholders.

The intent of Bill S-6 is commendable, seeking to reduce the regulatory burden for Canadian businesses and create an environment which enables economic innovation and growth. I believe that regular and ongoing efforts around regulatory modernization, as is committed to by the federal government, could be greatly beneficial for the business community in Canada.

• (1550)

As an example, the Canadian Federation of Independent Business told the Senate Banking Committee:

> . . . until recently, many small businesses told us that they kept a fax machine for the sole purpose of dealing with governments and meeting their requirements. . . .

I am concerned, however, with the process by which Bill S-6 has been brought to the Senate for study.

To begin, Treasury Board officials told our Senate Banking Committee that public consultations were launched in 2019 via the *Canada Gazette* in order to allow stakeholders to bring the attention of the government to regulatory issues that impacted them.

Senator Colin Deacon quickly picked up on this process, highlighting that the *Canada Gazette* may not be the most effective means of communicating with industry today, especially with new and emerging players who are not familiar with the seemingly antiquated process.

I could not agree more with Senator Deacon. The *Canada Gazette* as a vehicle for consultations and communication with industry today is not the most effective tool.

Many of us here are all too familiar with the outdated, clunky and slow publication process that is the *Canada Gazette*, and it is being used in an effort to modernize Canada's regulatory framework.

Colleagues, I think it may be time to bring the *Canada Gazette* into the 21st century before we bring Canada's patchwork of regulatory frameworks into the 21st century. Nevertheless, I am pleased to learn that the government has been working on alternative means of consulting with industry, which includes online portals that are designed to broaden the reach of the process to more stakeholders.

Lastly, I would like to highlight the visible disconnect between government and industry, which appears to be a recurring theme at our Banking Committee.

We heard at committee the need for government to not only offer extensive consultations but also to engage with stakeholders.

Speaking about the federal government's new regulatory consultation portal, Mr. Robin Guy of the Canadian Chamber of Commerce noted:

> . . . it's a new portal, but we have to see how these things work operationally. It can't just be business putting in feedback without response. There needs to be a two-way conversation, which, I guess, you could call a negotiation. From our side, we would hope that it is a two-way street and that it's not just information going into a system and never coming back out.

Additionally, Senator Rob Black, Chair of the Agriculture and Forestry Committee, appeared before the Banking Committee to speak about the divisions of Bill S-6 that were delegated to his committee. Speaking of the consultation process, he said:

> . . . the committee believes that the Government of Canada should ensure that future consultation processes for regulatory modernization bills and initiatives meet several key criteria. In particular, the processes should be transparent, interactive and inclusive of all relevant stakeholders, including both those who are well-established in and those who are new entrants to a particular sector. . . .

Finally, in a submission to our Banking Committee, the Canadian National Millers Association raised concerns that regulated industries had no way of knowing what changes would be included or excluded from Bill S-6 before the final text of the bill was tabled in the Senate. They noted that:

> [Treasury Board Secretariat] has liberty and the means (human resources and protocols) to consult with stakeholders on what regulatory modernizations might possibly be included during the drafting of the next [regulatory modernization bill] without disclosing the final content of the bill before tabling in Parliament via either the Senate or the House of Commons.

Colleagues, the stakeholders in regulated industries, in my view, are best positioned to provide feedback on how regulation impacts their businesses.

For example, a more proactive approach to communication by the federal government with industry would have prevented the inclusion of Part 6 in Bill S-6 which, had it not been removed at committee, would have superseded the extensive regulatory revision efforts of Health Canada currently under way on pest-control products.

Colleagues, Bill S-6 is the first of a series of ongoing legislative efforts to modernize Canada's regulatory frameworks. As such, the federal government needs to ensure that the process by which regulatory modernization takes place is properly coordinated internally. Moreover, the government needs to commit to more extensive, fulsome and engaging consultations with stakeholders to ensure the regulatory modernization efforts are effective. Thank you.

(On motion of Senator Patterson, debate adjourned.)

CUSTOMS ACT
PRECLEARANCE ACT, 2016

BILL TO AMEND—THIRD REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on National Security and Defence (*Bill S-7, An Act to amend the Customs Act and the Preclearance Act, 2016, with amendments*), presented in the Senate on June 15, 2022.

Hon. Tony Dean moved the adoption of the report.

He said: Honourable senators, on June 13, 2022, the Standing Senate Committee on National Security and Defence completed its study of Bill S-7, An Act to amend the Customs Act and the Preclearance Act, 2016.

As part of this study, the committee heard from the Minister of Public Safety, the Office of the Privacy Commissioner of Canada, government officials, academic experts and representatives from legal and civil society organizations.

The committee adopted Bill S-7 with three broad areas of amendment, which included the following: first, the legal threshold for searching personal digital devices at the border; second, the network connectivity of those devices; and third, regulations relating to solicitor-client privilege. I will cover each of these briefly.

First on the legal standard, Bill S-7 would have introduced a new legal threshold for the examination of personal digital devices by Canada Border Services Agency, or the CBSA, customs officers and U.S. pre-clearance officers — that standard being "a reasonable general concern."

As context for the changes proposed in the bill, in 2020 the Court of Appeal in Alberta ruled section 99(1)(a) of the Customs Act unconstitutional as it pertains to examinations of personal digital devices. CBSA customs officers currently use a multiplicity of indicators to guide searches of digital devices in line with their internal policies. The court determined that legislation must be amended to include a threshold and further stated that it is Parliament's role to establish a threshold for the examination of personal digital devices by these officers.

In appearing before the committee, the minister asserted that the threshold proposed by the Government of Canada in Bill S-7 is required to give CBSA officers the authority they need to intercept illegal contraband on personal digital devices.

Furthermore, government officials explained that Bill S-7 would introduce the first legal threshold for U.S. pre-clearance officers to conduct a search of a personal digital device.

However, several witnesses expressed concerns about the bill's proposed threshold. In their view, its implementation could have the following results: arbitrary treatment at the border; the violation of privacy rights of individuals; an increased risk of discrimination; a lack of clarity about the proposed standard's meaning; and, indeed, a further challenge before the courts.

The committee amended Bill S-7 to replace the new threshold of "reasonable general concern" with the higher threshold of "reasonable grounds to suspect," which is a legal standard that already exists in the Customs Act and the Preclearance Act, 2016.

The committee agreed, on division, that this higher legal standard might alleviate some of the concerns that I have just listed. The Customs Act and the Preclearance Act, 2016 currently state that a CBSA or U.S. officer must have reasonable grounds to suspect that a traveller could be breaking the law before conducting other searches such as, in the case of the Customs Act, opening mail that a traveller is carrying, or, in the case of the Preclearance Act, 2016, conducting a strip search.

• (1600)

The committee's amendments to Bill S-7 would ensure that examination of personal digital devices at the border would be subject to a threshold that is already known to CBSA and U.S. officers.

Regarding network connectivity, government officials emphasized that the Customs Act gives CBSA officers the right to examine documents that are stored on a personal digital device but not documents that are stored on a cloud-based server, for example. Bill S-7 would maintain this role for CBSA customs officers and would formally introduce this role for U.S. pre-clearance officers. However, to enhance clarity, the committee amended Bill S-7 to state explicitly that these CBSA or U.S. officers would be required to disable network connectivity on personal digital devices that they are examining.

Finally, several of the committee's witnesses raised concerns about solicitor-client privilege, suggesting that Bill S-7's proposed legal threshold for the examination of personal digital devices — that being a "reasonable general concern" — could result in CBSA officers and U.S. pre-clearance officers having unauthorized access to documents protected by solicitor-client privilege. To address those concerns, the committee amended the bill so that both the Customs Act and the Preclearance Act, 2016, would allow the Governor-in-Council to make regulations

respecting measures to be taken by such officers if a document on a personal digital device is subject to solicitor-client privilege or other related protections.

In conclusion, colleagues, throughout the study of Bill S-7, the committee was tasked with finding an appropriate balance between giving CBSA customs officers and U.S. pre-clearance officers the tools they need to, on one hand, ensure public safety and border integrity while, on the other hand, protecting the privacy rights of individuals.

On behalf of the committee, I present Bill S-7, as amended, for your consideration. Thank you.

Hon. Mobina S. B. Jaffer: Will the honourable senator take a question?

Senator Dean: Yes.

Senator Jaffer: Senator Dean, thank you very much for your work on the committee and for a very comprehensive report.

I may have my figure wrong, but besides the minister and officials, I think you had 12 independent witnesses. Would you agree with me that not one witness talked about the "reasonable general concern" test being a good idea, and that they all suggested that it should instead be "reasonable right to suspect?" Would you agree with me on that?

Senator Dean: Thank you, Senator Jaffer. Arguably, with the exception of the child protective services, that would be the case, yes. All of the others were clearly in favour of a higher threshold.

Senator Jaffer: Senator Dean, I will be speaking on this at some point, and I don't want to belabour it, but even Ms. St. Germain said that she would accept the threshold because that was the general threshold the Customs Act used. Would you agree with that?

Senator Dean: Senator Jaffer, I will check the record. It is my recollection, because it stood out to me, that this was the only witness who was supportive of the original bill as written. So I took from that that she was leaning toward "reasonable general concern." But we'll both check the transcripts, and we'll know when you deliver your statement next week.

Hon. Frances Lankin: Thank you for your report, Senator Dean. I am very pleased to see the thorough job that the committee did.

I wonder if you could comment if there has been any further correspondence or communication from people within the Office of the Privacy Commissioner of Canada with respect to concerns they may have had or how those concerns may have been alleviated by encompassing and using the existing, known and tried-and-true legal standard threshold.

Senator Dean: Thank you for the question, Senator Lankin. I believe we did receive submissions from the Privacy Commissioner, and they have been received previously with respect to this concern. The Office of the Privacy Commissioner was supportive of moving to a standard that was clearer and more definitive.

Senator Lankin: This might be more difficult for you to answer, and maybe it would be fair to wait until the sponsor of the bill speaks, but do we have any indication whether the government will view these amendments positively?

Senator Dean: I will speculate here just by reading the room. With respect to clarifying and strengthening a requirement to ensure that a digital device is disconnected from the network, the officials told us that would be covered in some regulations and that it is, indeed, the current practice.

I didn't hear concerns about that being toughened up through an amendment, I will say. Similarly, officials told us that they did have some pre-existing provisions in terms of solicitor-client privilege, but, again, I wasn't hearing concerns about those being replicated for certainty. There clearly was a difference of views with respect to the legal threshold, though.

[*Translation*]

Hon. Renée Dupuis: Senator Dean, thank you for the report you presented as the committee's chair.

I want to be sure I understand the amendment passed in committee. The Alberta Court of Appeal decision stated that there is a test that needs to be met, but not necessarily the one that is currently in the act; it could be a slightly less stringent test for the Canada Border Services Agency, rather than the one currently set out in the act.

My understanding is that the amendment that was passed by the committee is to decide on the test, to expand the application of the current standard — which the agency is very familiar with and used to implementing — and, therefore, to expand the issue of searches of devices to cell phones and tablets. Is that correct?

[*English*]

Senator Dean: Thank you for the question, Senator Dupuis. Yes, indeed, that is precisely the approach that committee members took — moving to what is a pre-existing standard for other purposes under the Customs Act and Preclearance Act, 2016, which is "reasonable grounds to suspect." That is, as I understand it, the next higher level of threshold that would be available beyond this new concept of "reasonable general concern." You are correct in your reading of it.

Hon. Gwen Boniface: Honourable senators, I rise today to speak at report stage of Bill S-7.

Let me begin by thanking the committee for their collegial nature; Senator Dean for an organized clause-by-clause consideration, his first as chair; and Senator Wells as critic of the bill.

As indicated in the report, Bill S-7 was amended at committee in a number of areas to put into the legislation network disconnection before a personal digital device, or a PDD, search could occur. This was originally intended to be in regulation.

Other amendments concerned the protection of information, like solicitor-client privilege, through order-in-council-making authority. There was a proposed amendment to the bill to ensure

that note taking would be found in the regulations, but the draft regulations provided to the committee proved those requirements were captured, which satisfied the committee, and the amendment was subsequently withdrawn.

• (1610)

As you would expect, the amendment I would like to address for the remainder of my time concerns the threshold of "reasonable grounds to suspect."

Let me quote the mandate of the CBSA:

> The agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation.

National security and public safety are at the heart of their mandate. In discussions with many of you, we talked about the balance of individual privacy rights on one hand and the protection of collective security rights on the other in the context of who and what crosses our borders.

Border officers are in an operationally unique position. They rely on an extremely brief interaction in order to make a determination of whether there has been a potential violation of any program legislation. Border security is a complex business. The CBSA enforces more than 90 acts, regulations and international agreements as part of the program legislation.

It is in this context that I remind you of Senator Dupuis' pertinent question at second reading, and one that she followed up on earlier. Speaking of "reasonable general concern," she said:

> The problem is not that this is a new concept, because it was the Court of Appeal itself that introduced it. When the Court of Appeal states that the existing concept may be too strict for the situation we want to address, the legislator could favour a less-strict concept that creates fewer obligations for customs officers.
>
> The fact that it is a new concept is therefore to be expected, but shouldn't we focus instead on whether the concept chosen by the government in its bill is legally appropriate for the situation we want to address?

That is an important question. My views, as you know, were evident in my second reading speech.

The intention of the government, which we heard at committee, was to create a threshold that is reasonable; that requires objective and verifiable factual indications; that is general, and does not point to a specific contravention of the over 90 pieces of CBSA-enforced program legislation; and that includes a concern, which must be individualized and attributable to the specific person or their device.

The CBSA processed almost 19 million travellers in 2021 and conducted approximately 1,800 personal digital device examinations. In 2021, the CBSA was operating under internal policies determining when a device search could occur; Bill S-7's intent was to take those internal policies and put them into law.

As stated at committee by Scott Millar, Vice President of Strategic Policy for the CBSA, "policy that exists now will be enshrined in legislation." It was creating a legal threshold out of their policies. The lack of a threshold in law was ultimately why 99(1)(a) was found to be unconstitutional in *R v. Canfield*.

Canfield, at paragraph 109, states that:

> The policies put in place by the CBSA go some way to recognizing the need for such safeguards, however policies are not "prescribed by law" as required by s. 1. . . .

There, the *Canfield* decision is referencing section 1 of the Charter of Rights and Freedoms.

Essentially, in order for something to be Charter compliant, it must be prescribed in law. Internal CBSA policies are not prescribed by law because, at the time, they were not found in law. The court did not reject internal CBSA policy as not meeting an adequate threshold; those internal policies were not even applicable in 2014 when the searches in *Canfield* took place because they were non-existent until 2015.

In drafting Bill S-7, the government believed that *Canfield* opened the door to a lesser threshold for personal digital device searches, and only for such searches.

At paragraph 75, the court states:

> Whether the appropriate threshold is reasonable suspicion, or something less than that having regard to the unique nature of the border, will have to be decided by Parliament and fleshed out in other cases. . . .

This became the crux of the committee's deliberations. This will be the first time that a law specifically in relation to personal digital devices will be in place at our borders. The uniqueness of the border for the purposes of section 8 privacy considerations has been settled in law for some time. The Supreme Court ruled on this in *R. v. Simmons*, and reaffirmed it in *R. v. Jacques* and *R. v. Monney*. On the topic of privacy rights at the border, paragraph 48 of *Simmons* says, "National self-protection becomes a compelling component in the calculus."

Then, paragraph 49 states:

> I accept the proposition advanced by the Crown that the degree of personal privacy reasonably expected at customs is lower than in most other situations. People do not expect to be able to cross international borders free from scrutiny. It is commonly accepted that sovereign states have the right to control both who and what enters their boundaries. . . .

Monney builds on this statement, and says in paragraph 43 that:

> . . . decisions of this Court —
>
> — the Supreme Court of Canada —
>
> — relating to the reasonableness of a search for the purposes of s. 8 in general are not necessarily relevant in assessing the constitutionality of a search conducted by customs officers at Canada's border.

It is critical to find the appropriate balance and threshold for personal digital device examinations at our borders. The court in *Canfield* did what I believe was a masterful job in coming to their conclusion that a lesser threshold than reasonable suspicion may be necessary for device searches. The court balances the informational privacy concerns with the border context in paragraph 66:

> The key question is to what extent an expectation of privacy is reasonable in the context of an international border crossing. In the domestic context it is well-recognized that individuals have a reasonable expectation of privacy in the contents of their personal electronic devices: see Morelli, Vu, Fearon. However, reasonable privacy expectations at an international border differ from reasonable expectations of privacy elsewhere. . . .

They continue in paragraph 67:

> The high expectation of privacy that individuals have in their personal electronic devices generally must be balanced with the low expectation of privacy that individuals have when crossing international borders. Since border crossings represent unique factual circumstances for the reasonableness of a s 8 search and seizure . . . the reasonable expectations of privacy international travellers hold in their electronic devices must be considered anew and in context.

It was recognized by the court at paragraph 34 that we can't sweep all personal digital device searches into one broad category for privacy considerations since different considerations are at play based on the information available to the border officer. The constitutional merit will eventually be determined by individual cases. But just because something is novel in law, as it was in the original draft, does not mean it's unconstitutional. Each case has a different level of evidence determining whether a threshold is met. These are different depending on the goods being searched.

For example, the threshold issue of mail was often used as a comparator in committee, as it was in the chamber — and rightly so. The Customs Act provides that mail can be examined without any threshold; "reasonable grounds to suspect" is triggered when that mail is opened. Much information can be gleaned from an unopened piece of mail. It can be picked up and felt; perhaps it has an address, or a return address, and both can be searched; the envelope can be tested for drugs or organic matter; and, more importantly, it can be X-ray scanned to see if anything is inside.

All of this is possible without a threshold. This evidence is what develops the reasonable suspicion needed to open the mail. This allows a border officer to more readily point to a specific contravention necessary to meet a threshold of reasonable suspicion.

Senators, even bad things come in small, inconspicuous packages. In a piece published in the *Calgary Herald*, Benjamin Perrin, former lead criminal justice advisor to Prime Minister Harper, interviewed CBSA officials and was told that 1.9 million pieces of mail enter Canada from China monthly, and fentanyl has been found in packages as small as greeting cards.

For mail, there are many methods: It is more difficult for personal digital devices, hence the reliance on more generalized factors needed to search a device — that is, factors that don't point to a particular contravention. This contributed to operational effectiveness.

At the same time, it was rightly argued that the amount of data on the device is so significant and so personal that the justification should be higher. But just because fentanyl is physical, does that somehow mean it's also more harmful than what can be found on an electronic device? That's the crux.

The minster told our committee that it's not only child pornography that can be found on personal digital devices at our border entries, but also things like hate propaganda or evidence of drug importation, all of which are extremely harmful as well.

• (1620)

"Reasonable grounds to suspect" isn't used only in the Customs Act for goods where evidentiary tools avail border officers to reach that legal bar. It is also the threshold for body searches, including strip searches. The court in *Canfield* states in paragraph 75 in relation to the Supreme Court ruling of *Fearon*:

> We agree with the conclusion in *Fearon* at paras 54 and 55 that, while the search of a computer or cell phone is not akin to the seizure of bodily samples or a strip search, it may nevertheless be a significant intrusion on personal privacy. To be reasonable, such a search must have a threshold requirement. As was noted in *Simmons* at para 28, "the greater the intrusion, the greater must be the justification and the greater the degree of constitutional protection". Given that, in our view the threshold for the search of electronic devices may be something less than the reasonable grounds to suspect required for a strip search under the *Customs Act*.

The Supreme Court in *Fearon* and the Alberta Court of Appeal in *Canfield* agreed that searches of personal digital devices are "not akin to . . . a strip search," yet this is where we find ourselves today.

Senators, there are different levels of searches available as we cross the border, depending on what the border officer is looking for. Luggage, purses, coats and briefcases don't require a threshold. Strip searches are at the level of reasonable suspicion. This amendment equates a search of a person with that of a personal digital device. Border officers will have to suspect a specific contravention in more than 90 acts, regulations and international agreements to search a personal digital device if this bill as amended passes.

Alberta and Ontario have been operating using the higher threshold of reasonable suspicion at their points of entry since the beginning of May, after the expiration of the constitutional invalidity. Statistics on the effects of this change are preliminary and high-level, but they offer us a glimpse of what may come for border security and their operations. In a document tabled with the committee, it showed that May 2021 saw a traveller volume of 606,000 for Alberta and Ontario; May 2022 saw 2,595,000. This is a fourfold increase from the same time last year. Sixty-three personal digital devices were examined in May 2021 in Alberta and Ontario; May 2022 saw only 18.

Senators, this is an examination rate of 1 in 10,000 last May, and 1 in 144,000 this May. This is a substantial change in searches, no matter how you cut it. Yes, we can look at the impact of COVID, travel patterns and staffing levels at our ports of entry, and I would hope that any incoming disaggregated data allows us to better understand the true impacts of this change in device searches. But the higher threshold for border operations is obviously going to have an operational impact.

A final note is that this bill also amends the Preclearance Act, 2016. This act is based on the agreement between Canada and the U.S. and will therefore require U.S. pre-clearance officers to be trained on the new threshold as well. It is important to note that border officers in the United Kingdom, Australia and the U.S. when they are on their own soil have no-threshold searches for personal digital devices.

I want to express my sincere thanks to all senators who put lots of thought and interest into this bill, including, of course, all those on the committee. Senators, the *Canfield* decision left it to Parliament to decide where the threshold for the search of personal digital devices should be. The committee has completed its work, and I look forward to third-reading speeches and the important continuing debate in the House of Commons. Thank you, *meegwetch*.

Hon. David M. Wells: Honourable senators, I would like to thank Senator Dean for his deft stickhandling at our committee meetings. There were a lot of witnesses, opinions and debate, and he did a great job. I also want to thank Senator Boniface, the sponsor of the bill, for her contribution as sponsor, for laying out the government's position on this bill. As the critic of the bill, I have my role to play as well.

During the committee meeting, as you heard, we had eight amendments presented, all of which passed. Many issues were raised, but there were three key issues. One on connectivity, which was my amendment, and actually there were three amendments that passed at committee. Senator Dean and others mentioned "reasonable grounds to suspect," which was Senator Jaffer's amendment. I note that Senator Dalphond also had a similar amendment, which passed quite easily, that also had elements of racial profiling and selecting people perhaps because of the country from which they came and other issues around that, which we will certainly hear in the third-reading speeches. The last amendment topic related to solicitor-client privilege, which was presented by Senator Dalphond. In some cases there were two amendments because some related to the Customs Act and others to the Preclearance Act, 2016.

I also note that there were other important issues that did not find their way into an amendment, and which may find their way into regulations. Senator Yussuff spoke of issues raised by the Office of the Privacy Commissioner for the committee's consideration. He had four key points: record keeping by CBSA officers; searching only what is on the device, which relates to my amendment on connectivity; rules for password collection; and mechanisms for complaint redress. Right now, colleagues, there is no mechanism for complaint redress. It is essentially howling at the moon for an organization that is now seeking carte blanche for searching our personal digital devices.

There were also questions asked, which I think are as important as the key parts of the bill, as to why the fines for interfering with a CBSA officer were significantly reduced. I'm unaware of how significantly reducing these fines serves as a greater deterrence.

I'll talk briefly about the categories of amendments that were brought up. One was to inform the passenger and make it known to them that their device can be searched while not in connectivity mode. Of course, in my second-reading speech I went through this. I was not advised this was policy and not advised that it could be put into non-connectivity mode. Consequently, because I was not advised of that, I didn't know my rights to that, and the CBSA officer comfortably searched my bank records, my Visa statements and asked questions about that. While that may be policy, I think it's important we recognize that their policy is not followed. Again, I mentioned in my second-reading speech — or perhaps it was a question to Senator Boniface in her speech — that on the TV show that features the CBSA, "Border Security," they regularly search passengers' personal digital devices and they thumb through and speak to the camera about what they find on it.

Senator Dalphond's amendment on solicitor-client privilege is really important. We are all familiar with what items we may have on our personal digital devices — health records, personal correspondence with spouses and partners, photos of our family

or whatever personal photos we might have — and the question that we might want to consider at third reading is whether this should also extend to doctor-patient confidentiality, which obviously is as important as solicitor-client confidentiality or commercially confidential information or anything else that might have a high degree of confidentiality that might be of no interest to CBSA in their search for contraband documents.

The committee passed an amendment that was spoken about, proposed by Senator Jaffer and equal to Senator Dalphond's amendment that he was ready with, which would change the proposal from "reasonable general concern" to "grounds to suspect." The reasonable general concern, honourable senators, is essentially not just a low bar, but no bar at all if the CBSA officer has to give no reason for their concern. Of course, all CBSA officers should have a reasonable general concern about everyone coming across the border. However, there has to be a limit at the point where they seek the most in-depth, private documents, messages and photos of Canadians travelling across the border.

• (1630)

Senator Dalphond noted as we were talking about this — as did all our legal scholars, including Senator Jaffer — that this "reasonable grounds to suspect" is a well-understood legal concept, tried and tested by the courts. It is well defined and goes some way to reducing the racial profiling that we know happens at the border — something that was discussed at length at the committee.

Finally, colleagues, I want to also mention the witnesses who did attend the meeting. Senator Dean mentioned a few of them, but I have the full list here. I think it is important for colleagues to know that these are the people who think about this every day: the International Civil Liberties Monitoring Group, the Canadian Civil Liberties Association, the British Columbia Civil Liberties Association, the Canadian Bar Association and the Munk School of Global Affairs & Public Policy at the University of Toronto. An associate professor of the Faculty of Law at the University of Calgary also gave excellent testimony. Of course, the Canada Border Services Agency, or CBSA, was there as the promoter of the bill, as was the Department of Justice.

Honourable senators, it's important to remember that just Tuesday we had Mr. Dufresne with us, who is the Privacy Commissioner nominee and who answered my questions on reasonable general concern. We all heard those answers in the Committee of the Whole.

Of all the independent expert witnesses — again, Senator Dean highlighted one that I thought didn't have an opinion on it. In her response, I thought she said, "I had not really considered this." But out of all of the other independent expert witnesses, none thought reasonable general concern was a good idea or would pass the judicial "smell test."

Honourable senators, it's important to know that if the bar is so low that it won't pass the judicial smell test, it will go back to the courts again to be decided. A couple of our witnesses suggested this could take up to five or ten years. We know how long a lot of these things take in the courts.

These amendments, colleagues, are all put in place to protect Canadians' fundamental rights as dictated by our Charter of Rights and Freedoms. While we know it's important that there are protections at the border from bringing in illegal goods and documents, we have to decide what trumps our Charter rights and freedoms.

Honourable senators, I look forward to third reading, which will happen early next week, and further discussions on this bill. Thank you very much.

[*Translation*]

Hon. Pierre J. Dalphond: I rise today in support of the adoption of the report. I just wanted to point out that section 99 of the Customs Act, which we are currently discussing, is entitled "Examination of goods." It states, and I quote:

> **99 (1)** An officer may
>
> **(b)** at any time up to the time of release, examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that the officer suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods the importation of which is prohibited
>
> **(d)** where the officer suspects on reasonable grounds that an error has been made in the tariff classification . . . examine the goods
>
> **(d.1)** where the officer suspects on reasonable grounds that an error has been made with respect to the origin claimed or determined . . . examine the goods
>
> **(e)** where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by him or any regulations thereunder have been or might be contravened in respect of any goods, examine the goods
>
> **(f)** where the officer suspects on reasonable grounds that this Act or . . . any other Act of Parliament . . . have been or might be contravened in respect of any conveyance or any goods thereon

That means any act of Parliament administered or enforced by the officer.

To inspect a package, a bus, or to ensure that the right rate has been applied, the officer must have reasonable grounds to believe. I would be more convinced if the government changed these other sections of the legislation to say that, for all these other sections there has to be reasonable concern, but no. Regarding the computer, the thing most closely linked to your privacy, the one thing that contains all the data and can describe you more accurately than you can, we cannot decide that it warrants a lower threshold than all these elements that are necessary formalities to prevent a firearm from being imported to Canada.

We are told about pedophilia. It is important. It is serious, but we cannot allow computers to be searched under the guise of wanting to counter pedophilia by accepting a lower threshold than the threshold for allowing packages to be opened to verify whether there are firearms inside. The government is on the wrong track. If it wants to convince us that a lower threshold is possible — as suggested in *Canfield* by the Alberta Court of Appeal — then I invite the government to amend the other parts of the legislation to have the new proposed test apply everywhere. If there is no consistency in the legislation we cannot justify measures before a court. Thank you.

[*English*]

Hon. Salma Ataullahjan: Senator, would you take a question?

Senator Dalphond: With pleasure.

Senator Ataullahjan: I have been listening to the debate, and, at the risk of sounding ignorant, can you tell me what happens when you have a racialized person coming through and their phone is looked at? There is a lower threshold. What happens? I, as a Muslim, will sometimes have a prayer on my phone in Arabic. What happens if the border agent doesn't understand what that says? How does that impact a racialized person or, in this case, a Muslim?

Senator Dalphond: Thank you, Senator Ataullahjan, for this question.

I'm not the expert on the issue, but there is one in this chamber. It's Senator Jaffer. She made an important declaration at the committee study when she referred to exactly that type of experience and why she is always singled out in the line for a "random" check and sent to the second line. When she shows her green passport, they apologize and say, "Oh, sorry. It's a mistake. We should not have called you for a second inspection."

No doubt the system is not perfect. The current system is, according to some witnesses and the personal experience of Senator Jaffer, certainly deficient, because it seems to target some people more than others, especially after 9/11. Regarding the threshold that is being proposed, the evidence shown before the committee has illustrated that it is designed to codify the current practices of the customs officers.

Senator Dagenais asked an important question. He asked how many more employees they will need to teach these new criteria, because it's a new test. Therefore, it will have to be explained carefully since it's not a test that has been applied so far. It's not the reasonable test that has been understood and developed by the courts. It will take time to flesh out.

How many more officers will you need? How many more training sessions? How many hours will you give to the officers to understand that new concept? The response from the border agency representative was, "No problem. We already have the training in place. We don't need more people. That's already what we do."

What they are saying is that what they intend to do is to have this new threshold be equivalent to the current practice. But the current practice is in the guidelines; it's not in the law. They say now that it's in the law, it's valid. I fear that, in practice, what is going to happen at customs won't change with this new test. The old practices will continue under a new hat.

It's important to me that we better define and flesh out the concept of reasonable suspicion or reasonable grounds to suspect rather than have a new test. This is the concept that has been recognized elsewhere in the act, so let's be consistent. Either they change the whole act, or they change it only for computers, which is very unconvincing to me.

Senator Ataullahjan: Senator Dalphond, reasonable suspicion — what does that mean? Would that be different for every agent? Who decides?

Senator Dalphond: I was expecting to be brief, but I appreciate the questions. Regarding reasonable suspicion, the word "reasonable" has been defined by the courts as being objective. So it means the agent has enough indicia to reasonably suspect that something's happening.

• (1640)

And it's interesting because when the customs agency representative spoke to it, he suggested an example. He referred to someone who is coming back from a country where it's well known that sex with children can occur. The person has been away for a long period. The person is having difficulty answering the questions, seems to be nervous and is sweating. He decides to send him to the second line.

Many of us felt there were reasonable grounds to do it. If this is the type of person they would like to target, the "reasonable suspicion" test will be the test to apply. I'm not so sure that it's going to become ineffective.

We have reference to Ontario and Alberta saying that the numbers have been going down since the judgment of the Court of Appeal of Alberta. It was not renewed and, therefore, since April, they have applied "reasonable suspicion" for all travellers coming to Ontario or to Alberta. They say the numbers went down drastically. Well, yes, numbers went down drastically, but who says why? Is that because they are more careful? Maybe it's a good thing. Is it because they don't want to enforce it just to come up with the numbers, so they can say, "You see where we are? It's a different test, and we don't do as many checks as we used to do."

All of that needs more explanation. I think we were a bit shortchanged when we asked questions about the rate of success and about the more limited numbers of people who are checked. What kinds of materials are found? What is illegal? We were not provided much information about that. I'm not saying there won't be any kind of operational impact on the way they do things. For sure, if we have "reasonable suspicion," it will change things compared to what they do now, because they intend to continue to do what they do now.

Senator Jaffer: Senator Dalphond, one of the things that happens at airports, as we all know, is that we also have American pre-clearance officials. I think Senator Boehm asked this question almost every time: How are we going to educate American officials on this lower threshold?

What is your opinion? How is this going? Because they have a higher threshold. Now we must educate them to a lower threshold when their customs officials said their training is sufficient already.

Senator Dalphond: I don't want to steal Senator Boehm's fire. He had very good questions at the committee about that. But our "reasonable suspicion" and "reasonable grounds to suspect" criteria are known in Canada as well as in the U.S. I suspect that if we have that criteria, the U.S. officers will know what they mean. For sure it's a higher threshold than what they apply now because, in the U.S., there are no clear cases about that. There is confusion about the state of the law.

Obviously, there will be some training, but if you have training in connection with a concept which is foreign to their law, it will be more difficult than to train them to a concept which is known to their law.

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

Hon. Senators: Question.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

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

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

IMMIGRATION AND REFUGEE PROTECTION ACT IMMIGRATION AND REFUGEE PROTECTION REGULATIONS

BILL TO AMEND—THIRD READING

Hon. Peter Harder moved third reading of Bill S-8, An Act to amend the Immigration and Refugee Protection Act, to make consequential amendments to other Acts and to amend the Immigration and Refugee Protection Regulations, as amended.

Hon. Michael L. MacDonald: Honourable senators, I rise today to speak to Bill S-8, An Act to amend the Immigration and Refugee Protection Act, or IRPA.

When I first spoke to this bill at second reading, I highlighted the very objectives that the government has declared that it wishes to achieve with this bill. First, the government has said that it wishes to reorganize existing inadmissibility provisions related to sanctions in order to establish a distinct ground of inadmissibility based on sanctions that Canada may impose in response to an act of aggression. Second, it proposes to expand the scope of inadmissibility based on such sanctions to include not only sanctions imposed on a country but also those imposed on an entity or a person. Third, the bill expands the scope of inadmissibility based on sanctions to include all orders and regulations made under section 4 of the Special Economic Measures Act. Finally, the bill amends the regulations to provide that the Minister of Public Safety will have the authority to issue a removal order on grounds of inadmissibility based on sanctions under new paragraph 35.1(1)(a) of the Immigration and Refugee Protection Act.

These measures appear in some respects to be quite broad. They are said to close a gap in the law, in this case, primarily to ensure that Russians who are supporters of the current regime are inadmissible to Canada. Obviously, we all want to ensure that.

However, as I noted in my remarks at second reading, sometimes our supposed strong measures may be less strong and less necessary than they actually are being made to appear. Some of the witness testimony we heard on this bill at committee confirms this.

When Dr. Andrea Charron, director of the Centre for Defence and Security Studies at the University of Manitoba, appeared before our committee, she said this bill ". . . repeats a pattern whereby Canada tinkers on the margins of legislation without addressing core policy and process issues."

This critique of government bills is becoming all too commonplace of late. Many of the bills that the government is introducing are increasingly reactive measures, usually quick responses to external events. They are hasty measures designed to be symbolic, and it shows.

When Professor Charron spoke about Bill S-8 in committee, she lamented that the government often seems to introduce a legislative solution to a problem when that problem is really one of process and policy.

We have a government that tries to look good while avoiding consultations, as well as the more comprehensive and difficult policy work. In relation to Bill S-8, the government has said that the bill is necessary to avoid a gap in the law where a sanctioned individual might otherwise be admissible to Canada despite being sanctioned. But, as Professor Charron asked, was there a case of a foreign national under sanctions who was inadmissible but gained access to Canada? She noted that this does not seem to have ever occurred.

Indeed, when Richard St Marseille, Director General of Immigration and External Review Policy at the Canada Border Services Agency, appeared before our committee, he informed us that no sanctioned individual appears to have entered Canada in the past five years. There have been refusals abroad, evidently; 5 under the Special Economic Measures Act and 10 under the Magnitsky Law. But even those refusals are out of

1,858 individuals sanctioned under the Special Economic Measures Act and roughly 2,200 individuals listed under various sanction grounds.

None of these individuals appear to have entered Canada, and evidently fewer than 1% ever even attempted to apply abroad to do so. Dr. Charron argued that the main shortcoming in Canada's approach relates not to legislative gaps around the sanctioning regime but due to the fact ". . . that Canada is not always clear about the reasons for sanctioning or the conditions to be met for their lifting." In other words, Dr. Charron argues that the main problems are a lack of policy clarity and policy inconsistency.

• (1650)

I cannot help but think about Dr. Charron's words this past weekend when we learned that a senior official from Global Affairs Canada attended national day celebrations at the Russian embassy. The government claims this was a mistake, but, honestly, how would such a mistake occur?

If an error such as that is possible in the current international climate, it is scarcely surprising that there may be a lack of policy clarity and policy consistency when it comes to the effective coordination of our sanctions policy, or indeed, when it relates to the effective coordination and implementation of any dimension of our international policy.

Unfortunately, Bill S-8 has the feel of an initiative that is designed to give the appearance of something being done rather than actually doing very much at all. That said, it could be that some of the measures incorporated in Bill S-8 may, in fact, be useful. Perhaps there is a need, at least a theoretical need, to close legal gaps between our sanctions regime and inadmissibility provisions in the Immigration and Refugee Protection Act. But I must say that I'm not supremely confident given the lack of clarity that the government has provided on the need for this bill.

Mr. Mario Bellissimo also appeared before our committee and warned that, in his view, Bill S-8 both expands and contracts inadmissibility provisions. He argues that the bill actually incorporates considerable ambiguity, and some of that ambiguity may simply be due to a lack of planning and thought.

Mr. Bellissimo argued that this ambiguity may create new unattended issues, including ambiguity as to whether foreign nationals may be treated as violators of human rights, regardless of whether or not the sanctioned person has been involved in personal wrongdoing themselves. Regrettably, the testimony by Mr. Bellissimo also speaks to a likely lack of policy attention being paid to policy issues that surround the crafting of such legislation.

All this leads me to conclude the bill we have before us today is largely a reactive measure. However, I can support it for the minor issues it purports to address. I do, however, wish that we had a government that was a little more thoughtfully proactive, a government that actually consulted and listened to these individuals, such as the informed witnesses who appeared before our committee. If we had such a government, we might actually begin to see more thoughtful and comprehensive policy approaches being adopted.

Canadians should be served better in this regard. We would have fewer bills that soak up legislative time but actually end up achieving very little. However, in spite of these legitimate concerns, what little this bill contributes is hopefully better than doing nothing at all, and I encourage honourable senators to support this bill. Thank you.

Hon. Ratna Omidvar: Honourable senators, I rise to speak very briefly on Bill S-8, An Act to amend the Immigration and Refugee Protection Act, to make consequential amendments to other Acts and to amend the Immigration and Refugee Protection Regulations. I was unable to lend my support to this bill at second reading, and therefore I am taking a bit of your time today to do so.

I will not repeat the essential features of the bill. You have heard them from the sponsor, Senator Harder, and from others.

In a nutshell, this bill aligns our aspirations in the sanctions regime with appropriate legislation in Immigration, Refugees and Citizenship Canada to ensure that individuals who are sanctioned for various reasons under either the Special Economic Measures Act or the Justice for Victims of Corrupt Foreign Officials Act are not inadvertently admitted into Canada.

The right hand must know what the left hand is doing, and this is what the bill seeks to ensure.

I think of this as a bit of a cleanup bill, but a bill that is nevertheless urgent in that we must make sure that we are clapping with both hands.

These amendments are essential. For one, the horrifying context in Ukraine — cities and communities decimated, thousands dead, brutal carnage which has been left behind by the invaders, mass graves, people with hands tied behind their back, torture, rape, et cetera.

Russia's invasion of Ukraine has displaced close to 7 million people who have fled to Poland, Romania, Moldova, Hungary, Slovakia and also into Canada. Unfortunately, as this conflict sees no end, I fear that more will be displaced.

We also know that Russia is forcing tens of thousands of Ukrainians into camps in Russia. An estimated 200,000 children are among the people who have been removed from Ukraine into Russia. Russia has, in essence, kidnapped them.

This is all horrifying, but if there is one tiny sliver of a silver lining, then it is the alignment of like-minded nation states to come together on sanctioning Russians in different ways.

An example is, of course, the swift and severe sanctions that have been imposed on Russia at SWIFT, and others, too, have been implemented. I am pleased that the government, through this bill and through other proposed changes in the budget implementation act on the repurposing and confiscation of frozen assets, is now taking a more expansive measure to approach our sanction regimes. Both measures will further strengthen Canada's commitment to holding foreign corrupt leaders, henchmen and entities to account for committing human rights abuses and grave breaches of peace and security.

No one sanction regime imposed by any one jurisdiction can be as effective as when we collaborate and coordinate our responses with other like-minded jurisdictions. But in the least, we need to ensure internal coordination and alignment.

As the sponsor has pointed out, the application of this bill is broader than simply that to Russia and Belarus. It will apply, and can apply, to other sanctioned individuals and entities from places like Iran, Myanmar, South Sudan, Syria, Venezuela, Zimbabwe and North Korea.

This bill makes sense in other ways as well. First of all, on the basic point, we don't want sanctioned individuals coming to Canada. We don't want their money and we do not want their presence, and Canada should in no way be a temporary or a permanent safe haven for them.

Second, it makes sense to align the Special Economic Measures Act with the Sergei Magnitsky Law. Magnitsky already has inadmissibility grounds for individuals that have committed grave human rights violations, torture and grand corruption. Having sanction regimes that are consistent from one to the other also makes good sense.

Finally, we know that sanctions applied by Canada and by others are having some effect. We know and we have read that there are a few Russian oligarchs who are already speaking out, and we need to tighten the noose every which way we can.

In conclusion, colleagues, for far too long corrupt, brutal and criminal foreign officials and entities have acted with impunity. The government needs more tools to hold brutal leaders to account, and Bill S-8 provides another way to do so. Calling them out is not enough. Sanctioning them is not enough. We must ensure that they never set foot in Canada because I think we all know that once you are in Canada it is extremely difficult to remove an individual.

I will borrow a line from Senator Woo's speech on Bill S-6 when he urged us to send that bill to the other house. I will urge you to do the same by adding a yellow sticky note and marking it, "super urgent." Thank you, honourable senators.

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

Hon. Senators: Agreed.

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

• (1700)

ADJOURNMENT

MOTION ADOPTED

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5-5(j), I move:

> That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 20, 2022, at 6 p.m.; and
>
> That rule 3-3(1) be suspended on that day.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

(*At 5 p.m., the Senate was continued until Monday, June 20, 2022, at 6 p.m.*)

APPENDIX

DELAYED ANSWERS TO ORAL QUESTIONS

JUSTICE

OMBUDSMAN FOR VICTIMS OF CRIME

(*Response to question raised by the Honourable Pierre-Hugues Boisvenu on February 8, 2022*)

Department of Justice

The government has launched an appointment process for a new Federal Ombudsman for Victims of Crime and the work to fill the position is ongoing. In the meantime, the office remains operational and accessible to victims of crime across Canada requesting their services.

On March 29, 2022 the Standing Committee on Justice and Human Rights began their study of the *Canadian Victims Bill of Rights*.

Victims' rights remain a priority for the government. Significant policy and programmatic investments and various law reforms have been introduced since 2015 to address the needs and concerns of victims and survivors of crime.

Key examples include:

- Investing over $48 million to support the development and enhancement of independent legal advice and independent legal representation programs for victims of sexual assault and intimate partner violence.

- Committing $37.68 million in support of victim services for families of missing or murdered Indigenous women and girls.

- Legislative measures bills to support victims of gender-based violence (i.e. former Bills C-51, C-75, C-3 and C-4).

INFRASTRUCTURE AND COMMUNITIES

CANADA INFRASTRUCTURE BANK

(*Response to question raised by the Honourable Donald Neil Plett on April 5, 2022*)

The Canada Infrastructure Bank (CIB) works with all orders of government and private partners, including Indigenous investment partners, to help transform how infrastructure is planned, funded and delivered to Canadians.

The CIB is involved in more than 30 infrastructure partnerships and has committed over $7.2 billion in capital, attracting over $7.6 billion in private and institutional investment.

Budget 2022 announced measures to increase the CIB's impact by broadening the types of private sector-led projects it can support. Further, under the Emissions Reductions Plan, it is expected to invest $500 million in large-scale zero-emission vehicle charging and refueling infrastructure.

The CIB is supporting key projects like High Frequency Rail, helping to transition Atlantic Canada off coal through clean power transmission and supporting Manitoba Fibre's plan to provide broadband access to households and businesses.

On compensation

The CIB's compensation framework is disclosed via the annual report in compliance with the *Financial Administration Act* and applicable Treasury Board policies. Compensation expenses for each fiscal year are also reported in its annual audited financial statements.

The government and the Crown corporation abide by the *Privacy Act* and *Access to Information Act* provisions concerning employee compensation. Any information concerning individuals and their compensation is personal and therefore protected.

FISHERIES AND OCEANS

INDIGENOUS FISHERY

(*Response to question raised by the Honourable Brian Francis on May 5, 2022*)

Over the past 23 years, Fisheries and Oceans Canada (DFO) has invested over $630 million in fishing licences, vessels, gear and training to help increase and diversify participation in commercial fisheries, and to advance the

implementation of the right to fish in pursuit of a moderate livelihood for the 35 Mi'kmaq, Wolastoqey and Peskotomuhkati communities (Treaty Nations). These investments resulted in meaningful economic benefits which increase year over year. For example, annual landed value among these Treaty Nations has increased from $3 million in 1999 to nearly $170 million in 2019. Additionally, approximately $100 million of annual revenue is being generated through fisheries-related businesses (e.g., processing, aquaculture) owned and operated by Treaty Nations.

DFO works with Treaty Nations through numerous tools to implement and recognize their treaty right, and ensure a stable and predictable fishery for the benefit of all Canadians.

I am pleased to report that an interim understanding was reached with Lennox Island First Nation. Community members will conduct moderate livelihood fishing (with up to 300 traps) in Lobster Fishing Area 24 off PEI during the remainder of the spring 2022 commercial lobster season, and an additional 700 traps in Lobster Fishing Area 25 once the season opens.

INFRASTRUCTURE CANADA

CANADA INFRASTRUCTURE BANK

(*Response to question raised by the Honourable Donald Neil Plett on May 19, 2022*)

Manitoba Fibre Broadband Project

Financial close occurred in August 2021 and construction has commenced, along with CIB funding. The project is expected to cost approximately $328 million and be completed by the end of 2024 with a target of approximately 48,500 underserviced households in 53 rural municipalities.

Kivalliq Hydro-Fibre Link Project

The CIB has been working closely in an advisory capacity with the Kivalliq Inuit Association and their subsidiaries on advancing the Kivalliq Hydro-Fibre Link. The work includes providing advice on selection of a private sector partner(s), commercial arrangements with suppliers and customers, completion of the project business case and advancing the routing, permitting, environmental work, design and engineering of the project. Once these development activities and due diligence are completed, the CIB will determine if an investment will be made.

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