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OFFICIAL REPORT
(HANSARD)

Tuesday, November 15, 2022

The Honourable GEORGE J. FUREY,
Speaker

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THE SENATE

Tuesday, November 15, 2022

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

Prayers.

SENATORS' STATEMENTS

NATIONAL PHILANTHROPY DAY

Hon. Jane Cordy: Honourable senators, Canadians are very generous people. We are generous with our time, whether volunteering at a local food bank or a homeless shelter, baking cookies for our children's or grandchildren's local school or donating to the many charities and non-profits that do so many great things for our communities.

To recognize such acts of kindness, we honour those outstanding contributions of Canadians and people around the world today, as it is National Philanthropy Day. Philanthropy is the love of human kind, and that love can take many forms.

The charitable and non-profit sector in Canada is huge. According to Imagine Canada, the sector employs 2.4 million people, which is 1 in 10 Canadian workers; it contributes 8.3% of Canada's GDP — an estimated $192 billion — and it sees 13 million volunteers give close to 2 billion hours a year.

Colleagues, as many of you know, Canada became the first country in the world to officially recognize National Philanthropy Day. Our former colleague the Honourable Senator Mercer successfully helped navigate legislation through Parliament to officially recognize the day in 2012. We are so very proud of that, because we should be proud of all of the efforts of the volunteers and sector employees who give of their hearts to help so many in need.

I am pleased to give my thanks today, and I encourage all honourable senators to join me in showing appreciation for those who give their time, their money and their care in support of others. Thank you.

FINANCIAL LITERACY MONTH

Hon. Peter Harder: Honourable senators, I rise today to bring attention to a matter that has particular relevance as our country navigates the new and challenging economic environment in which we are living. November is Financial Literacy Month, and it carries a special significance this year given the strain so many of our fellow Canadians are currently facing and might be facing over the coming months. It behooves us all to prepare for what many experts predict will be an unsettling period, already marked by inflationary pressures, rising interest rates, high household debts and, perhaps, a challenging job market.

To mark this month and to help cope with the times we find ourselves in, the Financial Consumer Agency of Canada, or FCAC, has prepared a series of educational tools that will help Canadians build financial resilience in the face of these economic headwinds. This year's theme is "Make Change that Counts: Managing Your Money in a Changing World." Throughout the month, the FCAC and its participating organizations across the country will focus on how Canadians can best manage their debt to achieve their financial goals and build financial resilience.

Many Canadian households currently carry high debt burdens, making them especially vulnerable to higher interest rates and increased costs of living. The debt-to-disposable-income ratio in our country is near a record level and among the highest in the Organisation for Economic Co-operation and Development, or OECD.

Over the length of the campaign, Financial Literacy Month will focus on five major themes, which include managing debt, planning for the future and borrowing money wisely. There is no more important a time than now to focus on these issues.

The FCAC has a number of tips that Canadians can use to meet these challenges. If you have constituents wondering about how to adjust their budgets, consolidate high-interest debts or develop strategies to reduce expenses, ask them to visit Canada.ca/financial-literacy-month. There, they will find numerous suggestions on how to adapt and persevere through predictable and unpredictable financial choices, difficulties and the shocks in life.

The financial world is increasingly digital and complicated. Like reading and writing, financial literacy is an essential skill we all need if we wish to make informed decisions. It is a goal that we, as senators, are obliged to promote. I draw this to your attention in the hopes that you will do your part in advancing financial literacy.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of interns of the Honourable Senator Pate.

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

Hon. Senators: Hear, hear!

THE HONOURABLE MURRAY SINCLAIR
THE HONOURABLE DAN CHRISTMAS

Hon. Kim Pate: Honourable senators, I rise today to congratulate and recognize the humbling and inspirational leadership of our former colleague the Honourable Murray Sinclair and our too-soon-retiring colleague and my seatmate Senator Christmas. These two outstanding First Nations leaders are well recognized for their countless contributions with and for

Indigenous peoples in their communities, regions, the country and the world over. Today, Queen's University in Kingston installed the Honourable Murray Sinclair as its first Indigenous and fifteenth chancellor, and awarded Senator Christmas an honorary PhD in Law.

Hon. Senators: Hear, hear.

Senator Pate: Many of us are well aware of Chancellor Sinclair's numerous well-deserved honours, his leadership at the bar and on the bench as the first Indigenous judge appointed in Manitoba and the second in Canada and his work exposing Canada to the human rights and Charter violations, systemic discrimination and overrepresentation in the child welfare and criminal legal systems, including issues of murdered and missing Indigenous peoples that dates back decades. He co-chaired the Aboriginal Justice Inquiry of Manitoba and the Truth and Reconciliation Commission. Since issuing the report in 2015, his commitment to seeing all 94 Calls to Action implemented has not wavered. Most recently, he urged us to fix Bill C-5 to meet the Calls to Action that address the mass incarceration of Indigenous peoples by freeing judges from the shackles of mandatory minimum penalties.

With wisdom, thoughtfulness and clarity, he continues to urge and inspire all of us to do and be better.

• (1410)

Senator Christmas is also a brilliant leader and advocate with a kind and generous heart. He has worked tirelessly to safeguard Mi'kmaq sovereignty and treaty rights in Nova Scotia and urge reconciliACTION. Before coming here, Senator Christmas was instrumental in taking his community from near bankruptcy to its current circumstances of being one of the most successful and thriving First Nations in this country. In his home community of Membertou and elsewhere, he continues to work to address the persistent challenges that too many face at the hands of discriminatory attitudes and systems that persist.

Senator Christmas' outstanding achievements and service have been previously recognized with numerous awards and honorary degrees, and among the mountain of his contributions here, many of us will always remember his most touching tribute to his World War II veteran father.

Honourable senators, please join me in celebrating the wonderful recognition of these two amazing, inspirational and fabulous leaders. *Meegwetch*. Thank you.

Hon. Senators: Hear, hear.

[Senator Pate]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of representatives and advocates from the Juvenile Diabetes Research Foundation. They are the guests of the Honourable Senator Hartling.

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

Hon. Senators: Hear, hear!

DIABETES AWARENESS MONTH

Hon. Nancy J. Hartling: Honourable senators, November is Diabetes Awareness Month, and this week, we welcome to the Hill 30 kids with Type 1 diabetes from across Canada, along with their parents, for Kids for a Cure, *Les enfants pour une guérison*. It is so exciting to have you here with us.

As one of the co-chairs of the All-Party Juvenile Diabetes Caucus, I encourage you to learn about the funding priorities in the JDRF, the Juvenile Diabetes Research Foundation's, 2023 Pre-Budget Submission and learn about these kids' reality. JDRF is a leading global organization funding Type 1 diabetes research, and they are absolutely committed to a cure.

This disease affects millions of people, and they will ensure new therapies are developed and address mental health issues common to those with Type 1 diabetes. Thanks to JDRF for all you do.

For me, the reality struck home when Max, my grandson, was diagnosed when he was only two years old. I learned a lot over the past eight years, and he is one of the most important reasons that I am involved with diabetes advocacy. I would like to highlight two very special youth friends with Type 1 diabetes, T1D, who are here with us today from New Brunswick. They have been here visiting us this week.

[*Translation*]

I had the pleasure of meeting Vanessa Galluchon and her mother, Judy Roy, from Dieppe, New Brunswick, during the Kids for a Cure event in Ottawa in November 2018. Vanessa was diagnosed with Type 1 diabetes when she was 13 months old. She is now 16 going on 17. Vanessa told us that living with Type 1 diabetes is not easy and that she is working hard for a cure. She raised $4,815 for the Walk to Cure Diabetes in Moncton. One of her favourite pastimes is riding her horse, Déjà. She will graduate from École Mathieu-Martin in the spring. She hopes to go to university in September. Good luck, Vanessa.

[*English*]

I also had the pleasure of meeting Mariah Inglis and her father, Robert, in the virtual JDRF meetings with kids with T1D in Atlantic Canada. Mariah is 13 years old, a Grade 8 student living in Sackville, New Brunswick. She was diagnosed with diabetes when she was nine. Mariah has been advocating for a cure by raising awareness, participating in JDRF fundraising walks, speaking at events, holding a bake sale and hosting unique fundraising activities with a focus on diabetic devices. She continues to meet with provincial health policy-makers. In her spare time, Mariah enjoys playing basketball, travelling, baking, water sports and horseback riding. Bravo.

As we move forward, let's all support JDRF and all of the kids to "make Type 1, Type None."

Thank you.

Hon. Senators: Hear, hear.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Connor Chow. He is the guest of the Honourable Senator Batters.

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

Hon. Senators: Hear, hear!

REMEMBRANCE DAY

Hon. Marty Deacon: Honourable senators, we have much on the go. Today, as we begin to see the lights, the trees and the magic of the holiday season, we celebrate National Child Day and we push hard over the next very busy four weeks, I would first like to take one more opportunity to remember.

On November 4, 2022, here in the chamber, a week of remembrance began with a wonderful ceremony. The Speaker hosts and honours so many veterans in a special ceremony, and it is an honour that we are invited and are able to attend. How special it is that every senator has the privilege of sending a wreath to their community of choice. Like all of you, I give this careful thought each and every year.

Every year we learn more from the stories of Canadians — some stories are over a hundred years old; some stories are very recent. Last week, Mr. Peter Mansbridge — a name that may be very familiar to you — on his podcast "The Bridge," slowed his usual work down and highlighted different stories throughout the week. Perhaps the most profound episode was on November 10, 2022, entitled, "Your Turn On Remembering," which turned the focus to stories written and submitted by Canadians.

This year I learned about 20 Royal Canadian Air Force pilots from Saskatchewan in 1946, following World War II. I'm sure my Saskatchewan senator colleagues know this tragic story well.

The community was Estevan, Saskatchewan. Imagine: The war is over. You are home. Canada has leased planes from the United States, and now it is time to return them. Each plane was returned. The last plane, a C-47 cargo plane, was returned to North Dakota. Twenty pilots and one ground crew member were on their flight back home and crashed near the Estevan airport. They survived the war, trained pilots and were tragically killed shortly after the war. There is a beautiful memorial to remind us all of these brave men who died doing their work.

This year, Remembrance Day found me in the United States. I wanted to learn a little more about their veteran community, so I visited with some young men and women who have returned home from tours in the last five years or so. I learned about a not-for-profit program called Home Base. It provides programs to veterans and their families at no cost to treat PTSD, traumatic brain injury, anxiety and depression, while addressing wellness and social isolation. It reminded me of the volunteer services we have here in Canada and the hard work they do assisting those who return home, such as the Veterans Transition Network, Wounded Warriors Canada and the Royal Canadian Legion. We thank them for all they do for our returning soldiers.

Thank you. *Meegwetch*.

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 teachers and students of North Addington Education Centre. They are the guests of the Honourable Senator Boyer.

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

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

AUDITOR GENERAL

2022 FALL REPORTS TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the 2022 Fall Reports of the Auditor General of Canada to the Parliament of Canada, pursuant to the *Auditor General Act*, R.S.C. 1985, c. A-17, sbs. 7(3).

[*English*]

FALL ECONOMIC STATEMENT 2022

DOCUMENT TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the *Fall Economic Statement 2022*.

[*Translation*]

RECEIVER GENERAL

PUBLIC ACCOUNTS OF CANADA—2021-22 REPORT TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the Public Accounts of Canada for the fiscal year ended March 31, 2022, entitled (1) Volume I — Summary Report and Consolidated Financial Statements, (2) Volume II — Details of Expenses and Revenues, (3) Volume III — Additional Information and Analyses, pursuant to the *Financial Administration Act*, R.S.C. 1985, c. F-11, sbs. 64(1).

[*English*]

JUSTICE

CHARTER STATEMENT IN RELATION TO BILL C-31— DOCUMENT TABLED

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, a Charter Statement prepared by the Minister of Justice in relation to Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing, pursuant to the *Department of Justice Act*, R.S.C. 1985, c. J-2, sbs. 4.2(1).

• (1420)

[*Translation*]

PROTECTING YOUNG PERSONS FROM EXPOSURE TO PORNOGRAPHY BILL

EIGHTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. Mobina S. B. Jaffer, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, November 15, 2022

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

EIGHTH REPORT

Your committee, to which was referred Bill S-210, An Act to restrict young persons' online access to sexually explicit material, has, in obedience to the order of reference of December 8, 2021, examined the said bill and now reports the same with the following amendments:

1. *Clause 11, page 6*:

(a) Replace line 11 with the following:

"**11 (1)** The Governor in Council may make regulations for";

(b) add the following after line 14:

"**(2)** Before prescribing an age-verification method under subsection (1), the Governor in Council must consider whether the method

(a) is reliable;

(b) maintains user privacy and protects user personal information;

(c) collects and uses personal information solely for age-verification purposes, except to the extent required by law;

(d) destroys any personal information collected for age-verification purposes once the verification is completed; and

(e) generally complies with best practices in the fields of age verification and privacy protection.".

Respectfully submitted,

MOBINA S. B. JAFFER

Chair

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

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

COST OF LIVING RELIEF BILL, NO. 2 (TARGETED SUPPORT FOR HOUSEHOLDS)

SEVENTH REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

Hon. Percy Mockler, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, November 15, 2022

The Standing Senate Committee on National Finance has the honour to present its

SEVENTH REPORT

Your committee, to which was referred Bill C-31, An Act respecting cost of living relief measures related to dental care and rental housing, has, in obedience to the order of reference of November 3, 2022, examined the said bill and now reports the same without amendment.

Respectfully submitted,

PERCY MOCKLER

Chair

Honourable senators, I want to thank the members of the Standing Senate Committee on National Finance, as well as the sponsor of the bill, Senator Yussuff, for their work and their dedication.

I would also like to thank the outstanding staff, including the clerks, the analysts, the interpreters, the communications staff and our office staff, who worked very hard to support our work.

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

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

[*English*]

FALL ECONOMIC STATEMENT IMPLEMENTATION BILL, 2022

NOTICE OF MOTION TO AUTHORIZE CERTAIN COMMITTEES TO STUDY SUBJECT MATTER

Hon. Marc Gold (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:

1. in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-32, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022, and certain provisions of the budget tabled in Parliament on April 7, 2022, introduced in the House of Commons on November 4, 2022, in advance of the said bill coming before the Senate;

2. in addition, the Standing Senate Committee on Indigenous Peoples be separately authorized to examine the subject matter of those elements contained in Subdivisions A and B of Division 3 of Part 4 of Bill C-32;

3. the Standing Senate Committee on Indigenous Peoples submit its final report to the Senate no later than December 5, 2022, and be authorized to deposit its report with the Clerk of the Senate if the Senate is not then sitting;

4. the aforementioned committees be authorized to meet for the purposes of their study of the subject matter of all or particular elements of Bill C-32, even though the Senate may then be sitting or adjourned, with the application of rules 12-18(1) and 12-18(2) being suspended in relation thereto; and

5. the Standing Senate Committee on National Finance be authorized to take any report tabled under point three into consideration during its study of the subject matter of all of Bill C-32.

[*Translation*]

FALL ECONOMIC STATEMENT 2022

NOTICE OF INQUIRY

Hon. Raymonde Gagné (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to the *Fall Economic Statement 2022*, tabled in the House of Commons on November 3, 2022, by the Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland, P.C., M.P., and in the Senate on November 15, 2022.

[*English*]

QUESTION PERIOD

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Donald Neil Plett (Leader of the Opposition): Senator Gold, your government's inaction on the issue of interference in Canada by the Communist government in China is putting Canadian democracy increasingly at risk.

According to reports by Global News, the Prime Minister was warned by Canadian intelligence officials in January of this year that China has been targeting Canada with a vast campaign of foreign interference. This included funding a clandestine network of at least 11 federal candidates who ran in the 2019 election and conducting research into Canadian MPs who were critical of China's human rights abuses against the Uighur population in Xinjiang.

Leader, my question is simple: Why is your government not responding forcefully to the Communist regime's interference in our democracy?

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

Senators, protecting the public from the threat of foreign interference by China or any other country is precisely what Canadians have mandated this government to do, and that is what it is doing. I'm assured that Canada's national security agencies are actively and proactively doubling down on threats from foreign bad actors such as China and Russia. I'm further assured that any harassment, intimidation or coercion by a foreign power will be investigated and appropriate charges will be pressed. Canadians can be reassured and assured that no stone will go unturned in the government's efforts to protect the public's safety and security.

Senator Plett: Senator Gold, saying it does not make it a reality.

The government has not shown any of what you have just said. Leader, the urgency of this threat seems to be evident to our Canadian intelligence officials, to experts on China and to our allies, and yet not to your government.

We know that the Chinese regime is targeting our democratic process. We know that they are targeting Chinese Canadians through police stations operating on Canadian soil. And yet the Prime Minister continues, leader, to sit on his hands.

Leader, when will your government abandon its failed strategy of appeasement, which only emboldens this rogue regime in China?

• (1430)

Senator Gold: Thank you for your question. The government's strategy with China is not one of appeasement. The Minister of Foreign Affairs, Minister Joly, has given some indications of Canada's approach to the Indo-Pacific region and the strategy that will go forward governing Canada's relationships. Canada will always defend its national interests and pursue those relationships in the Indo-Pacific area that will further our interests, and that includes taking strong action against Chinese interference in our internal affairs, democratic and otherwise, and any other interference.

ELECTION INTEGRITY

Hon. Donald Neil Plett (Leader of the Opposition): Senator Gold, as you know, I was once a party president, so I understand very well the severity of this issue. I'm puzzled that your government doesn't seem to understand the severity of foreign interference in Canada's electoral processes. It is unfathomable that the Prime Minister has been made aware that Beijing quietly funded 11 candidates in the 2019 federal election and placed operatives on campaign staff and that he was sitting on this information for months.

Senator Gold, what we're really talking about is the integrity of our democratic institutions, and Canadians are owed better than what you are giving them. They are owed the utmost truth and transparency. Who are the 11 candidates whose offices were allegedly infiltrated by the Chinese Communist Party, or CCP, during the 2019 federal election?

Hon. Marc Gold (Government Representative in the Senate): I don't have the answer to that question. I do know that our national security agencies are doubling down on allegations and on threats from foreign bad actors such as China. As I said before, maintaining the integrity of our electoral system remains a priority for this government, as it is and should be for any government. As the Prime Minister has said:

> We have taken significant measures to strengthen the integrity of our elections processes and our systems, and will continue to invest in the fight against election interference, against foreign interference of our democracies and institutions.

Senator Plett: Well, yes, what are they, Senator Gold?

Senator Gold, you say you don't have the names of the candidates. I trust you will get them for us. Senator Gold, this is a matter of national security and confidence in our democratic institutions. Parliament requires this information. Senator Gold, will you agree to a process where Parliament can have this information if required for an initial period and then in an in camera setting?

Senator Gold: I am not in a position to make that engagement on behalf of the government. I will certainly take it under advisement and take advice accordingly.

INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

RESEARCH FUNDING

Hon. Stan Kutcher: My question is for Senator Gold. Health research is the foundation for improved health outcomes for all Canadians, yet our health research ecosystem is in jeopardy. Investment lags significantly behind other OECD countries, and we're seeing our best and brightest leave Canada for careers elsewhere. For example, the per cent of health spending allocated to research in the U.S. is 4.7%, in Australia 3.3%, in Canada 1.5%.

In the Canadian Institutes of Health Research's Spring 2022 Project Grant competition, only 19% of applications were successful — not because they weren't excellent but because there wasn't enough funding. In the U.K., the rate was 35%. We're lagging behind and we can't continue to do this.

Health care organizations and top-notch researchers have been calling for a doubling of the funding for our Tri-Council. Will the Government of Canada heed this call for urgent action and commit to doubling the current funding to the Tri-Council in the upcoming budget?

Hon. Marc Gold (Government Representative in the Senate): Thank you for your question. The government recognizes that investing in research and supporting Canadian researchers is pivotal and vital to address the health issues facing Canadians, and the pandemic through which we are living has reminded us of the importance of having access to solid research evidence.

I note that Budget 2018 provided $354.7 million over five years and $90.1 million per year ongoing for the CIHR, the Canadian Institutes of Health Research, to increase its support for fundamental research. The government as well continues to invest in research that's important to the health of Canadians. Budget 2022 announced $20 million to study long-term effects of COVID infections and wider impacts on health and health care systems, and $20 million as well to increase our knowledge of dementia and brain health that we funded over five years through the Canadian Institutes of Health Research.

Budget 2022 additionally committed to funding important research areas including long-term impacts of COVID-19, to name a few. With these continued investments, the government demonstrates its commitment to supporting a vibrant, equitable and diverse research community to help address the health challenges of today and tomorrow.

Senator Kutcher: According to the International Monetary Fund — and here I want to thank Senator Galvez's office for the research — in 2019, Canada provided our coal industry subsidies worth over $7 billion. At the same time, the Canadian Institutes of Health Research received about $1.2 billion. This doesn't make sense.

Masters-level graduate students who work in research labs make about $19,000 a year, and PhD students about $21,000 annually. As you know, the low-income cut-off for a single person in 2021 was just over $24,000. Does the government not think that investing in our best and brightest young researchers is as important as subsidizing our coal industry?

Senator Gold: Thank you for the question. Over the last years, as I've mentioned, the government has made historical investments toward research. I won't repeat the figures that I gave before, but in Budget 2018 alone, the government committed nearly $4 billion over five years to support the next generation of Canadian researchers. It's clearly an important priority for the government.

The government remains committed to strengthening Canadian researchers with resources and strengthened infrastructure and research networks.

[*Translation*]

IMMIGRATION, REFUGEES AND CITIZENSHIP

IMMIGRATION TRANSFERS

Hon. Tony Loffreda: My question is for the Government Representative in the Senate.

Senator Gold, I would like to talk about immigration in Quebec. We know that this subject has received extensive coverage lately.

Early this month, journalist Joël-Denis Bellavance published an article in *La Presse* stating that Quebec spent only 25% of the funding it had been given by the federal government for the 2021-22 fiscal year to help immigrants integrate and learn to speak French. We are talking about $168 million out of a total of nearly $700 million.

Senator Gold, can you confirm whether Mr. Bellavance's reporting is true? If so, is the federal government okay with the fact that this federal funding intended to meet specific provincial objectives is not being spent?

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

As you know, senator, Quebec has exclusive authority to select the majority of its immigrants. Under the Canada-Quebec Accord, Quebec receives funding to provide French integration programs to newcomers.

The government respects this agreement, which has worked very well for decades. However, the article to which you refer is still concerning. I have been assured that the government continues to work closely with Quebec and is committed to always respecting provincial jurisdiction in immigration matters.

Senator Loffreda: I recognize, accept and approve of the fact that, according to the 1991 Canada-Quebec Accord on immigration, Quebec is responsible for welcoming and integrating newcomers to Quebec and ensuring they know French. I agree with Premier Legault that integration must be at the heart of our immigration policy. However, this recent news troubles me.

If this money were used for the intended purpose, perhaps Quebec could welcome more immigrants and would be able to better integrate them, which could alleviate some of the pressures on the labour market.

Doesn't the federal government have a responsibility to ensure that the money it transfers to the provinces for a particular program is spent on that program?

Is it time to re-evaluate the concept of unconditional federal transfers to the provinces and explore a transparency and accountability mechanism?

Senator Gold: Thank you for the question.

The Government of Canada and the Government of Quebec have been collaborating for some time to advance and ensure respect for shared immigration priorities. The 1991 Canada-Quebec Accord defines the bilateral relationship between Immigration, Refugees and Citizenship Canada and Quebec, which is guided by the principle that immigration must help preserve Quebec's demographic weight within Canada as well as its distinct identity. The agreement has provided Quebec with a lot of money, and that funding has gone up in recent years. Funding is not tied to the total number of new immigrants to Quebec in a given year. The amount of funding never goes down, and the amount established in one year becomes the baseline for the following year.

• (1440)

The Government of Canada will continue to work closely with the Government of Quebec to achieve the goal of bringing in as many immigrants as necessary to help our businesses thrive and ensure the vitality of French in Canada.

FINANCE

REAL RETURN BONDS

Hon. Clément Gignac: Honourable senators, my question is for the Government Representative in the Senate.

In her November 3 economic statement, the Minister of Finance had a few surprises for the financial sector. On the positive side, there were smaller-than-expected deficits for the previous and current fiscal years, and the government expressed an intention to return to a balanced budget within five years. However, the government's decision to stop issuing real return bonds has caused some surprise among the country's pension funds and insurance companies, which are the traditional purchasers of such products to protect themselves against inflation-related risks.

As my colleagues may recall, real return bonds were introduced with great fanfare in 1991, shortly after the Bank of Canada and the finance minister of the day jointly adopted a 2% inflation target. Now, as National Bank's chief economist recently noted, Canada will be the only country that no longer issues real return bonds.

Senator Gold, my question is this: Can you clarify the reasons behind the finance minister's decision to abruptly stop issuing real return bonds, since her economic statement contained only three lines to explain her decision?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. I am told that following broad consultations in 2019, the decision was made to stop issuing real return bonds because of the very low demand for this product. The decision to cancel the real return bond program will also allow the government to maintain liquidity within core funding sectors at a time when the government's financial needs are declining. I would be pleased to ask the government for further details and to inform this chamber should you wish me to do so.

Senator Gignac: Thank you for your answer, Senator Gold. I would appreciate it if you would do that. Following the announcement of the Department of Finance's decision, the Canadian Bond Investors' Association, which represents more than 50 of the largest institutional investors in the country, with over $1.2 trillion in assets under management, issued a press release yesterday asking the minister to reconsider her decision and to take more time to consult stakeholders and assess the ramifications of her decision.

Senator Gold, in the interest of promoting transparency and preserving the independence and credibility of the Bank of Canada, would the Minister of Finance be prepared to present the Bank of Canada's recommendation on this decision to the Department of Finance?

Senator Gold: Thank you for the question. I will make inquiries with the government and try to get back to you soon.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Jean-Guy Dagenais: My question is for the Leader of the Government.

At the G20 summit in Bali, U.S. President Joe Biden and the Chinese President had seemingly cordial and constructive formal discussions. This morning, there is talk of warming relations between China and the United States. At that same summit, the Chinese President has had formal bilateral talks with several world leaders, but not with Mr. Trudeau. In the meantime, our Prime Minister continues his solo efforts to position other

Asia-Pacific countries as a counterweight to China. Yet China is a key economic player. The U.S. knows this, but Mr. Trudeau does not.

In light of this situation, can you explain to me how we can be expected to believe that Prime Minister Trudeau's foreign policy is not reducing, or even undermining, Canada's influence? Are we being reduced to minor player status?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. No, that is not the case at all. As I said recently in response to another question, Minister Joly and the Government of Canada are in the process of preparing a new strategy for the Indo-Pacific region. It is no secret that relations between Canada and China have been difficult for some time now. Canada is working to maintain a good rapport with its allies in the region to counterbalance China's claims and actions with respect to human rights and the other hostile acts perpetrated by that regime.

Senator Dagenais: Jean Chrétien, who was the Prime Minister when the very first G20 meeting was held, said that these summits were the ideal time to have more private meetings with major world leaders and discuss various issues. That is in stark contrast to what Mr. Trudeau is doing. The Prime Minister is not talking to China or to Russia. That does nothing to improve Canada's influence on important global issues.

Do you think it's time that Mr. Trudeau adopted the approach of great prime ministers, such as Lester B. Pearson, Brian Mulroney, Stephen Harper and Jean Chrétien, to restore Canada's image?

Senator Gold: Thank you for the question. As I said, the government is positioning itself in a world that is different from the one that existed in the time of Prime Minister Chrétien and the others you mentioned. China and its international aspirations are very different now, and the government understands that very well. I repeat that the Government of Canada is committed to defending our interests and the democratic interests of our allies around the world.

[*English*]

FINANCE

FOOD SECURITY

Hon. Salma Ataullahjan: Government leader, food bank usage in Canada is at an all-time high. Demand is especially strong among both domestic and international students amid soaring tuition fees and skyrocketing food and housing costs. Senator Gold, Canada's international students are among some of the brightest talents in the world, and they are a key part of our country's future. They contribute billions of dollars to the Canadian economy. It is shameful that many of them are having to turn to food banks to survive. When will your government get serious about the affordability challenges that are keeping our youth and our students from getting ahead?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. The government understands that food insecurity for all Canadians, especially those such as students who have less access to family and other resources, is a real preoccupation. It's on the rise. As you point out, those turning to food banks are examples of this. Thank goodness for those food banks and the generous volunteers and organizations that support them.

The fact is that the government recognizes this problem and is very preoccupied with it. The Government of Canada has made serious investments through targeted social programs and income supplements, like the Canada Child Benefit, to reduce poverty and food insecurity. Generally, other measures are contained in the *Fall Economic Statement* 2022, which will be before us when the bill arrives, to assist students in that regard, and the government will continue to do what it can to help those facing challenges such as food insecurity and other issues tied to the rising cost of living.

Senator Ataullahjan: Leader, this is not a problem your government can fix with a one-time housing benefit or other temporary fixes — nor cancelling a Disney+ subscription, as the finance minister lectured Canadians about last week, make a difference. Such comments reflect the deep-rooted disconnect between the Trudeau government and the reality of everyday Canadians. Canadians need concrete and lasting solutions for the current affordability crisis they're facing. I will ask again: Will your government finally take serious action to make life more affordable for students and all Canadians?

Senator Gold: Thank you for the question. I will answer again. The government is taking serious actions — targeted, focused, committed and sustained actions — to help Canadians with the challenges that the rising cost of living has imposed.

FOREIGN AFFAIRS

CANADA-CHINA RELATIONS

Hon. Donald Neil Plett (Leader of the Opposition): Leader, I continue with the matter of Communist Chinese interference in our affairs.

Yesterday, leader, we learned that the RCMP arrested Hydro-Québec employee Yuesheng Wang and charged him with espionage. In a statement, authorities said that Mr. Wang obtained trade secrets to benefit the People's Republic of China to the detriment of Canada's economic interests.

• (1450)

Senator Gold, the Chinese Communist Party, or CCP, has interfered in our electoral processes. They have set up police stations to intimidate Chinese-Canadians and they have infiltrated our industries.

What, Senator Gold, is it going to take for your government to recognize the real threat posed by this totalitarian regime and finally take the steps needed to protect our national interests?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question, but, again, the assumptions, with respect, are not ones that I can subscribe to. Canada is taking steps, and indeed, the example you just cited with regard to the ex-employee of Hydro-Québec is a perfect example.

Our intelligence and law enforcement agencies are working hard and taking significant steps, and in that regard, of course, you'll understand I cannot comment on the particular case. It is simply not the case that Canada is neither taking action nor taking this seriously.

Senator Plett: We aren't questioning the intelligence people that we have in Canada. We're questioning the lack of action of this Prime Minister, not the intelligence community.

Senator Gold, policy experts and intelligence officials have indeed been sounding the alarm on the threat of the CCP for years now. With all the information available to us, it is clear that they are getting increasingly aggressive, yet your government has not adjusted its approach accordingly. Rather, it sits by while our institutions come under threat.

Yesterday, we learned of Chinese espionage at Canada's largest power utility. This certainly will not be the last incident we hear about. How many more espionage charges will need to be laid before Trudeau and his government wake up?

Senator Gold: The Government of Canada is very awake, attentive and mindful of the threat that China poses and will continue to take the action that is necessary to protect Canadian interests.

HEALTH

PEDIATRIC HEALTH CARE

Hon. Rosemary Moodie: This question is for the Government Representative.

Senator Gold, as you know, there is a crisis in pediatric health centres across the country. Last Friday at the Hospital for Sick Children, half of the children were in ICU on ventilators, and this spike of respiratory illnesses has prevented surgeries, cancelled emergency room access and flooded intensive care wards. Halifax's IWK Health Centre set a record a week ago with the highest number of seriously ill patients. CHEO — the Children's Hospital of Eastern Ontario — opened a second ICU with unprecedented demand.

Senator Gold, I understand and I agree with the federal government's position that money is not the only solution and there needs to be a systemic change. Nevertheless, we are in a crisis.

Despite the failure to make progress on health funding at the recent Federal-Provincial-Territorial Health Ministers' meeting, has the Minister of Health re-engaged with his provincial and territorial colleagues to seek pathways for meaningful collaboration to address this pediatric health crisis?

Hon. Marc Gold (Government Representative in the Senate): Senator, thank you for raising this issue. It's a concern to all of us, parents, grandparents and citizens alike. You're right; it's not just money, even though the federal government has made enormous investments in health recently, as I've outlined on other occasions.

You mentioned the recent meetings of the federal health ministers. It was the first meeting since 2018. It did not result in the progress that the government planned or hoped for. Since the beginning of the year, the federal, provincial and territorial officials worked collaboratively to prepare concrete action plans to advance the use of health data and digital health for Canadians and to support health workers.

Regrettably, instead of allowing health ministers to do their work and engage in a constructive and meaningful collaboration and conversation about the future of health care in this country, the premiers forced them to speak only of money and not the means of improving the system. This is not a plan.

The Government of Canada calls on the premiers to allow their health ministers to do the work with Canada's Minister of Health to ensure that the long-term survival of Canada's universal and publicly funded health care system survives and flourishes.

Senator Moodie: The crisis in pediatric health care, Senator Gold, is not limited to the hospital but to the drugstore, where Canadian parents have struggled to find basic medications for their children for a number of weeks now. For added context, a recent article in the *Canadian Medical Association Journal* argued that Canada has very little pharmaceutical security — that is, the ability to ensure our supply of drugs is not disrupted by supply chains.

Senator Gold, the government announced yesterday that it has secured a shipment of drugs in severe shortage right now. This is obviously welcome. Is there a plan coming to ensure Canadians can be confident that they will have access to basic pharmaceuticals when they or their loved ones need it?

Senator Gold: Thank you for your question. The government is pleased that it was able to secure an additional foreign supply of children's acetaminophen. It will be available for sale in retail and community pharmacies in the coming weeks to help address the immediate situation.

The longer-range solution requires not only federal and provincial government action but also that of the private sector to increase our already-significant capacity in research into drugs and the drug production facilities. That is something that is in the long-term interests of Canada.

FOREIGN AFFAIRS

ECONOMIC SANCTIONS

Hon. Marilou McPhedran: My question is to Senator Gold. While we applaud what Canada has done and is doing to support Ukraine in Russia's illegal, genocidal war against the Ukrainian people, what more is the government prepared to do to bring the architects of the war to justice and to signal to their allies and business associates that international isolation awaits them should they continue to support Putin's war? While Canada has sanctioned some individuals, why are we standing by while Alexei Mordashov, one of the richest Russian warmongers, evades Canadian sanctions despite being sanctioned by the U.S. and the EU?

Hon. Marc Gold (Government Representative in the Senate): Thank you for the question. Canada stands firmly with Ukraine against the illegal invasion and annexation by Russia of its territories. It also continues to ratchet up sanctions against individuals in Russia who are associated with these actions and continues to evaluate any further steps that are called for in that regard.

ORDERS OF THE DAY

CRIMINAL CODE
CONTROLLED DRUGS AND SUBSTANCES ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.
>
> And on the motion in amendment of the Honourable Senator Boisvenu, seconded by the Honourable Senator Seidman:
>
> That Bill C-5 be not now read a third time, but that it be amended in clause 14, on page 3, by replacing lines 19 to 21 with the following:
>
> "**(iii)** section 318 (advocating genocide);
>
> **(2) Section 742.1 is amended by adding "and" at the end of paragraph (d) and by replacing paragraphs (e) and (f) with the following:**
>
> **(e)** the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:
>
> **(i)** section 221 (causing bodily harm by criminal negligence),
>
> **(ii)** section 264 (criminal harassment),
>
> **(iii)** section 267 (assault with a weapon or causing bodily harm),
>
> **(iv)** section 270.01 (assaulting peace officer with weapon or causing bodily harm),
>
> **(v)** section 271 (sexual assault),
>
> **(vi)** section 279 (kidnapping),
>
> **(vii)** section 279.02 (material benefit — trafficking),
>
> **(viii)** section 281 (abduction of person under age of 14), and
>
> **(ix)** section 349 (being unlawfully in a dwelling-house).".

Hon. Denise Batters: Honourable senators, I rise today to speak in support of Senator Boisvenu's amendment to Bill C-5. Senator Boisvenu's amendment would remove conditional sentences from Bill C-5 for a list of offences, including those related to domestic, family and sexual violence. This would mean that offenders convicted of serious crimes like sexual assault, assault with a weapon, criminal harassment, kidnapping, human trafficking and causing bodily harm by criminal negligence could not receive a conditional sentence.

There are crimes that most reasonable people would agree are so grievous that society demands some form of reparation both to victims and to society. Generally, for more serious crimes, we have accepted that is generally sought through time spent in custody and through denial of one's freedom to circulate within a community. Usually, the types of crimes Senator Boisvenu has listed in his amendment should warrant this, particularly because vulnerable victims are involved.

In reality, those sentenced to prison in Canada almost never serve their entire terms of incarceration. In almost all cases, prisoners are released after serving two thirds of their sentences. Quite frequently, their term may be reduced further to only one third of their original sentence. Most Canadians wouldn't find that even close to acceptable.

Prisoner rehabilitation is certainly an important goal for the safety of society. But we can work to promote that goal while simultaneously ensuring greater truth in sentencing. In some of these cases, prison may be a place where offenders access programming to help them deal with their violence and abuse issues. And an offender's removal for a custodial sentence may give the victim in a domestic abuse situation time to secure the supports she needs to establish her own safety and that of her family. In the event of a non-custodial sentence, such as the conditional sentences the Liberal government proposes with Bill C-5, these offenders may be returned to the very communities and, in some cases, the very homes where they abused their victims.

• (1500)

Last week, in its ruling on the *R. v. Sharma* case, the Supreme Court of Canada upheld the constitutionality of current limitations on the use of conditional sentences imposed by Parliament in 2012 during the Harper government. The case concerned Ms. Sharma, a 20-year-old Indigenous woman, who was found at the airport transporting a suitcase full of heroin for her boyfriend. Ms. Sharma had a troubled background of significant hardship, intergenerational trauma and sexual assault, and was a young, single parent with few supports. Ms. Sharma appealed her sentence for importing drugs, challenging the constitutionality of Criminal Code provisions limiting conditional sentences from being applied for certain offences, contending that they are over broad, arbitrary and discriminatory to Indigenous offenders.

The Supreme Court majority held that a conditional sentence was unavailable to Ms. Sharma and dismissed her challenges under sections 7 and 15(1) of the Charter. They ruled that Ms. Sharma's personal circumstances did not make her crime any less serious. While a judge must — and, in this case, did — take an offender's circumstances into account, it does not mean that an Indigenous offender cannot be given a sentence of incarceration. And, writing for the majority, Justices Brown and Rowe stated:

> The impugned provisions do not limit Ms. Sharma's s. 15(1) rights. While the crisis of Indigenous incarceration is undeniable, Ms. Sharma did not demonstrate that the impugned provisions created or contributed to a disproportionate impact on Indigenous offenders, relative to non-Indigenous offenders, as she must show at the first step of the s. 15(1) analysis.
>
> Nor do the impugned provisions limit Ms. Sharma's s. 7 rights. Their purpose is to enhance consistency in the conditional sentencing regime by making imprisonment the typical punishment for certain serious offences and categories of offences. And that is what they do. Maximum sentences are a reasonable proxy for the seriousness of an offence and, accordingly, the provisions do not deprive individuals of their liberty in circumstances that bear no connection to their objective.

When Minister of Justice Lametti proposed Bill C-5 to our Senate Legal Committee, he raised the example of ". . . an Indigenous mother who was caught in very low-level trafficking in order to put bread on the table" as the type of person this legislation was meant to target with conditional sentences. Clearly, the Supreme Court of Canada found in the *Sharma* ruling that, although personal circumstances should be taken into consideration, a sentence still must fit the severity of the crime and that the limitations Parliament placed on the application of conditional sentences in 2012 is constitutional.

With Bill C-5, this activist Trudeau government is further chipping away at Canadians' confidence in the justice system. Half of Canadians surveyed earlier this year indicated they were not confident in the fairness of our justice system. Senator Boisvenu's amendment aims to correct this problem.

One statistic that stood out to me, being from Saskatchewan, is that intimate partner violence is experienced by rural women at the rate of 75% higher than that of urban women. In fact, my home province of Saskatchewan has the highest rate of family violence in Canada, so this is an issue of paramount importance to me and to my region.

Legislation like Bill C-5, which would have repealed mandatory minimum penalties on a number of significant crimes, and allow for conditional sentences in others, will devalue the justice system further in the eyes of victims of crime and the Canadian public.

At the Senate Legal Committee, we heard testimony to this effect from Jennifer Dunn, Executive Director of the London Abused Women's Centre. She told us:

> It is already hard enough for a woman to come forward, and when she does, it takes years to get to the point of a conviction, if there ends up being one at all. This makes women feel as if the justice system isn't taking them seriously. Just today, I was told by a woman we serve that if we have less protection in sentencing, we are less likely to report offences and this would be a real setback for us.

Crimes involving violence against women are already some of the most under-reported in our country. Statistics Canada estimates that more than 80% of violence against girls and women at the hands of an intimate partner, spouse or relative goes unreported. Only 6 out of every 100 sexual assault cases are reported to police. The last thing these victims need is to fear that the perpetrator of violence against them may receive a conditional sentence so that they will be back in the community where they live or work.

Jennifer Dunn told us about the chilling effect conditional sentences can have on victims of crime:

> Conditional sentences for some offences can undermine the seriousness of the crimes. Women report to us that they believe this makes them feel as if they must watch their backs in the community when conditional sentences are imposed. We need to remember that sometimes victims and offenders are from the same communities as each other.
>
> At our centre, there was a situation with a woman where the perpetrator was ordered to stay off her property, among many other conditions, of course. The perpetrator decided, though, to bring a lawn chair to a neighbouring yard and sit in that yard, facing her house and there was nothing that she could do about it.

Victims of crime should not have to endure this kind of intimidation or the threat that a perpetrator will turn up unexpectedly in the home community that a victim expects to be their safe space.

Honourable senators, if this Trudeau government passes Bill C-5 without Senator Boisvenu's amendment, they will make conditional sentences available to: criminals convicted of abduction of a person under 14 years of age, those who benefit from human trafficking and those who sexually assault someone — and potentially serve those sentences at home? Show

me where the justice is in that. Because, believe me, the survivors of these crimes don't see the justice in this either. How can we expect them to report crimes against them when they happen again?

Victims of domestic violence already face barriers to justice in the courtroom. Bill C-5 could make that problem worse. University of British Columbia law professor Isabel Grant has written about the justice system's lack of regard for female victims of abuse and related crimes and sentencing. She wrote this about female victims of criminal harassment:

> The power of judicial discourses can also act to silence women who encounter the law. This is especially true of those women who do not comply with the construction of the "responsible victim."

Female victims of crime know all too well that a court placing conditions on an offender is no guarantee of that perpetrator's adherence to the rules. Because of the under-reporting of intimate partner violence it's hard to know precisely, but the women's shelter Interval House estimates that recidivism of domestic abuse falls somewhere between 39% and 66%. On its website, Interval House notes that abusers are often sentenced to lighter sentencing, carrying lighter penalties — similar, we could expect, to those the Trudeau government has listed in Bill C-5 as eligible for a conditional sentence.

Even if an offender is deemed low or no risk to the community and released on a conditional sentence with orders not to contact a victim, we know orders can be, and often are, breached.

Earlier this month in this chamber, Senator Fabian Manning — my friend and seatmate — gave an impassioned speech on his bill, Bill S-249, advocating for a national framework for the prevention of intimate partner violence in Canada. He presented us with many staggering statistics about the magnitude of domestic violence and the frequency with which it occurs. Senator Manning shared that 3 in 10 women who suffer intimate partner violence endure it — in some form — at least once a month, if not more often. One in five who suffers sexual abuse by their partners say it happens to them monthly or more frequently than monthly.

Domestic violence is a crime that repeats, and it is a crime that escalates. Often violence escalates through what might seem like less severe behaviour, which might fall on the lighter end of the criminal spectrum — the very offences that might receive a conditional sentence under Bill C-5 — for example, unlawful presence in a dwelling house or criminal harassment.

One such example is criminal harassment, which is a highly gendered crime. The Department of Justice estimates that females account for 76% of all victims in criminal harassment cases, while men account for 78% of the accused perpetrators. Stalking is a crime that can have devastating and profound psychological effects on its victims, and it is also often a precursor to repeated and increased violence. One study found that 76% of femicide and 85% of attempted femicide respondents had reported at least one episode of stalking within 12 months of the violent incident — more than had reported physical assault during that same period.

Domestic violence victims are often highly vulnerable once they have broken free from a relationship: 26% of all women who were murdered by a spouse had left the relationship, and 60% of all dating violence occurs after a relationship has ended. For the Trudeau government to institute conditional sentencing for these serious crimes against the person is dangerous. For these offenders to be returned to the communities where their victims live is unconscionable.

The government argues that removing mandatory minimums and increasing conditional sentences under Bill C-5 will address the overrepresentation of Black and Indigenous Canadians in the prison system. Two of the only witnesses we heard from at committee who presented actual data, University of Ottawa criminology professor Cheryl Webster and researcher Dawn North, testified that the provisions of Bill C-5 will barely touch Indigenous overrepresentation in incarceration. Further, Ms. North stated that Indigenous offenders tend to have higher breach rates when granted conditional sentences. The increase is further troubling for the Indigenous women and girls who may be victims of abuse by their partners. Among Indigenous women, 6 in 10 have experienced physical or sexual abuse at some point in their lives, and Indigenous women are 61% more likely to suffer from intimate partner violence than non-Indigenous women. For Indigenous women who are a sexual minority, the number is a shocking 83%.

• (1510)

Increased access to conditional sentences by offenders is not an advantage for victims of crime, especially Indigenous women and girls. As Jennifer Dunn repeated at committee:

> I said in the House of Commons, and I'll say it again, we need to view this bill through the lens of male violence against women. There needs to be a focus on women, specifically marginalized women, how they will be impacted by this bill and not get the justice they deserve.

It's not just Indigenous victims who are vulnerable under Bill C-5. The statistics for other marginalized groups are shocking as well. An estimated 83% of disabled women will be assaulted at some point in their lives. Two thirds of sexual minority women have experienced intimate partner violence. Immigrant and refugee women and girls are especially vulnerable to the effects of intimate partner and family violence given language barriers, social isolation, a lack of resources, concern for their children and precarious immigration or deportation scenarios.

Honourable senators, the statistics on domestic abuse in this country are heartbreaking, but we need to act, not just talk about it. It is not enough for us to tweet supportive messages a couple of times a year or give a short speech here on an inquiry about domestic violence.

Colleagues, our opportunity to protect women and children living in these dangerous and very vulnerable situations is right here and right now. Your vote on this amendment is what can actually make a difference. Don't let these abusers back into their communities so they can hurt or perhaps kill these women. Please take a stand, vote yes to this important amendment and help us protect victims of domestic abuse.

[*Translation*]

Hon. Pierre J. Dalphond: Honourable senators, I rise to share my perspective on the amendment proposed by our respected colleague, Senator Boisvenu.

My remarks will centre on the following points: first, some background on sentences to be served in the community; second, the purpose of Bill C-5 in that regard; and third, the scope of Senator Boisvenu's proposed amendment.

Some of my remarks are inspired by the most recent Supreme Court of Canada decision, which was handed down on Friday, November 4, in *R. v. Sharma*, a case that was referred to by the Minister of Justice and Senator Gold, as well as numerous witnesses, during the committee's consideration of Bill C-5.

I will use Professor Cotter's three-step approach. First I will provide a little history.

When the first Criminal Code was adopted in 1892, Parliament set out hanging, imprisonment, and fines and forfeiture as possible penalties. The death penalty was abolished in 1968. We have also seen the emergence of other types of sentences, such as conditional release, also known as a probation order, and conditional sentences, which are sentences served in the community.

[*English*]

Conditional sentences were introduced as part of a 1995 bill entitled An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof. This bill significantly reformed sentencing law by stating the purposes and the principles of sentencing, and by setting out considerations for judges when determining a fit sentence.

In other words, the bill substantially structured the discretion of Canadian judges with regard to sentencing. Nowadays, there are many provisions that start at section 718 and following in the Criminal Code that really structure, if not limit, the discretion of judges.

Among the various principles enunciated, the one relevant to our consideration of the proposed amendment is found at section 718.2(e) of the Criminal Code. That provision states that all available sanctions other than imprisonment must be considered where reasonable in the circumstances and consistent with the harm done to the victims or the community.

Under the 1995 bill, offenders were not eligible for conditional sentences if: one, the offence was punishable by a minimum term of imprisonment — what we call a mandatory minimum penalty, or MMP; two, the court was considering imposing a term of imprisonment of two years or more; three, imposing a conditional sentence would endanger the safety of the victim or of the community; or four, a conditional sentence would be inconsistent with the fundamental purposes and principles of sentencing. These are the four types of exclusions that make a conditional sentence unavailable.

The principal objectives of Parliament in enacting this new legislation in 1995 were, thus, to reduce the use of sentences of imprisonment in cases that were admissible and to address both punitive and rehabilitative objectives as stated by the Supreme Court of Canada in *Proulx*, a judgment rendered in January 2000, which is the most famous judgment on conditional sentences.

In 2007, Parliament adopted a government bill to exclude the possibility for a judge to impose a conditional sentence for those convicted of a serious personal injury offence, a terrorist offence or a criminal organization offence prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more. In other words, even if there was no MMP applicable for these offences and the sentencing judge held the view that a sentence of less than two years would be appropriate, this was not possible. Imprisonment was the only way.

In 2012, Parliament adopted another bill called the Safe Streets and Communities Act for the purpose of excluding the possibility of conditional sentences for a long list of additional offences. First, this list included all the offences prosecuted by way of indictment for which the maximum term of imprisonment is 14 years or life. Second, this list included categories of offences prosecuted by way of indictment for which the maximum term of imprisonment was 10 years that: one, resulted in bodily harm; two, involved the import, export, trafficking or production of drugs; or three, involved the use of a weapon. These categories of offences are found at paragraph (e) of the current section 742.1 of the Criminal Code. Third, there are 11 specific offences prosecuted by way of indictment: prison breach; criminal harassment; sexual assault; kidnapping; trafficking in persons — material benefit; abduction of person under 14; motor vehicle theft; theft over $5,000; breaking and entering a place other than a dwelling-house; being unlawfully in a dwelling-house; and arson for fraudulent purpose. These 11 specific offences are found at paragraph (f) of current section 742.1 of the code.

Bill C-5 proposes to delete paragraphs (e) and (f). This means broadening judicial discretion in sentencing in connection with offences described a few seconds ago, including all offences related to drugs under the Controlled Drugs and Substances Act, many of which were declared unconstitutional.

This means that a conditional sentence will again become an available sanction in relation to these categories of offences and specific offences should the judge conclude that, first, an offender deserves a sentence of imprisonment of less than two years — these are not the most serious offences. Second, the offender presents no risk to the community or to the victim. And third, such a conditional sentence would be in accordance with all the sentencing principles including consideration of all available sanctions other than imprisonment where it is reasonable in the circumstances, especially in the case of Indigenous offenders which requires the application of the *Gladue* principles.

• (1520)

The current government has made a policy decision, and this is perfectly valid. In the recent judgment in *Sharma*, which Senator Batters referred to, the Supreme Court of Canada said:

> Parliament has the exclusive authority to legislate in matters of sentencing policy. There is no constitutional right to any particular sentence, including a conditional sentence . . . . Parliament had no positive obligation to create the conditional sentence regime. This Court stated in *Proulx* that Parliament could "have easily excluded specific offences" from the conditional sentencing regime when it came into force in 1996 . . . . It chose to do so later, and may choose to do so in the future. That is inherent in the role of Parliament, informed by experience and by the wishes of the electorate.

Senator Boisvenu disagrees with the broadening of judicial discretion proposed by Bill C-5 in connection with sentencing, and proposes to revert to the 2012 policies of the Harper government, which Senator Batters referred to.

[*Translation*]

The senator is proposing, in keeping with the 2012 legislation, to exclude any possibility of conditional sentences for a list that includes nine specific offences, which would become the new paragraph (e) of section 748.2 of the Criminal Code. I want to point out that this list is shorter than the 2012 list, because the senator is proposing to drop the following offences: prison breach; motor vehicle theft; theft over $5,000; breaking and entering a place other than a dwelling-house; and arson for fraudulent purpose.

In doing so, he is dropping four types of offences described in 2012 as being serious property crimes that justified excluding conditional sentences. I note this change.

As he stated in response to one of my questions, he chose to focus on offences against the person. That is why there are two new offences on the proposed list that were not found in the 2012 legislation: causing bodily harm by criminal negligence, and assaulting a peace officer with a weapon or causing bodily harm. I want to point out that in my research, I found very few legal decisions for either of these offences. They do not seem to be used. I would add that I did not hear one witness or read one brief that suggested adding these offences to the list of cases where the use of conditional sentencing would be prohibited.

In his speech leading up to the proposed amendment, Senator Boisvenu repeatedly referred to violence against individuals, especially women and children, to justify the other items on his list. For example, he said it was completely unacceptable for a man convicted of intimate partner violence to serve his sentence in the community.

I agree with him in the case of a repeat offender, and I believe that, in such cases, judges will not even consider a sentence of less than two years. I should add that a conditional sentence is possible only if the judge believes this type of sentence poses no threat to the victim or the community. Unfortunately, Senator Batters did not mention these prerequisites for a conditional sentence in her speech.

Also, in Quebec, judges can require offenders serving a conditional sentence to wear an electronic monitoring bracelet if the victim consents to having a corresponding app installed on their cellphone. My understanding, based on what Senator Batters said two weeks ago, is that this is also being done in Saskatchewan and other provinces.

Senator Boisvenu also mentioned that, according to 2010 figures he obtained from the Syndicat des agents de la paix en services correctionnels du Québec, or CSN, which is the union representing Quebec peace officers in correctional services, 40% of offenders serving conditional sentences don't comply with the conditions imposed by the Criminal Code and the judges. Unfortunately, we did not hear any witnesses make that claim, nor did we receive any documentation or evidence to support it. Furthermore, we have no information on the nature of the alleged violations, which I am sure must vary in severity.

Finally, I would point out that a conditional sentence can only be imposed on offenders if the judge believes that the appropriate sentence is imprisonment for a period ranging from a few days to two years; in other words, these are offenders who would be sent to provincial corrections facilities. The proposed amendment is tantamount to saying that we will automatically increase the number of inmates in provincial prisons. In my view, we cannot impose that consequence on the provinces unilaterally, without consulting them and giving them the opportunity to express their views on such an amendment in committee. As senators representing the regions, we owe it to the provinces to consult with them before imposing a significant financial burden on them.

In conclusion, it seems to me that this amendment must be rejected. That was the outcome at the Standing Senate Committee on Legal and Constitutional Affairs, by a vote of nine to four. Thank you for your attention. *Meegwetch*.

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I want to begin by thanking the Honourable Senator Boisvenu for his amendment, which clearly stems from his deep concern for the well-being of victims of crime, particularly victims of gender-based violence. However, the government opposes this amendment because it would limit judicial discretion in sentencing when the whole point of Bill C-5 is to broaden that discretion.

In committee, most of the witnesses were in favour of giving judges more flexibility to take into account the particular circumstances of the individual and the offence. In fact, many wanted this bill to go even further in that direction.

[*English*]

We absolutely agree that serious criminal behaviour should be met with serious sanctions. Under Bill C-5, the offences listed in this amendment will continue to result in a prison sentence almost all of the time. The bill simply gives judges the discretion to issue conditional sentences for these offences in what are likely to be rare and exceptional cases.

Judicial discretion is especially important where the description of the offence can cover a broad range of circumstances and degrees of culpability. For example, this amendment seeks to prohibit conditional sentences for the offences of "being unlawfully in a dwelling-house" and "causing bodily harm by criminal negligence."

There could be, and I'm sure there will be, many instances where someone who commits one of these offences deserves — and will receive — a harsh sentence. But there could also be cases where it would be appropriate for the judge to have some flexibility. Indeed, when she spoke to this amendment, Senator Simons gave multiple examples of these types of scenarios.

The Criminal Code, as Senator Dalphond masterfully outlined, only allows conditional sentence orders for sentences of less than two years when the individual is not a public safety risk or, indeed, a risk to the victim. Now, one might be tempted to argue that we should jail everyone who commits any of these offences, just in case, because it is possible a judge's assessment of whether someone poses a threat could be wrong.

But, colleagues, overincarceration comes with its own risks to public safety.

[*Translation*]

When we unnecessarily separate people from their loved ones, their jobs and their social support network, when we interrupt their education, send them far away from their normal environment and place their children in foster care, it can contribute to creating unstable homes and communities, which increases the risk of recidivism and the likelihood that the next generation will also end up in conflict with the law.

Honourable senators, in the long term, our communities are safer when dangerous people go to prison and when those who can safely remain in their communities are not needlessly imprisoned. It is therefore in the interest of public safety that the government opposes this amendment. I encourage all senators to do the same. Thank you for your attention.

[*English*]

The Hon. the Speaker pro tempore: Senator Gold, would you answer a question?

• (1530)

Senator Gold: Of course.

Senator Batters: Senator Gold, you referenced some examples that Senator Simons gave regarding situations she found would be acceptable for conditional sentences. Which particular examples that Senator Simons referred to do you think are acceptable for conditional sentences?

Senator Gold: Thank you for the question. I won't repeat the criteria that are set out in the Criminal Code, which make it clear that the offence must be one for which the judge would otherwise not impose a sentence of over two years, that there is no risk to the victim and that there's no risk to public safety under all sentencing provisions. Therefore, it is case by case, and it is circumstance by circumstance.

Let us take the example of kidnapping, if I may. It's a horrible crime when we imagine taking somebody, confining them against their will, locking them up and all the horrible things that unfortunately happen not only in TV shows but in real life — horrible things, indeed. But it could also apply, technically, to blocking an exit in the heat of a fight or to a prank that has simply gone too far. Indeed, unfortunately, and tragically in some cases, these actions take place when there are disputes around custody or care of a child.

I repeat, colleagues, and in response to your question, Senator Batters, that the judge has the discretion to take all the circumstances into consideration but is obliged by law to not grant a conditional sentence order if there is a risk to the collectivity, a risk to the victim or would otherwise be inappropriate given the objectives of the criminal law. In that regard, I think we should support the bill and reject this amendment.

Senator Batters: Senator Gold, I'm looking for particular examples. Since you listed kidnapping and then referenced some types of situations, do you really think those would result in a kidnapping charge? Because not only do the police have discretion, but the prosecutors and judges have discretion in the types of charges that are laid and the sentences that are given out. For blocking an exit or something like that, would you contend that is actually something that somebody would receive a kidnapping offence charge for?

With respect to custody situations, of course, those can be extremely damaging situations too. We had one in Saskatchewan a few months ago where the mother in that situation had no idea where her child was for months. Wouldn't you contend that if someone is charged with kidnapping, that is particularly something that should not be a conditional sentence?

Senator Gold: Respectfully, I do not. Decisions as to whether charges should be laid are made through a process involving police and Crowns and the like. The judge — she or he — performs an important role at the sentencing stage. It's in evaluating all the circumstances and the nature and reasons for the charge that Bill C-5 would return discretion to the judges, which was earlier eliminated precisely because it is in those rare circumstances where to imprison somebody would be unjust and

not in the interests of public safety that conditional sentence orders are the appropriate response in the interest of public safety.

Hon. Donald Neil Plett (Leader of the Opposition): Honourable senators, I rise today to speak in support of Senator Boisvenu's amendment, which I believe to be a carefully considered, thoughtful approach to proposed changes that have yet to be fully explained or justified.

At the outset, I want to commend Senator Boisvenu for his continued dedication to the pursuit of justice, both inside and outside of this chamber. When it comes to the protection of victims of crime, Senator Boisvenu has always ensured that nothing falls through the cracks. Canadians are truly better for his passion, tenacity and insight.

Colleagues, Bill C-5 proposes to end a significant number of mandatory minimum penalties for serious offences. The merits of mandatory minimums and the role of Parliament in establishing sentencing parameters has been debated at length. While I personally believe it is not only appropriate but indeed responsible for Parliament to set out mandatory minimum penalties on offences that impact public safety, I recognize that others do not share that perspective and view such stipulations as an infringement on judicial discretion. On this, I believe reasonable people can disagree. However, Senator Boisvenu's amendment focuses on a problem that has been identified by those most affected and most in tune with the experience of survivors of domestic and sexual violence.

Bill C-5 proposes to allow for greater use of conditional sentence orders, such as house arrest, for a number of offences where the offender faces a term of less than two years of imprisonment. The offences eligible under this bill include sexual assault, kidnapping, human trafficking, assault with a weapon and more. Women's groups and victim advocacy groups — those who have real-world experience dealing with the ramifications of violent offenders post-release — have highlighted a glaring oversight with this proposal: Bill C-5 in its current form will allow for instances in which violent offenders serve their sentences from home, in the same community as their victims. They can be right across the street, as was said, sitting in a lawn chair.

As this is a new proposal, we do not have any data on compliance with conditional sentence orders for these particular violent offences. However, Senator Boisvenu provided data indicating a 44% failure-to-comply rate with existing conditional sentences. We also have data that demonstrates a stark increase in crimes against the person — specifically family violence, criminal harassment, sexual assault and human trafficking. The Senate's Legal Committee heard testimony about the experience of survivors of abuse when their abuser has been released on parole. The committee heard stories of intimidation, a lack of compliance and a general feeling of a lack of safety among abuse victims, which would only be exacerbated by this expansion.

Colleagues, while we all support the objective of rehabilitation, we also know that the best indicator of future behaviour is past behaviour. There is nothing in a conditional sentence that would protect women from a future violent attack.

I raised this issue with Justice Minister Lametti when he appeared before this chamber for ministerial Question Period. Unfortunately, as with most of his answers, this one provided no explanation and gave skeptics of this proposal no comfort. In my question, I highlighted the testimony of Jennifer Dunn from the London Abused Women's Centre from her appearance at the House of Commons Justice Committee, when she said:

> Women and girls are five times more likely than men to be victims of sexual assault, and sexual assault is a violent crime on the rise in Canada. With conditional sentencing, many women will be stuck in the community with the offender, which places them at even higher risk.

I asked the minister, given the rising statistics, what message it sends to victims of sexual assault to extend leniency to sexual offenders through this measure. He answered by saying, "It will always be the case that serious crimes will attract serious penalties . . . ."

We all know that this is, in fact, not the case, even under the current law. We can all point to examples of heinous crimes receiving shockingly low sentences that resulted in public outrage. However, given the minister's answer, I must ask: What could possibly constitute a non-serious sexual assault? Nobody has provided an answer for that — not the minister, not the officials, and not the sponsor of this bill.

• (1540)

Senator Simons did try to draw a distinction between rape and what she considered to be a less serious type of sexual assault. However, there is a reason the offence of sexual assault is broad and encompasses a range of behaviours, and that is because, as the Supreme Court outlines, sexual assault violates "the sexual integrity of the victim."

This is serious, colleagues. Regardless of whether people in this chamber find that to be a laughing matter, sexual assault, in all its forms, has the potential to cause serious, lasting trauma for victims, and our laws need to continue to condemn sexual assault in all its forms.

Colleagues, we must ask ourselves: What specific problem is this conditional sentence expansion seeking to fix? Some have cited the overincarceration of Indigenous peoples as a justification for this measure. However, on that point, the committee heard no specific evidence that expanding conditional sentencing measures would have an impact on the Indigenous incarceration rate. In fact, University of Ottawa criminology professor Dr. Cheryl Webster and PhD graduate Dawn North testified on this specific misconception. While they wholeheartedly support the stated goal of prison reduction for Indigenous peoples, they cautioned that the data and multiple subsequent evaluations, in fact, demonstrate that the expansion of conditional sentence eligibility as a prison alternative has no meaningful impact on incarceration rates of Indigenous peoples.

Ms. North stated that there is ". . . little reason to believe that the sanction will now contribute to significant prison reduction, especially for Indigenous peoples."

In particular, Ms. North described the data in great detail:

> The research does suggest that even when conditional sentences were broadly available, Indigenous populations or offenders didn't proportionately benefit from them. There were instances when they were benefiting, but it wasn't in the same proportion as other offenders. There's also data suggesting Indigenous offenders tend to have higher breach rates even when they are granted conditional sentences. This becomes, of course, a problem for overall incarceration rates when they're imprisoned upon breach.

Colleagues, if the reduction of Indigenous incarceration rates is the rationale for this expansion, it is not rooted in evidence and, according to researchers, could actually have the opposite effect when breach rates are considered.

Not to mention, the data is clear that Indigenous women are at an increased risk of experiencing domestic and sexual violence. In fact, colleagues, more than 4 in 10, or 43%, of Indigenous women have experienced sexual violence in their lifetime. How could it possibly benefit an Indigenous survivor of abuse to have their abuser serve their sentence in the same community — across the street?

In my follow-up question to Minister Lametti, I asked what impact he believed this would have on a victim's likelihood to come forward, given that sexual assault is estimated to be the most under-reported crime in Canada. The minister refused to answer the question. Instead, he used the opportunity to tout his government's record on helping victims of crime. Quite a rich retort from the minister who refused to appoint a Federal Ombudsman for Victims of Crime for 361 days, meaning that a year's worth of legislation impacting victims did not undergo this critical review. In fact, it would have served us well to have such a review on this legislation as we consider its impact on victims.

While the minister did not have the answer, those who work with victims of sexual violence know exactly what is at stake. When Jennifer Dunn was asked about this during the Senate Legal Committee, she indicated that she heard from a victim in her centre's care that very day that she testified — the victim stated, unequivocally, that less protection in sentencing means fewer women coming forward, which would be a real setback for the fight against sexual assault.

Senator Boisvenu, in bringing forward this amendment, has carefully selected the offences that are most highly correlated with domestic and family violence — offences for which a house arrest in the community would pose the greatest risk to victims.

Some senators in the Legal Committee noted that criminal defence lawyers want this bill passed as quickly as possible, specifically the conditional sentence expansion — "imperfect as it may be," they said — because it would benefit their current clients.

Colleagues, I submit that this is not a consideration we need to concern ourselves with. It is not our job to make sure that defence counsel can ensure a better result for their clients. I recognize the important role that the defence plays in a fair and just trial. However, I have a hard time believing that many in this chamber are rushing to pass imperfect legislation that would benefit the Crown in ensuring a harsher sentence for the offender.

Rather than worry about which side of the courtroom this legislation helps, let's, instead, listen to victims who have the experience to understand the real-world impact of this expansion.

One abuse victim in the care of the London Abused Women's Centre said that:

> . . . it seems as if we are focused on the men that have created the problem and are not listening to the women who are on the other side as victims.

Colleagues, the proposal to expand conditional sentence eligibility to perpetrators of violent offences is misguided. There is no data to suggest that it will impact the overincarceration of Indigenous peoples. Yet, it will certainly have an impact on the safety of abuse survivors — a category in which Indigenous women are tragically overrepresented as well.

Please consider, colleagues, what is at stake for all victims of sexual assault. Let's concern ourselves with the victims — not the perpetrators — of sexual violence and all other violent crimes against people. Let's listen to what victims are asking of us, and support this very thoughtful amendment.

Thank you, colleagues.

The Hon. the Speaker pro tempore: Senator Plett, Senator Dalphond has a question. Would you agree to answer a question?

Senator Plett: Certainly.

Senator Dalphond: Thank you for expressing your policy on the issue. I think you're right: The Supreme Court has made clear there are policy decisions to be made here.

You tell me that conditional release should not be imposed to protect the victims, but here we're talking about the less serious offences that deserve less than two years.

Are you saying that someone who receives a sentence of three months — and the judge thinks that is the proper sentence, according to all the principles and based on his case-by-case analysis — should serve the time in jail? So after three months, what would you do? The person will be released, and will maybe live next to the victim again.

What are you proposing — that the law be amended to specify that the person be forced to live in a different city? Please explain it to me. I understand the victim's perspective, and the right to be protected, but you think that the conditional sentence is a fix? I don't think it is a fix. So after three months, what would you do?

• (1550)

Senator Plett: I'm not sure, Senator Dalphond, that I even understand the question properly.

I think if a person commits a sexual assault, that person needs to be incarcerated, simple as that. The judge has the discretionary powers to say whatever the minimum is and give that minimum. We, as parliamentarians, have an obligation to fulfill that — not to allow individual judges who may have had a bad day to allow that bad day to influence their decision. We need to have rules in place. We have had rules in place. You alluded to Senator Boisvenu speaking to 2012 and how he had been part of a different government. Yes, that government brought in what was considered good mandatory minimums.

I'm not sure where you would possibly think that I would have somewhere changed my mind on that. If that person has committed a sexual offence against somebody I know — some woman or girl I know — I don't want that person living beside her, period. The longer we can keep that person away, the better it is, yes. That is what I believe.

Senator Dalphond: Don't you think the real problem is the root cause of this violence? That the real answer is to address the real cause of this violence — that jail is not the answer to it, that three months or three weeks in jail is not going to change a person, that the judge should impose conditions that the person go to therapy to follow some education to better understand his reaction and to have to wear a bracelet that will signal to the victim he's coming by? Don't you think three weeks in jail is not protecting the victim enough? There are other ways. We have to address the real issues. It may be sensational to say, "He shall serve three weeks in jail because he did something to deserve jail," but is that the answer?

Senator Plett: Senator Dalphond, in all fairness, we're having a debate here. It's not a question. You heard my speech. You know what my answer is. Yes, I believe if a person has committed a sexual assault, then that person needs to be punished accordingly.

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

Hon. Senators: Question.

The Hon. the Speaker pro tempore: Is it your pleasure to adopt the motion in amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker pro tempore: Those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Do we have agreement on the bell? Call in the senators for 4:53 p.m.

• (1650)

Motion in amendment of the Honourable Senator Boisvenu negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Mockler
Batters	Oh
Black	Patterson
Carignan	Plett
Dagenais	Quinn
Downe	Richards
Housakos	Seidman
MacDonald	Smith
Manning	Tannas
Marshall	Wallin—21
Martin	

NAYS
THE HONOURABLE SENATORS

Bellemare	Gold
Boehm	Harder
Boniface	Hartling
Busson	Jaffer
Campbell	Klyne
Christmas	Kutcher
Clement	LaBoucane-Benson
Cordy	Loffreda
Cormier	Marwah
Cotter	Massicotte
Dalphond	McPhedran
Dasko	Miville-Dechêne
Dawson	Moncion
Deacon (*Nova Scotia*)	Moodie
Deacon (*Ontario*)	Omidvar
Dean	Pate
Duncan	Petitclerc
Dupuis	Ringuette

Francis	Saint-Germain
Gagné	Simons
Gerba	Sorensen
Gignac	Woo—44

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

BILL TO AMEND—THIRD READING—DEBATE

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.

Hon. Kim Pate: Honourable senators, I rise today to speak to Bill C-5. I thank Senator Gold for his able sponsorship of this bill.

Regrettably, Bill C-5, as written, will not even come close to realizing the objectives outlined by Senator Gold. The good news, though, honourable senators, is that we have the opportunity to fix that. Indeed, as senators, we have the responsibility to amend this bill, return discretion to judges and thus help to guard against unjust and ineffective sentencing.

Bill C-5 rightly acknowledges that mandatory minimum penalties result in unfair sentences, particularly for members of racialized groups. Yet, it only seeks to repeal 20 mandatory minimum penalties. Not only is that less than a third of the mandatory minimum penalties currently on the books, but the bill covers only a fraction — 10 out of 44 — of mandatory minimums that have already been struck down as unconstitutional, and as cruel and unusual punishment by courts in different provinces and territories.

Bill C-5 will not achieve the government's goal of reducing the number of federally imprisoned Black or Indigenous people, especially not Indigenous women. By repealing only some mandatory minimum penalties, or MMPs, the government falls far short of its commitment to reconciliation and the implementation of the Calls to Action of the Truth and Reconciliation Commission. Having promised the Canadian public that it would go further, the government now claims that Bill C-5 is the best they can do at this time — but is it?

• (1700)

I do not think so. The evidence remains incontrovertible that mandatory minimum penalties create and perpetuate inequality and mass incarceration.

The government says they cannot do more at this time, but they have provided no follow-up plan or clear next step toward fulfilling their promises to the electorate. The government has provided no — as in zero — rationale for its piecemeal approach to eliminating mandatory minimum penalties for some offences but not others, and leaving in place a patchwork of inconsistent sentences throughout this country. Bill C-5 reflects the government's fear of being labelled — wait for it — "soft on crime." They fear that some people may mischaracterize the removal of some MMPs as leniency or even full decriminalization rather than seeing the reality that it merely allows judges to do their job to impose fair sentences in some but still not all — let alone most — cases.

In 1952, the Royal Commission on the Revision of Criminal Code concluded that all mandatory minimum sentences should be abolished. For seven decades, umpteen experts have advocated for the repeal of mandatory minimums. The Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls, every law and sentencing reform commission, the Supreme Court of Canada as well as our own Senate Legal Committee and Human Rights Committee have recommended remedying the wrongs of mandatory minimum penalties.

A 2017 Department of Justice survey reported that 9 out of 10 Canadians support the government ensuring judges have the flexibility to not impose mandatory minimum penalties. In the 1999 *Gladue* decision, the Supreme Court of Canada declared the overrepresentation of Indigenous peoples in prisons a national crisis. At the time, Indigenous people represented 10.6% of the country's federal prison population. Today they are 32%. If it was a crisis in 1999, honourable senators, what on earth is it now? I say it is a shameful catastrophe that we must prevent growing worse.

This is most especially true when we talk about Black and Indigenous women. When I joined this chamber six years ago today, Indigenous women represented some 32% of the federal prison population. This year, Indigenous women make up half of all women in federal prisons, and 1 in 10 of federally sentenced women is Black. As it currently reads, Bill C-5 will most certainly contribute to increased criminalization and imprisonment, most definitely of Indigenous and Black women as well as increased seizure of their children by child welfare authorities.

The National Inquiry into Missing and Murdered Indigenous Women and Girls underscored that the issues that give rise to Indigenous women being more likely to go missing or be disappeared, murdered or rendered homeless and impoverished are the same conditions that caused them to be the fastest-growing prison population in this country — namely, 50% of women serving sentences of two or more years and more than 75% of women serving sentences of under two years in most of the western provinces. As well, in Saskatchewan, Manitoba and the North, 95% to 100% of the young women and girls in youth jails are Indigenous. Most are first- or second-generation residential school survivors and have experienced the trauma of sexual and physical abuse, child welfare involvement and disabling mental health issues.

We are tasked with representing the interests of the most marginalized. In this case, colleagues, Indigenous and Black people are relying on us to not continue to relegate them to prison and their children to state care. We owe them our best efforts to stem this tide.

Honourable senators, let's do what is right. The majority of the expert witnesses who appeared before the Standing Senate Committee on Legal and Constitutional Affairs explicitly advocated for the elimination of all mandatory minimum penalties or, at the very least, that we amend Bill C-5 in order to allow judges to not impose the mandatory minimum penalties that the bill does not repeal.

Why? Because mandatory minimum sentences are a primary contributor to overrepresentation of Black and Indigenous people in prison. They preclude judges from weighing all the evidence and then exercising their discretion to impose the fit and proper sentence. They prevent judges applying what are often referred to as *Gladue* factors. These section 718.2(e) sentencing provisions of the Criminal Code of Canada direct judges to limit the use of incarceration and to consider factors crucial to ensuring sentencing fairness. MMPs go against the very heart of sentencing principles.

Without amendment, Bill C-5 will not even put a dent in the overincarceration of Indigenous and Black people, both because it applies to so few offences and because, as witnesses before the committee underscored, the government's own data shows this bill will add jet fuel to discriminatory charging and prosecutorial practices. It will magnify, replicate and reinforce discrimination.

The existence of mandatory minimum penalties drives up the average length of sentences for all criminal convictions. They also induce Crown prosecutors and defence counsel alike to plea bargain. Too many people charged with an offence that carries a mandatory minimum penalty are encouraged to plead guilty to lesser offences rather than face the uncertainty of a trial with the risk of a mandatory minimum sentence — regardless of whether they are guilty or, more importantly, they are not. Similarly, too often abused women who, after long and horrific histories of abuse, act to defend themselves or those in their care may use a weapon. If their reactions to serious threats of violence result in serious harm to their abuser, they will usually be charged with the commission of a violent offence: precluded from Bill C-5.

If the person dies, they will most often be charged with murder, which carries a mandatory minimum sentence of life imprisonment. Even when they may have acted in self-defence or defence of their children or others, the incentive to plead guilty to manslaughter to avoid the risk of a mandatory life sentence is overwhelming for most women in this tenuous situation. Many such women are Indigenous, yet this bill would not allow judges to appropriately examine the circumstances of each of such cases and tailor a sentence accordingly. In their recent decisions in *Bissonnette*, *Ndhlovu* and *Sharma*, the Supreme Court of Canada reinforced that Parliament has an obligation to address the appropriateness of penalties and should not be leaving the current piecemeal approach to sentencing reform to the courts.

In 2015, Prime Minister Trudeau promised the world:

> . . . in partnership with Indigenous communities, the provinces, territories, and other vital partners, fully implement the Calls to Action of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

He tasked the Minister of Justice with decreasing the number of Indigenous people in prison, and every minister's mandate letter includes a commitment to reconciliation and implementation of the UN declaration.

More recently, including at the UN and at the second National Day for Truth and Reconciliation, the Prime Minister reiterated his commitment and said he was ". . . hugely impatient to do even more." Me too. Bill C-5 ignores the Truth and Reconciliation Commission's Calls to Action 30 and 32 and the Calls for Justice 5.14 and 5.21 in the Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, which focus on repealing all mandatory minimum penalties and redressing the current overrepresentation in prison of Indigenous people, most particularly Indigenous women.

Many Indigenous and Black leaders — including Assembly of First Nations National Chief Archibald just today — called on us to heed the advice of our former colleague the Honourable Murray Sinclair and deal with this crisis now. We have already sentenced those waiting for this change to further catastrophe. We need to act to allow judges to do their jobs and free them from the limitations MMPs currently place on their ability to weigh all the circumstances and determine appropriate sentences.

The government claims that any amendment would effectively kill the bill. We have heard this before. They said this when the Senate insisted on maintaining women's reproductive rights and also when the Senate added section 718.2(e) to the sentencing principles of the Youth Criminal Justice Act. They said the same thing when we insisted on the removal of gender inequality in Bill S-3 amendments to the Indian Act.

• (1710)

The list goes on, colleagues. In these cases, not only was the threat untrue, but the Senate amendments vastly improved the flawed legislation. The Senate must learn from the lessons of the past and not repeat mistakes. Let's learn from our history of institutionalizing the most marginalized. Let's rely on the evidence and not allow mandatory minimum penalties, or MMPs, and the resulting mass incarceration and consequent state removal of children to be our institutional legacy.

Colleagues, we have a catastrophe on our hands. We have allowed this to happen. Like residential schools, unmarked graves and the crisis of missing and murdered Indigenous women and girls, we know that our laws and policies are perpetuating and perpetrating injustices. Knowing this, we have a choice. We can continue to hide our heads in the sand or we can act. We can decide to fix Bill C-5 to try to remedy the wrongs, achieve the purposes that the government set for it and stem the tide of the most egregious harms.

Colleagues, those we serve need our courage now more than ever. It is our responsibility not to fail them. *Meegwetch*, thank you.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Bernadette Clement: Senators, today I will be introducing an amendment to Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, which aims to repeal certain minimum sentences. We have discussed and debated this bill at length. Specifically, the other place heard from 52 witnesses. The Standing Senate Committee on Legal and Constitutional Affairs heard from 45 witnesses. This has not been an easy bill to get through. Now it is November 2022. It is time to pass this bill, but more importantly, it is time to do it right.

[*English*]

I've heard it time and time again: Perfect is the enemy of good. Bill C-5 is not good enough, and amendments will not make it perfect.

In 2021-22, Black persons represented 9.2% of the overall incarcerated population despite representing about 3.5% of the Canadian population. As approximately 5% of the adult population, Indigenous peoples continue to be vastly overrepresented in the federal correctional system, accounting for 28% of all federally sentenced individuals and nearly one third of all individuals in custody. Fifty per cent of the female population in Canada's federal prisons are Indigenous women.

Looking at these numbers shows us how far we are from "good." Perfect? No. That won't be possible, but an amendment would make it better. The amendment that I will be putting forward moves Bill C-5 closer toward good — not perfect — with the goal of decreasing the over-incarceration of Black, Indigenous and marginalized Canadians.

A lot of discussion and action around Bill C-5 has become tangled up in politics, but let's be clear. This isn't about being soft or tough on crime. This is about laws that are effective and that accomplish our goals. Mandatory minimums are sold to the public as being consistent — a predictable punishment for crime. But the Department of Justice website lists March 2018 research that states:

> The overwhelming majority of Canadians (95%) felt that the best approach for determining fair and appropriate sentences for offenders involves giving judges at least some degree of discretion.

I want to be clear. This is not about politics. It is more about what and how we communicate to the public.

In my reflections on Bill C-5 and considerations of an amendment, I went back to Senator Gold's speech of two weeks ago in the chamber and I reread the witness testimony. Senator Gold quoted several of the committee witnesses, but I'd like to offer other quotes from these same witnesses because they believe in judicial discretion, which is why I am bringing forward an amendment today.

Catherine Latimer, Executive Director of The John Howard Society of Canada, stated:

> We strongly support judicial discretion to impose less than the mandatory minimum penalties when needed to achieve a fair and proportionate sentence. With that view, we join many of the other witnesses and experts . . . recommending an amendment to this bill that would provide judicial discretion, where some have described it as a safety valve against the injustices that inevitably flow from mandatory minimum penalties. This is a huge opportunity to promote justice, and the John Howard Society urges you to act.

Michael Rowe from the Canadian Association of Chiefs of Police explained:

> . . . Parliament could provide the judiciary with additional powers via a clause or safety valve, something other countries with mandatory minimum penalties have but that is currently absent in Canada.

Brian Sauvé, the president and founder of the National Police Federation, said:

> I think that discretion in our judicial system is an excellent decision. I trust the judicial system. Honestly, judges get to be judges for a reason and we need to have more faith in those judges.

Janani Shanmuganathan, a lawyer who appeared at committee, told us:

> The bottom line is that mandatory minimum sentences strip trial judges of the discretion to consider important things like the circumstances of the offence and the moral blameworthiness of the offender. It doesn't allow a trial judge to stop and think, "Okay, what sentence does this person actually deserve?" Mandatory minimum sentences are a one-size-fits-all approach, except offenders come in different shapes and sizes.

She went on to say:

> Really, it's up to Parliament. It's up to all of you and the way this government works to do that job of eliminating mandatory minimum sentences and putting the discretion back in the hands of trial judges, where it belongs.

In addition to experts, the Supreme Court of Canada and law and sentencing commissions, a clear majority of the 45 witnesses whom we heard in committee support judicial discretion.

I'm not a criminal lawyer. I'm a legal-aid clinic lawyer, a proud one. One of the most impactful lessons I have taken away from my three decades — yes, three decades — of practice concerns my multi-generational clients. Around the age of 40 — I will put you out of your misery; I'm 57 — after 15 years of practising law, I started providing legal services to the kids of the clients whom I had already represented.

This is the cycle of poverty and the lack of support for those who face barriers in our society. Individual casework motivates me; it continues to do so, but it sometimes feels hopeless. But do you know what else I did around the time I turned 40? I went into politics. I needed to come at this more systemically. I had to get involved with breaking the cycle. So here I am, at the decision table, with all of you.

At committee, our talented and dedicated colleague Senator Pate presented some key arguments to support judicial discretion, and I would like to reiterate those issues here.

One, judicial discretion is accepted in other jurisdictions. Dr. Julian Roberts, a Canadian professor of criminal justice at the University of Oxford, outlined the different ways to draft a judicial discretion amendment. He highlighted that using "exceptional circumstances" is the highest bar for judges, and that is what is used in the U.K. Senator Dalphond connected this to Chief Justice McLachlin when she wrote for the majority in *Lloyd*. As Senator Dalphond stated, she opted for the use of "exceptional circumstances."

I listened intently to his argument, and I would like to thank Senator Dalphond for emphasizing this important point: The version brought forward in committee did not use "exceptional circumstances" as the language, and it was defeated. So please note that the amendment that I will put forward has been updated to use "exceptional circumstances."

Number two, mandatory minimum penalties do not deter or denounce criminality. They do, however, harm the most vulnerable, marginalized and criminalized people, notably Indigenous and Black people. The Justice Canada website states the following:

> Some of the evidence found suggests that harsh penalties – like MMPs – are ineffective at deterring crime . . . .
>
> Even when there is a drop in crime in jurisdictions with MMPs, careful analysis often shows that reduction in crime started before the implementation of MMPs and that most crime trends are indicative of large nation-wide shifts in offending . . . .

• (1720)

In the next section, it states:

> [Mandatory minimum penalties] disproportionally affect disadvantaged persons and members of minority groups, such as Indigenous Canadians. Mandatory minimums do not allow judges to consider the role of social context in criminal sentencing and, as a result, vulnerable people may be adversely and disproportionately impacted . . . .

Three, provincial patchwork of mandatory minimum laws create constitutional challenges. As the Department of Justice website states:

> As of December 3, 2021, the Department of Justice Canada was tracking 217 *Charter* challenges to [mandatory minimum penalties]. . . . [which] represents a little over a third (34%) of all *Charter* challenges to the *Criminal Code* . . . .

University of British Columbia law professor Debra Parkes told the committee:

> We have had an unacceptable and unprincipled patchwork of laws in Canada where mandatory minimum sentences have been declared unconstitutional in some provinces and not in others, and that persists even with Bill C-5. Many of those are not changed by Bill C-5, so we will continue to have that patchwork.

Four, Indigenous and Black people are less likely to have the resources required to effectively appeal unfair sentencing by mandatory minimums. Janani Shanmuganathan explained this well at committee. She stated:

> . . . what I would say in terms of the guilty plea is that the existence of mandatory minimum sentences may only encourage people to plead guilty when they don't need to or shouldn't because if they were to go to trial on a particular charge and lose, then they would face the certainty of getting at least that mandatory minimum sentence, if not something higher. If something is waved in front of them, saying, "If you plead guilty to this lower offence, you can get a sentence that is not going to be the mandatory minimum sentence," it becomes all the more appealing for that client to plead guilty.

Five, the federal government has committed to reconciliation. It has committed to reconciliation. Calls for Justice 5.14 and 5.21 of the National Inquiry into Missing and Murdered Indigenous Women and Girls point to the impact of mandatory minimums and to the gross overrepresentation of Indigenous women and girls in the criminal justice system.

The Truth and Reconcilation Commission Calls to Action 30 and 32 address Indigenous overrepresentation in custody and ask for a departure from mandatory minimum sentences. They ask for that.

As one witness, Pam Hrick, executive director of Legal Education and Action Fund, stated:

> It's within this committee's power to force the issue — to insist that Parliament not defer and delay the implementation of yet another of the Calls to Action. Implementing Call to Action 32 is low-hanging fruit, and I urge you to grasp it.

This point was reiterated by the Honourable Murray Sinclair when he said:

> The government has provided no data to justify its piecemeal approach to the repeal of mandatory minimum sentences, nor have they explained why they have rejected TRC Call to Action 32 with respect to the mandatory minimum sentences Bill C-5 leaves in place. I urge the government to reconsider and fully implement Call to Action 32. We need to move away from a simplistic, punitive, one-size-fits-all response, and we need to trust and allow our judges to do the job they have been appointed to do.

This amendment reflects these arguments and the recommendations of the majority of witnesses at committee. It allows judges, in exceptional circumstances, to depart from the remaining mandatory minimums when a more fit, appropriate sentence should be applied.

MOTION IN AMENDMENT—DEBATE

Hon. Bernadette Clement: Therefore, honourable senators, in amendment, I move:

> That Bill C-5 be not now read a third time, but that it be amended on page 3 by adding the following after line 10:
>
> "**13.1 The Act is amended by adding the following after section 718.3:**
>
> **718.4 (1)** The court that sentences an accused may impose a sentence other than the prescribed minimum punishment for the offence if, after having considered the fundamental purpose and principles of sentencing as set out in sections 718 to 718.2, it is satisfied that doing so is justified by exceptional circumstances.
>
> **(2)** The court shall give reasons for imposing a sentence other than the prescribed minimum punishment for an offence and shall state those reasons in the record."

Thank you.

[*Translation*]

Hon. Marc Gold (Government Representative in the Senate): Honourable senators, I understand the spirit in which this amendment was put forward, and I share many of the values behind it. However, I rise today to explain why the government does not support it.

Certainly, an amendment of this nature was recommended by several witnesses. At the same time, credible stakeholders have expressed concerns about the unintended consequences of this so-called "safety valve" approach. These include the Canadian Bar Association, the Criminal Lawyers' Association and Janani Shanmuganathan, a lawyer who successfully argued the landmark case *R. v. Nur* on mandatory minimum sentences before the Supreme Court.

[*English*]

One of the main concerns is that this amendment could actually incentivize the proliferation of mandatory minimums in the Criminal Code.

As we heard from Tony Paisana of the Canadian Bar Association:

> . . . Under section 12 of the Charter, if you introduce a safety valve, it will, in effect, mean that any future mandatory minimum penalty will be impervious to a Charter challenge, which has the risk of encouraging mandatory minimum penalties to be introduced in the future . . . .

In other words, adopting this amendment could have the unintended effect of providing constitutional cover to a future government inclined to tack a mandatory minimum onto everything that moves. This would mean that, in more and more cases, there would be a presumption at sentencing that a mandatory minimum applies, and it would be up to the defence to fight the uphill battle of rebutting that presumption.

On this point, it is important to remember what we heard at committee from Oxford University criminologist Julian Roberts. Speaking about the safety valve mechanism in England and Wales, he told us that, "Only a small number of cases actually get saved this way."

[*Translation*]

That raises the question of what cases will be deemed worthy of special "safety valve" treatment. In committee, Anne-Marie McElroy from the Criminal Lawyers' Association warned us that the approach proposed in an amendment of this type might, and I quote:

> . . . only benefit those people who are more privileged and are not part of the marginalized populations for whom we're hoping to reduce incarceration or representation in the system.

Furthermore, Ms. Shanmuganathan believes that it would only, and I quote, "create further litigation around how we consider what 'exceptional' means."

Of course, people who have money and privilege will be better positioned to enter into the long legal battles that could be necessary to benefit from such a "safety valve" provision. As I mentioned in committee, similar arguments could be made with regard to the process for Charter challenges. However, at least with Charter challenges, a case only has to be successfully argued once before other people in similar circumstances are able to benefit. The approach proposed by this amendment could condemn every offender to have to plead their own case.

[*English*]

On this subject, by making mandatory minimums in the words of the Canadian Bar Association "impervious to a Charter challenge," this amendment could undercut challenges of mandatory minimum penalties that are currently before the courts.

There was some discussion at committee about whether we should simply eliminate all mandatory minimums. To be frank, as I said in my earlier remarks, the Canadian public simply isn't there, nor are the elected members of the House of Commons.

• (1730)

There have been several successful constitutional challenges of mandatory minimums, and more are progressing through the courts as we speak. If our goal is to allow for more judicial discretion at sentencing, let's not amend Bill C-5 in a way that risks obstructing that progress.

Finally, if we were to proceed with an amendment along these lines, we would be well-advised to thoroughly consider the way safety valve provisions work elsewhere. There are versions of this in other jurisdictions, but they're all different. In some places, the safety valve only applies to certain types of offences, like drug offences or non-violent offences. In other places, the judge can deviate from the mandatory minimum if the accused cooperates with authorities — for instance, by accepting a plea or testifying against third parties. In several places, the law sets out a list of factors for judges to consider when deciding whether to treat a case as exceptional, and, of course, those factors differ from one jurisdiction to another.

There is also the question of what wording to use — thank you for your speech, Senator Clement. It was really well done.

This amendment proposes to allow deviation from the mandatory minimum in "exceptional circumstances." At committee, the proposal that was put before the committee — and voted down — was to let judges set aside mandatory minimums if doing so is "in the interest of justice."

There are many other possible approaches. A proposal in the United States would let mandatory minimums be set aside if "it is necessary to do so in order to avoid violating" sentencing guidelines. In New Zealand, until recently, the law required that certain repeat offenders receive the maximum penalty unless such a sentence would be considered "manifestly unjust."

Colleagues, these details matter. When Madeleine Redfern, President of the Nunavut Inuit Women's Association, was asked at committee if she supported the safety valve approach, she quite reasonably responded with questions of her own by asking, ". . . who designs the valve. How does it work in practice? How are people held accountable when the system fails?"

[*Translation*]

Before we adopt such a measure, it would be wise to conduct an in-depth analysis of international examples, hear testimony on the pros and cons of different models and obtain expert advice on the way specific legislative language is likely to be applied.

We heard the perspective of just one such witness at committee, at the very end of our study. He was a leading criminologist, but I think that his testimony alone is not enough.

The committee focused on the content of Bill C-5. Witnesses kept telling us that this is a good bill and a major step forward. Throughout our study, criminal lawyers urged us to pass Bill C-5 without delay. Since the recent Supreme Court ruling in *Sharma*, which narrowly confirmed the restrictions on conditional sentences, calls to swiftly pass Bill C-5 have only grown louder.

[*English*]

The Canadian Bar Association, or CBA, said this:

> While there's certainly room for further debate and reform, it's vital that we don't throw out the baby with the bathwater in hopes of perfection. It's critical that this bill pass, and pass with haste.

Colleagues, the exhortation from the Canadian Association of Black Lawyers, or CABL, was ". . . we encourage you to work expeditiously to pass this bill so we can start implementing on the ground . . . ."

The CABL further stated, "We can't let the perfect be the enemy of the good."

This is what our colleague in the other place, NDP MP Randall Garrison, told *The Hill Times* about the Senate's consideration of Bill C-5:

> . . . this bill is agreed upon, and if you pass this, we're done on this part . . . . If they —

— senators —

> — want other things done, then pass a [new] bill and send it to us . . . but don't hold this one up."

Colleagues, I think that's good advice.

With great respect, I urge you to oppose this amendment — both because of the substantive concerns raised by credible stakeholders, and because of the importance of moving this legislation expeditiously toward Royal Assent. Thank you for your kind attention.

Senator Pate: Would Senator Gold take a question?

Senator Gold: Yes, of course.

Senator Pate: Senator Gold, thank you for that.

The CBA is actually in the process of reconsidering its position, despite what the soon-to-be past president has indicated.

I want to go back to something you said about the CBA's assertion that this kind of clause would make mandatory minimum penalties immune to constitutional challenges. Wouldn't you agree that authorities like the Honourable Murray Sinclair — who, through the TRC, weighed all of this — would

have some knowledge of the appropriateness of these kinds of valves, and the fact that the Supreme Court of Canada in *Bissonnette*, at paragraph 111, stated they are of the view that:

> In any event . . . the existence of a discretion cannot save a provision that authorizes the imposition of a punishment that is cruel and unusual by nature. . . . Since such a punishment must quite simply be excluded from the arsenal of punishments . . .

Does that sound, to you, like a statement from the Supreme Court of Canada that, in fact, the mere possibility that a sentence imposing an infringement of the Charter might be upheld by this kind of amendment?

Senator Gold: Thank you for your question. There are two things I'd like to say: The first is that I respect enormously the eminence of the folks and former colleagues you mentioned — as I do of the other jurists in this chamber — and reasonable people can disagree. It's the government's position — and correctly — that this does, in fact, increase the risk that mandatory minimums that could be introduced in the future will be immunized from a successful constitutional challenge.

I do want to also respond to your comments about the Canadian Bar Association. At committee, the Canadian Bar Association was represented by Tony Paisana, past chair of the Criminal Justice Section, and he did, as I mentioned and as members of the committee know, clearly express concerns with the safety valve approach.

Just this morning, I had my office check with the Canadian Bar Association's Criminal Justice Section to see if their position has changed, as has been suggested and implied in your question. Colleagues, this is the reply we received:

> While we at the section take pains on an ongoing basis to make sure our positions remain meritorious, it would be inaccurate to suggest that the position taken by the section and delivered to the committee this fall in relation to Bill C-5 by our representatives Tony Paisana and Jody Berkes was being reconsidered or amended or currently undergoing an evolution of any kind.

Senator Pate: Would you take another question, Senator Gold?

Senator Gold: Of course.

Senator Pate: As you may be aware, the Canadian Bar Association actually passed a resolution in 2011 authorizing precisely this kind of mechanism as one of their resolutions. Although I didn't say that they are undergoing that right now, there is going to be new leadership, and the clear message has been — to our office, in response to sending out the email that came from Tony Paisana today — that, in fact, this is not a done deal.

I do want to come back to the Supreme Court of Canada. Senator Gold, are you suggesting to this chamber that the CBA's position would trump the words of the Supreme Court of Canada on this very issue?

Senator Gold: No, Senator Pate, I'm not suggesting that. We have a responsibility as parliamentarians, as members of one of the two houses of Parliament, to assume our responsibilities in legislating for the good of Canadians. This is a bill that came to us from the House of Commons — that was supported by the government and by another party: the New Democratic Party. This is a minority Parliament. This is a policy choice that the government has made.

• (1740)

The Minister of Justice explained very clearly and candidly before the committee and in other fora that the judgment of the Government of Canada is that these measures will make a difference, respectfully, to the overincarceration and overrepresentation of Indigenous, Black and other marginalized members of our community; that it is a major step in the right direction; that the mandatory minimums that are being repealed represent a significant number of cases affecting members of those groups; that the restoration of conditional sentence possibilities is a major step forward on which virtually all witnesses would agree; and that this is what the government and the House of Commons believe is the appropriate step forward and the step that they believe is in line with what the public does accept and can accept.

We did a serious study, we heard witnesses and we heard overwhelming testimony to the effect that this is a good bill and that it's a bill that deserves to be passed. No bill is perfect. All bills, perhaps, have room for improvement, but this is a policy decision of a government in a minority Parliament that we studied carefully and judiciously. We did our constitutional duty. I believe it's time for us now to do our constitutional duty and pass this bill unamended. That's why it's the position of this government that this amendment is not one that should be supported, and I urge all colleagues to vote against it.

Hon. Brent Cotter: Honourable senators, I rise to speak to Senator Clement's amendment to Bill C-5 and, inferentially, to speak about Bill C-5 itself. My remarks are divided into two parts. The first addresses three points with respect to which I am sympathetic regarding the proposed amendment, and it's only fair to say that I'm supportive in principle of nearly all of the arguments that have been advanced in favour of the bill.

The second part of my remarks will address the reasons why I will reluctantly vote against the amendment and in support of Bill C-5 unamended.

A number of speakers here and before the committee have identified a variety of reasons why Bill C-5 is a good legislative initiative but one that could be made significantly better. I wish to limit my own observations today to the section of the bill that would remove a number of mandatory minimum sentences from our criminal law and, in that respect, highlight three points.

The first relates to the importance and value of largely unconstrained judicial discretion in the area of sentencing criminal trials. While each of us can identify a decision or a sanction imposed by a judge in an individual case that is troubling to us, on the whole we have an outstanding judiciary in Canada composed of thoughtful jurists.

When it comes to sentencing, it's not as though the judges impose sanctions on convicted people on the basis of whim. Indeed, there's a vast body of law that addresses the subject matter of sentencing in criminal cases. Indeed, at my now-former law school, there's a course in sentencing law, and this is the case at many other law schools in Canada. The legal framework for sentencing is complex and also needs to be adapted to the circumstances of individual cases, as we have heard.

With the greatest respect to parliamentarians, judges generally — and in particular in individual cases with which they are understandably intimately familiar — are the best arbiters of the appropriate sanction.

Indeed, for me it is passing strange that we seem to be perfectly comfortable with judges alone, in the vast majority of cases, making decisions about guilt or innocence — by far the most important function — but then we suddenly lose confidence in these very same judges when it comes to sentencing and tell them, at least in part, what they must do, regardless of the specific facts associated with the very cases they are judging.

My second point is one that was mentioned by a few witnesses and, based on aspects of my former career teaching legal ethics, is bothersome to me. In some cases, as we have seen in the courts and in arguments in this place, the imposition of mandatory minimum sentences will be manifestly unfair — even unconstitutional, not just in your view or mine or the view of the accused or his or her lawyer, but even to the prosecutor. Now, some of you may be disdainful of the cold hearts of prosecutors, but in my experience the vast majority of prosecutors are interested in justice. Sometimes that includes avoiding the imposition of a sentence upon an accused person that, even in the eyes of the prosecutor, would be unjust.

So what's a prosecutor to do? The obvious answer is to search around for some different criminal charge more or less associated with the evidence that has a punishment that better suits the crime — indeed, Senator Batters suggested such an approach in her dialogue with Senator Gold a bit earlier — and then the prosecutor has the person charged with that offence instead.

There's a very good chance that the accused is not guilty of this more or less suitable offence, and both the prosecutor and the defence lawyer know this. But the accused's lawyer advises the client to plead guilty to avoid being convicted of the offence that was committed, probably, and for which a mandatory minimum requirement would lead to a much harsher and unjust punishment.

You might say that's fair enough, and that justice is served. But to get there, both the prosecutor and the defence counsel have to violate central obligations of their codes of conduct and professional obligations. The prosecutor must proceed with a charge that he or she knows does not meet the standard that is the reasonable likelihood of conviction — in fact, prosecutors get in trouble if they act without reference to that standard, a central obligation of prosecutors — and the defence lawyer must recommend to the client that he or she plead guilty to a criminal offence that there's a very good possibility they didn't commit.

We are in a strange place indeed if, in the sophisticated and much-envied justice system that we have, to achieve justice in these problematic cases — made problematic by the harshness of mandatory minimums — we have to ask both prosecutors and defence counsel to act unethically.

Let me say at once that these two points are relevant to virtually all mandatory minimums and would be resolved by legislative provisions that would remove their imposition.

My third point relates specifically to the amendment we are considering. I support the amendment in principle. Indeed, at an earlier point this fall, when I had hopes for it, I led the drafting of a version of an amendment almost identical to what Senator Clement has proposed.

Let me be clear: I support the idea that people should be held accountable for their actions, but what that accountability should look like can vary a lot. In some cases it should be incarceration — sometimes for a very long time, and sometimes less so. If we think that rehabilitation is an important goal of the criminal justice sentencing system, lengthy jail terms — and sometimes any jail term at all — may not be the answer.

This is a serious debate and I hesitate to introduce even a modest amount of levity, but, as you might know, I can't resist. I used to serve as the Deputy Attorney General and Deputy Minister of Justice in Saskatchewan for a period of time, and that included responsibility for the provincial jails. As Senator Pate and others have noted, Saskatchewan's provincial jails have a lot of Indigenous people incarcerated in them — deeply troubling — and we did work, I think, in some respects to improve that.

I used to visit these jails regularly and spent a third of my time with the jail managers, a third with the guards and a third with the inmates. On one occasion, in the Prince Albert Provincial Correctional Centre, I was visiting with some of the inmates, and one fellow in particular who was in a training program; he was squatting down, working with a blowtorch and cutting through metal. That was his training program. I chatted with him for a minute or two. I asked him, "What are you in for?" He said, "Safe cracking."

Now, I think he was probably pulling my leg, but it did cause me to think it's not necessarily the case that the training programs we make available inside the jails are really the best training programs for lawful life outside.

So judges will not always get it right, but they will know better than we parliamentarians sitting hundreds of kilometres and years away from the event and clueless about the actuality of the circumstances.

This amendment would license judges to make assessments and achieve justice in sentencing, and where justice cries out for a deviation from a mandatory minimum, justice could be done. It would resolve both of the dilemmas I mentioned earlier.

• (1750)

I won't go on to speak about the debate with regard to who supports it and who does not, other than to say this. A number of years ago, the Uniform Law Conference of Canada, a criminal

law section made up of senior prosecutors, senior defence counsel and senior federal criminal justice policy people from the federal and provincial governments supported the idea of this "exceptional circumstances" approach in almost the language identical to this amendment.

Now the reason why I reluctantly will not support the amendment. Simply put, I've come to the considered conclusion that it will go nowhere in the other place. I could elaborate on that in greater detail — others have commented — but it comes down to two points. First, based on such information as I have been able to gather independently of the proponents of the bill, I have concluded that it will not garner sufficient support to be adopted. I'm disappointed in this, but I'm trying not to be naive about it.

My second concern is that an amendment almost identical to this one was overwhelmingly rejected as out of scope at the Justice Committee in the other place. It seems highly unlikely that this amendment would meet anything other than the same fate. I'm disappointed in this, but, again, I'm not naive.

The consequence of this amendment being adopted and referred back to the other place, then, would, in my judgment, have the necessary consequence of delaying the passage of Bill C-5 for a period of time and to no achievable purpose, to the disappointment of those who support the amendments in the bill and many of whom called for it to be adopted as urgently as possible.

There's also the risk, perhaps remote, perhaps real, that the bill would flounder in the other place. I should observe at this point that this is a bill to which the government is significantly committed, including in its electoral platforms, and in my view, we need to be respectful of that.

I am hardly an expert on how these things work in the other place for sure — a 30 handicap, you might say — but speaking only for myself, in my view, creating that risk takes me beyond the boundaries of my limited parliamentary legitimacy as a senator, and I'm not prepared to take that risk.

Let me reiterate that Bill C-5 is a good bill and I will support it. That said, whatever decision is made with respect to this amendment and on the various issues we are debating, I'm more than prepared to start immediately with others to examine the whole terrain of sentencing in Canada, with the goal of achieving a better, more responsive and fairer criminal justice system. Thank you.

The Hon. the Speaker: On debate on the amendment, Senator Simons. I apologize in advance, but at six o'clock I will have to interrupt you.

Hon. Paula Simons: Honourable senators, I rise today in support of Senator Clement's amendment to Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act, and I want to start this story with a trip I made alongside our colleague Senator Pate to the Edmonton Institution for Women, a federal prison that serves the Canadian Prairies. When we visited last August, the facility was full. Indeed, it was over capacity. Of the prisoners, we were told 70% were Indigenous — First Nations, Métis or Inuit.

This is one of the terrible injustices that Bill C-5 is designed to address. The bill removes mandatory minimum sentences for 20 Criminal Code offences, returning to judges the discretion and responsibility to craft sentences that are appropriate for all the complicated circumstances of a particular crime.

Mandatory minimum sentences rob judges of their authority and autonomy, and they rob convicted criminals of the chance to receive an apt and nuanced sentence, one that takes into consideration all their complicated social circumstances and personal histories. The hope is that by eliminating this constellation of mandatory minimum sentences, we would not only achieve greater justice for Indigenous, Black, queer and other marginalized defendants but make the justice system more just for everyone, reduce pressures on our courts and prisons and return to judges the respect and independence they require.

Bill C-5 goes further. It would encourage police to consider diverting people, particularly those arrested for relatively minor drug offences, away from the criminal justice system and toward programs that treat drug addiction as a medical and psychiatric condition.

There are also important changes to the use of the conditional sentence so more defendants would be considered eligible to serve their sentences carefully monitored and restricted in their homes. I have certainly heard from criminal trial lawyers of their great impatience for this bill to be passed quickly so present and future clients can benefit, especially in light of the recent Supreme Court of Canada decision in *Sharma*, which demonstrated the limitations of relying on the courts to expand conditional sentences as an option.

Yet I feel I must speak in support of this amendment because if we do not act now, we might miss a vital opportunity to address a larger and deeper problem. As Senator Clement noted, Bill C-5 removes some mandatory minimum sentences but leaves many other intact, including sentences that have already been found unconstitutional by various superior courts across the country.

That's not only absurd on its face, but it sets up a bizarre patchwork of sentencing protocols across the country. Commit a particular crime in one province, and you get a completely different sentence than if you commit exactly the same crime in another. That makes a mockery of our criminal justice system and of the human rights of Canadians. Canadians are entitled to equal treatment under the law, no matter what province they call home. In a federation such as ours, a federal Criminal Code must surely be applied equally, from British Columbia to Newfoundland.

Bill C-5 is also silent on one of the greatest areas of sentencing injustice: the crime of murder. Now, you may say, "Well, of course it is, Senator Simons. Murder is the worst of crimes. Of course it demands a mandatory minimum sentence. Who could question that?"

We need to recognize a real risk that men and women who are facing the mandatory minimum sentence for murder — that's life in prison with no chance of parole for 10 years for second-degree murder and no chance of parole for 25 years for first-degree murder — will not dare take the risk of a trial but will instead plead guilty to manslaughter to get a shorter sentence in the sort

of scenario that Senator Cotter described so well. Even if they have a legitimate defence at trial, many will take the plea deal, either because they can't afford to mount a vigorous and well-funded defence or because they don't want to gamble on the verdict.

Which takes me back to my visit to the Edmonton Institution for Women. While I was there with Senator Pate, we met a young Indigenous woman I'll call SB. She wore a large and noticeable crucifix and spoke in emotional tones about her love for Jesus. Later, she pulled me aside to ask if I could help her with her case. She had just been convicted of manslaughter, but she told me earnestly she had been possessed by demons when she committed the crime.

There was something about her vulnerability and her obvious psychological distress that moved me and made me curious, so I researched her case. It wasn't easy. She had been arrested in Winnipeg in 2020 and charged with the second-degree murder of a man with whom she had been living. While there were a couple of short news blotters in the media from the time of her arrest, there was absolutely no coverage of the outcome of the case. So I contacted the prosecutor, I wrote to the judge, and after several months, I finally got enough court documents to try to piece the tale together.

Both SB and the victim were meth addicts who had been squatting together in a vacant house in Winnipeg. Neighbours became concerned about what was going on in the house and called police. When police arrived, they found a man's body, his head bashed in. The body was seriously decomposed, and the medical examiner could not say how long the man had been dead, estimating it might have been anywhere between two days and eight days. The medical examiner determined the man had died of blunt-force trauma, but the autopsy couldn't say what weapon was used, and I found nothing in the public court record to indicate that any weapon was ever found.

Police quickly arrested one of the dead man's known male associates. In court documents, the man was described as an:

> "unsavoury witness" based on his criminal record and that he provided a statement to police only after he had been arrested for the murder himself.

This "unsavoury witness" told police that it was SB who had beaten the man to death with an axe handle, and that he had walked into the room and saw her doing it.

Now, to judge by the court records I had the chance to review, the police never found any forensic evidence linking Ms. B to the crime. There is no mention in the files of blood spatter or fingerprints on a murder weapon. No mention of any murder weapon at all. Police couldn't even reliably place the woman in the house at the time of the killing because they had no independent forensic evidence to determine the date or time of death. There was also no indication of motive to explain why SB might have killed her companion. The key evidence was the personal testimony of the original suspect arrested for the crime — that and SB's own extremely hazy memory. She told the court she believed she had killed her companion but that she had no clear memory of doing so and no reason or explanation for why she might have wanted to kill him.

• (1800)

Let me quote from the evidence she gave the court:

> That . . . that day, the occurrence happening was — I can't even explain how to start on what happened because I have a little recollection of what had taken place that night. All I know is that it was an unnatural occurrence and I'm so sorry. And not ever in my life I could — I thought I could do such a heinous act. And I just . . . like, I just ask for forgiveness from – like all sides from my family, from his — especially his family.

The Hon. the Speaker: Apologies, Senator Simons, but I must interrupt.

Pursuant to rule 3-3(1), I'm required to leave the chair until 8 p.m., unless there is agreement that we not see the clock. Is there agreement?

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no."

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2000)

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator Gagné, for the third reading of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act.
>
> And on the motion in amendment of the Honourable Senator Clement, seconded by the Honourable Senator Duncan:
>
> That Bill C-5 be not now read a third time, but that it be amended on page 3 by adding the following after line 10:
>
> "**13.1 The Act is amended by adding the following after section 718.3:**
>
> **718.4 (1)** The court that sentences an accused may impose a sentence other than the prescribed minimum punishment for the offence if, after having considered the fundamental purpose and principles of sentencing as set out in sections 718 to 718.2, it is satisfied that doing so is justified by exceptional circumstances.
>
> **(2)** The court shall give reasons for imposing a sentence other than the prescribed minimum punishment for an offence and shall state those reasons in the record.".

Hon. Paula Simons: Honourable senators, let me tell you more about S.B., and the story I started to tell before the dinner break.

S.B. had a poor, transient and traumatic childhood filled with sexual and physical violence. Indeed, according to the pre-sentencing report, she described being abused by 13 different family members as a child.

In an affidavit, she said she began drinking at 15, and became addicted to crystal meth at 18. She said she had gotten off meth successfully when she became pregnant with her first child, and she stayed off the drug for 14 years. She fell back into addiction in 2019, and she lived homeless on the streets of Winnipeg for five months before her arrest. She is now the mother of six children, and, by the time of that arrest, she had lost custody of all of them.

S.B. did have a criminal record with 19 offences which sounds pretty dire, except that 14 of those offences were for things like failure to appear in court and failure to meet her curfew. The longest she had ever spent in prison at one time was 30 days. She did not have a history of serious violence. In fact, prior to her arrest in this case, she had only one minor assault charge in 2017, for which she had received a conditional discharge.

Now, you could imagine that this woman might have been able to fight her second-degree murder charge at trial. You might suppose, for example, that her lawyer could have argued that she was not criminally responsible because she was suffering from a mental disorder that rendered her incapable of appreciating the nature and quality of her actions, or of knowing they were wrong — especially in light of the young woman's avowed belief that she was possessed by demons, or in a trance.

You might imagine that a lawyer could have argued that S.B. was in the grips of drug-induced psychosis or self-induced extreme intoxication, especially since the young woman was sentenced before we rushed to pass — without due consideration, I might say — Bill C-28 last June. You might presume it could have been a viable legal strategy to simply demand that the Crown prove beyond a reasonable doubt that S.B. had actually committed the crime, given the paucity of physical evidence against her.

Indeed, in June of 2021, after the preliminary hearing, the Crown actually applied to stay the proceedings in the case, stating that it had determined there was no reasonable likelihood of conviction. Yet, in January of 2022, the woman's lawyer wrote to the court that her client would be accepting a guilty plea. After all, a second-degree murder charge comes with a mandatory life sentence without even a chance of parole for 10 years. By pleading guilty to manslaughter, S.B. received a sentence of eight years — less credit for time served in custody — which left her with a little more than four years remaining on her sentence.

This may not be the intent, but our mandatory minimum sentencing regime is positively set up to invite such guilty pleas, even when a defendant might have a viable courtroom defence. The poorest, most vulnerable and most powerless defendants are the very ones most often pushed to take those plea deals because they have no capacity to fight back and, frankly, no hope.

Let's consider the outcome here: Since there was no trial, there was no news coverage, no public attention, no public questions about the facts and no public outrage. S.B. was sentenced quietly and invisibly — and with no chance for people to hear her story, or champion her cause. She was then sent to serve her sentence thousands of kilometres from her family in an overcrowded prison filled with Indigenous women with stories nearly as bleak as hers.

I decided to take the time to tell you the story of this one individual because it is so representative of the crisis within our criminal justice system and, frankly, within our society. The amendment I support today would not give judges unbridled licence to ignore mandatory minimum sentences; it would simply give them the opportunity in only the most extraordinary cases — cases where a mandatory minimum sentence would be manifestly unfit — to suggest, and then justify, the substitution of a sentence apt for that particular defendant.

It is — I accept, and for all of the reasons Senator Gold outlined — an imperfect solution. Perhaps it is an impolitic one. I know that in the world of realpolitik, we run a real risk by pushing for this at third reading.

Honourable senators, I had the privilege of serving as a member of the Standing Senate Committee on Legal and Constitutional Affairs during its study of Bill C-5, and I heard witness after witness come before us — academics, lawyers and advocacy groups — asking us all for an amendment such as this one. I cannot in good conscience ignore their advice any more than I can ignore stories such as the one I've told you this evening.

I hope you will think carefully when it comes time to vote.

Thank you. *Hiy hiy*.

Some Hon. Senators: Hear, hear.

(On motion of Senator Housakos, for Senator Plett, debate adjourned.)

DEPARTMENT FOR WOMEN AND GENDER EQUALITY ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator McCallum, seconded by the Honourable Senator Mégie, for the second reading of Bill S-218, An Act to amend the Department for Women and Gender Equality Act.

Hon. Marty Klyne: Honourable senators, I rise in support of Bill S-218, An Act to amend the Department for Women and Gender Equality Act sponsored by Senator McCallum.

This important legislation would require the Minister for Women and Gender Equality and Youth to table a statement in Parliament on certain bills, outlining their potential effects on women and, particularly, on Indigenous women.

Senator McCallum commenced our debate with a powerful call for substantive equality for Indigenous women, considering the terrible discrimination and violence they have endured in our federation. Senator McPhedran recently added her support and insights to the discussion, and I hope we'll hear additional debate — and I hope Bill S-218 will move to committee with a sense of urgency after having been introduced in November of 2021, and twice in the last Parliament.

Colleagues, why do we need this bill? Since 2019, following the passage of Bill C-51, federal law has required the Minister of Justice to provide a statement of Charter compliance for every government bill in Parliament. However, complying with Charter equality requirements is not necessarily the same as doing a good job of considering, and crafting, public policy that establishes equality and paves the way for all women.

As Senator McCallum told us, this is particularly the case for Indigenous women, where specific knowledge and understanding are often needed to think carefully about colonialism, discrimination, violence, risk from resource development, constitutional Aboriginal or treaty rights, and the inherent rights affirmed under the United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP.

In the face of many disadvantages incurred through injustice, this bill aims to help Indigenous women access the quality of life that so many others take for granted — so they can exercise, and enjoy, their individual and collective rights.

As I will discuss, the concept of GBA Plus is also broad enough to respond to contextual concerns of other groups of women who have faced disadvantage, such as other racialized groups. I trust the committee will attend to this point.

Specifically, Bill S-218 would establish a gender analysis reporting requirement for all government-initiated bills, as well as for any individually initiated House of Commons private member's bill, Senate public bills or private bills that reach committee stage.

As Senator McCallum told us, she chose the trigger point because adoption at the second reading indicates that a non-government bill is meaningfully progressing through the legislature. In addition, this legislation requires a statement from the minister in response to amendments adopted in the chamber where the bill originated should the bill pass that chamber for the benefit of the second house. This feature of Bill S-218 is valuable to get the full picture.

• (2010)

Honourable senators, a legal requirement for publicly available gender-based analysis can enhance federal legislation's value for women, including Indigenous women. In this way, Bill S-218 represents a natural progression of years of effort toward the federal government's inclusion of gender-based analysis in formulating legislation, intersecting with reconciliation.

This is not a new issue. In 1995, the Government of Canada committed at the United Nations Fourth World Conference on Women to applying gender-based analysis to its policy decisions. Sadly, challenges linger. In 2005, the House of Commons Standing Committee on the Status of Women tabled a report outlining the uneven application of gender-based analysis by departments, resulting in the appointment of an expert panel on accountability mechanisms for gender equality. The panel's 2005 report recommended establishing legislation to enforce the use of gender-based analysis, monitoring and reporting. With Bill S-218, we have an opportunity to fulfill the recommendation made 17 years ago.

In 2009, the Auditor General released a report on gender-based analysis indicating its application still varied significantly among departments. In 2015, the Auditor General noted ongoing barriers to Gender-based Analysis Plus, that is GBA Plus, including an absence of mandatory government requirements in relation to legislation. For persons who may be learning about this subject, the "Plus" in the term "GBA Plus" acknowledges that gender-based analysis is not just about differences between genders. It must also consider intersection with aspects of identity such as ethnicity, religion, age, language, income or disability. In this way, the concept respects diversity and inclusivity.

Bill S-218's emphasis on Indigenous women certainly does not exclude other groups of women where considerations of social context are relevant, such as for other racialized or marginalized groups. Again, a committee can examine these details.

In 2015 and 2017, mandate letters for the Minister of the Status of Women prioritized efforts to strengthen gender-based analysis. In 2017, a report of Women and Gender Equality Canada noted that the federal government made the application of GBA Plus mandatory for all memorandums to cabinet and Treasury Board submissions.

This is a positive step. However, the analysis is not made public. This lack of transparency is the first problem with the status quo that Bill S-218 would remedy through tabling requirements.

Bill S-218 would also address a second problem. As Senator McCallum said, "any future government can stop the practice at any time." By enshrining the analysis and tabling requirements for women in law, the practice would become hard to discontinue, only possible through repeal with democratic scrutiny.

Bill S-218 would address a third problem with the status quo, being that GBA Plus may not be happening for non-government bills that have viable prospects of becoming law in Canada. Colleagues, we, of course, need to treat any potential legislative changes with due diligence, regardless of whether the initiator is the government or an individual parliamentarian. In fact, according to *Senate Procedure in Practice*, our distinction between government business and other business has only been in place since 1991, when changes to the Rules prioritized government items.

Currently, a few federal statutes, such as the Immigration and Refugee Protection Act and the Impact Assessment Act, do require gender-based analysis in their application. These examples demonstrate the value of statutory requirements, as does the shift to Charter compliance statements with Bill C-51 and other examples of reporting requirements to Parliament. However, federal legislative activity is still not subject to requirements to report on a given bill's potential effects on women. By changing this, Bill S-218 will ensure that new laws benefit all women in Canada.

Recent proceedings in this place have confirmed that there is room for improvement. On debate on Bill C-30 — legislation that enhanced the GST credit — Senator Dupuis and Senator Bellemare noted government shortcomings around GBA Plus analysis. We learned that though a summary of GBA Plus is sometimes made available to senators by the government, as Senator Dupuis said:

> This practice should be extended to all bills, and the summary of this analysis should be tabled before all Senate committees. This practice should be routine, not left to the whim of individual ministers.

Honourable senators, at a meeting of the Standing Senate Committee on Social Affairs, Science and Technology on October 27 of this year, the Minister for Women and Gender Equality and Youth, the Honourable Marci Ien, discussed the value of GBA Plus and the government's commitment to this approach. Her determination is to be commended. However, Senator Patterson noted that a 2022 report of the Auditor General stated:

> . . . only 39% of surveyed departments and agencies performed GBA Plus at this critical problem definition stage more than 60% of the time. This means that the majority of departments and agencies surveyed reported not applying GBA Plus in the initial design phase of policies, programs, and initiatives, thereby reducing the impact GBA Plus could have to address or avoid inequalities experienced by diverse groups of men, women, and gender-diverse people.

Senators, with Bill S-218, the federal government can build on progress to date on GBA Plus. As Senator McPhedran told us, it is important that GBA Plus take place in all sectors, including in areas such as fisheries, national defence and infrastructure. We should therefore move Bill S-218 to committee to consider the lasting change proposed by Senator McCallum.

Honourable senators, I will add a few words on why Indigenous women require dedicated policy attention, justifying the specific mention that Senator McCallum has suggested in Bill S-218. In my view, valid reasons include the historical context of colonialism, being the genesis of the high levels of discrimination and violence we see today, as well as distinct legal frameworks applying to Indigenous women through section 35 constitutional rights and UNDRIP.

From *The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, released in 2019:

> The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the *Indian Act*, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.

Honourable senators, our work in this chamber has sought to address this situation, and there's more work to do. For example, the famous six Indigenous women, including Senator Lovelace Nicholas and former Senator Dyck, have made extraordinary efforts to eliminate gender-based discrimination in Indian status registration. As the Indigenous Peoples Committee outlined in their June report entitled *Make it stop!*, and as Senator Lovelace Nicholas and Senator Francis wrote in Charlottetown's *The Guardian* in July, the government is still not up to the principle of non-discrimination in status.

As a second example, Senator Boyer in the Standing Senate Committee on Human Rights has led efforts to end the ongoing practice of forced sterilization in this country. We know from the committee's report last year that this practice disproportionately affects Indigenous women and other vulnerable and marginalized groups in Canada. This year, Senator Boyer introduced Bill S-250 to make this practice a specific offence under the Criminal Code.

Colleagues, the need for such a bill illustrates a terrible ongoing situation for Indigenous women in this country.

As a third example, we're familiar with Senator Audette's work as a Commissioner on the National Inquiry into Missing and Murdered Indigenous Women and Girls and their Calls for Justice. We are grateful for the work of the Indigenous Peoples Committee in helping to hold the government to account in answering those Calls through their June report, *Not Enough: All Words and No Action on MMIWG.*

• (2020)

I acknowledge the committee's conclusion that their ongoing vigilance can help answer Calls for Justice 1.7, respecting a National Indigenous Human Rights Ombudsperson and Tribunal, and 1.10, respecting an independent annual reporting mechanism to Parliament.

Senators, in giving Indigenous women legislative focus through Bill S-218, we also acknowledge their distinct legal situation by virtue of section 35 constitutional rights, as well as UNDRIP, set for implementation by way of action plan. Articles 21 and 22 of UNDRIP provide that:

> Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

As UNDRIP becomes federal law, this principle requires legislative attention, as proposed by Bill S-218.

To conclude, government, Parliament and Canadians must do more to approach public policy through a gender and reconciliation lens. We must do more to build a better society for all women, including Indigenous women. This legislation will help. Colleagues, I ask you to join me in supporting Bill S-218 for swift passage to committee. Thank you, *hiy kitatamîhin*.

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

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Wallin, seconded by the Honourable Senator Tannas, for the second reading of Bill S-248, An Act to amend the Criminal Code (medical assistance in dying).

Hon. Judith G. Seidman: Honourable senators, I rise today in support of Bill S-248, An Act to amend the Criminal Code (medical assistance in dying). I would like to thank Senator Wallin for her passionate and vocal support of advance requests for medical assistance in dying; patient autonomy always has been and remains at the heart of her advocacy.

The objective of Bill S-248 is twofold. It amends the Criminal Code to permit an individual whose death is not reasonably foreseeable to enter into a written agreement to receive medical assistance in dying, or MAID, on a specified day if they lose capacity to consent prior to that day; and to permit an individual who has been diagnosed with a serious and incurable illness, disease or disability to make a written declaration to waive the requirement for final consent when receiving MAID if they lose capacity to consent, are suffering from symptoms outlined in the written declaration and have met all other relevant safeguards outlined in the Criminal Code.

Some of you may wonder whether the introduction of Bill S-248 is premature, given that the new Special Joint Committee on Medical Assistance in Dying was established in March of 2022 and has only completed a portion of its mandate thus far. The committee tabled its first report entitled *Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report* in June 2022. However, I will argue that this bill is not premature; on the contrary, our work is past due, and it is time for us to catch up.

I will bring your attention to three documents that can guide our work: the November 2015 *Final Report* of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, the February 2016 report of the Special Joint Committee on Physician-Assisted Dying entitled *Medical Assistance in Dying: A Patient-Centred Approach* and the 2018 report of The Expert Panel Working Group on Advance Requests for MAID assembled by the Council of Canadian Academies entitled *The State of Knowledge on Advance Requests for Medical Assistance in Dying*. We have the information that we need to act. Now we must have the courage to do so.

The first report for us to consider is that of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying. In February 2015, in their ruling in *Carter v. Canada*, the Supreme Court of Canada concluded that the absolute prohibition of MAID defied sections of the Canadian Charter of Rights and Freedoms that protect an individual's right to life, liberty and security. The court determined that it was the responsibility of Parliament and provincial legislators to establish a national legal and regulatory regime for MAID. As the court wrote, "Complex regulatory regimes are better created by Parliament than by the courts."

The Provincial-Territorial Expert Advisory Group was therefore formed to provide non-binding advice to provincial and territorial ministers of health and justice in 11 participating provinces and territories on a pan-Canadian approach to physician-assisted dying. The group's members had professional expertise regarding relevant clinical, legal and ethical issues. The group issued their *Final Report* in November 2015 and made 43 recommendations in total.

Recommendations 12 and 13 concern the timing of completion of a patient declaration form for a request for MAID. The group considered four possibilities regarding the timing of a request and determined that physician-assisted dying should be permitted in the following three scenarios where:

> a) the patient is competent at all times from the initial request to the moment of provision of assistance;

> b) . . . the patient lost competence between the completion of the . . . form and the provision of assistance; or
>
> c) . . . the patient lost competence between the completion of the . . . form and the onset of the enduring intolerable suffering.

The second report for us to consider is that of the Special Joint Committee on Physician-Assisted Dying. In December of 2015, both houses of Parliament established the special joint committee whose purpose was to review existing consultations and reports on assisted dying, consult with Canadians and relevant experts and make recommendations to the federal government for a national framework on MAID.

As one of the 5 senators and 11 MPs of this committee, I can speak to the seriousness with which we conducted our work. Over the course of five weeks in January and February 2016, our committee received over 100 submissions and heard thoughtful and valuable testimony from 61 witnesses who had rich knowledge and expertise in the fields of law, medicine and ethics.

As legislators, we were asked to propose a framework on MAID that both respected the autonomy and dignity of individuals who suffer from a grievous and irremediable medical condition and protected some of society's most vulnerable individuals.

In February of 2016, the special joint committee tabled its report titled *Medical Assistance in Dying: A Patient-Centred Approach*, which made 21 recommendations, including eligibility requirements and procedural safeguards.

A few months later, in June of 2016, the federal government presented Bill C-14 — Canada's first-ever legal framework for MAID — which reflected some but certainly not all the recommendations made by the special joint committee.

One noticeable omission from Bill C-14 was Recommendation 7, which stated:

> That the permission to use advance requests for medical assistance in dying be allowed any time after one is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before the suffering becomes intolerable.

During our hearings, Professor Jocelyn Downie of the Faculties of Law and Medicine at Dalhousie University suggested the following requirements for advance directives:

> . . . at the time of the request, the patient must have a grievous and irremediable condition and be competent, and at the time of the provision of assistance, the patient must still have a grievous and irremediable condition and be experiencing intolerable suffering by the standards set by the patient at the time or prior to losing capacity.

• (2030)

Ms. Linda Jarrett, a member of the Disability Advisory Council at Dying With Dignity Canada, told us:

> The members of our council believe that as with other major life-ending decisions, we should have the ability to make our decisions known now when we are competent and hopefully have them carried out later when possibly we will not be.

Honourable senators, I include these quotes from the report to further demonstrate that Senator Wallin's proposal isn't new; this recommendation was made to our special joint committee by many witnesses over six years ago. The report and witness testimony are easily available on the special joint committee's website.

The third document we have access to is the report from the Expert Panel Working Group on Advance Requests for MAID.

Now, I might remind you, for those of you who were in this chamber when we debated Bill C-14, that bill mandated an independent review within two years of three outstanding and complex issues: one, MAID for mature minors; two, advance requests for MAID; and three, requests for MAID where mental illness is the sole underlying condition. To fulfill the mandate of independent review, the Government of Canada requested that the Council of Canadian Academies, or CCA, assemble a multidisciplinary panel of 43 experts from Canada and abroad to study and address these three topics.

The overall panel was chaired by the Honourable Marie Deschamps, former justice of the Supreme Court of Canada and adjunct professor at McGill University and Université de Sherbrooke. The panel's working group on advance requests was chaired by Associate Professor Jennifer Gibson, Sun Life Financial Chair in Bioethics and Director at the University of Toronto's Joint Centre for Bioethics. It was composed of many well-known experts in the fields of bioethics, law, aging, relevant health care professions and Indigenous knowledge, including Dr. Alika Lafontaine, Professor Trudo Lemmens, Professor Emerita Dorothy Pringle and Dr. Samir Sinha.

In December of 2018, the CCA released three final reports of the expert panel. In the summary of their reports, the expert panel noted that:

> Key drivers for creating an AR for MAID are the desire to have control over one's end of life and the desire to avoid intolerable suffering. For people who wish to receive MAID, the knowledge that they could lose decision-making capacity and thus become ineligible for MAID is a source of fear.

They also observed that the primary risk involved with advance requests for MAID is that an individual may receive an assisted death against their wishes, but they asserted that several safeguards can be implemented to circumvent potential risks or vulnerabilities.

The Expert Panel Working Group on Advance Requests for MAID report entitled *The State of Knowledge on Advance Requests for Medical Assistance in Dying* consists of five substantive chapters: "MAID in Canada: Historical and Current Considerations;" "Advance Requests for MAID: Context and Concepts;" "Issues and Uncertainties Surrounding Advance Requests for MAID: Three Scenarios;" "Evidence from Related Practices in Canada and Abroad;" and "Allowing or Prohibiting Advance Requests for MAID: Considerations."

Although it was not within the scope of the expert panel or its working group to provide recommendations to government, the report does offer important insights, including potential safeguards for advance requests for MAID, and these include systems-level safeguards, legal safeguards, clinical process safeguards, support for health care practitioners and support for patients and families.

Honourable senators, these reports by the expert panel were meant to inform our understanding and guide our work as legislators, and they have yet to be subjected to a review by a parliamentary committee as originally intended in Bill C-14. Our work is long past due.

Today, the Criminal Code laws governing MAID establish two sets of safeguards: one for those whose natural death is reasonably foreseeable and one for those whose death is not reasonably foreseeable.

Individuals who make a voluntary written request to receive MAID must have a grievous and irremediable medical condition, and they must also be mentally competent, free from external influences and be able to give informed consent.

If an individual's death is reasonably foreseeable, they may be allowed to waive the requirement for final consent if, when they were assessed and approved to receive MAID, they possessed decision-making capacity.

Most notably, an individual must have a written arrangement with their practitioner in which the person gives consent in advance to receive MAID on their preferred date if they no longer have the capacity to consent on that date.

In essence, Bill S-248 extends what the law already permits. It will allow all individuals who suffer from a grievous and irremediable medical condition to waive the requirement for final consent and to receive MAID on a specified day or at the onset of the symptoms outlined in their written declaration.

Honourable colleagues, respected experts have been advising policy-makers since 2015 to allow for advance requests, but they have been ignored. If we continue to wait for government action, it may be years before we see any proposed legislative change. As a result, when Canadians are at their most vulnerable, they will experience unnecessary and undesired suffering, unable to exercise their personal autonomy and direct their end-of-life journey. We have at our disposal excellent evidence on how best to proceed. It's time we consider it. I hope you will join me in voting to send this bill to committee. Thank you.

(On motion of Senator Housakos, debate adjourned.)

CRIMINAL CODE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kutcher, seconded by the Honourable Senator Boehm, for the second reading of 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).

Hon. Rosemary Moodie: Honourable senators, one of the central roles of our Senate is being a voice for the voiceless and representing the groups who lack meaningful representation in our political discourse. Bill S-251 fits well within this mission on three fronts. It simultaneously addresses, first, a long-standing concern within Canadian communities; second, a Call to Action from the Truth and Reconciliation Commission's final report; and third, it's an important step towards fulfilling all international human rights commitments.

I'll start by saying I strongly favour this bill and urge us to ensure it receives due consideration in committee, where the voices of Canadians — especially Canadian children — can be heard.

Colleagues, it is well past time to repeal section 43 of the Criminal Code. I want to commend our colleague Senator Kutcher for putting this bill forward because, colleagues, this bill has come before us in many iterations in the past decade. But the truth is that, as we all know, perseverance and persistence are always necessary for real change to happen. For this crucial issue, it is time for us to bring it back for renewed consideration in today's context, recognizing again Canadians' concerns, the need to definitively respond to the Truth and Reconciliation Commission and to fulfill our international commitments.

A few years ago, we hosted a virtual celebration for the Honourable Landon Pearson's ninetieth birthday and during that discussion she said something I knew and you know, but she communicated it in a fresh and simple way when she said, "Parents don't have rights. They have responsibilities. Parents don't have rights. Children have rights. Parents have responsibilities."

I'm strongly in support of helping parents care for their family well. In that regard, we must be sensitive to the role government should play, but interventions from public institutions are sometimes needed to protect children's rights, and then they should be welcomed.

• (2040)

That's why we have wealth transfers, for example, like the Canada Child Benefit; and important programs like the special benefits within Employment Insurance, because these play a role for public institutions in helping families thrive.

Parents are supposed to be the primary caretakers of their children, and have the responsibility to raise them so they go on to live healthy, meaningful and productive lives. In an ideal world, this would be what we observe in every family. But, as you and I know, sometimes reality does not play out like this. There are times when public institutions do need to step in. We often think of those moments as times when parents are unable or unwilling to live up to that responsibility. I would argue that we also need to look at them as times when children's rights and their well-being need to be assured and upheld.

What are those rights? According to the United Nations Convention on the Rights of the Child, or UNCRC, children have wide-ranging rights — just like adults — from freedom to use their language and freedom of religious thought, to protection from violence and abuse. Senator Kutcher quoted section 1 of Article 19 in his speech as sponsor, and I'll read it again to remind you:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Colleagues, Canada has an obligation to respect the UNCRC and to fully implement it. This is one of the many ways that we have failed to do so.

Section 43 effectively does the opposite by allowing children to experience forms of physical violence. We can no longer stand idly by. This bill is not about grabbing a child to help keep them out of harm's way. Nor is it about lovingly restraining a child to put them in their car seat or to give them their bath. It is about removing corporal punishment as a legally accepted form of parental discipline when there is no evidence at all to prove its effectiveness.

I want to turn to comments from two experts: Dr. Daniella Bendo, Assistant Professor at King's College University; and Cheyanne Ratnam, CEO of the Ontario Children's Advancement Coalition, an organization that focuses on children in foster care. Dr. Bendo argues:

> Section 43 of Canada's Criminal Code justifies the use of corrective force against children in Canada and states that corrective force is warranted if the force does not exceed what is considered "reasonable" under the circumstances. This colonial law is a violation of children's protection rights and has been in the Criminal Code since 1892 although 63 countries globally have prohibited physical punishment in all contexts.
>
> There exists a significant amount of academic research that demonstrates the negative effects of corporal punishment on children — including the harmful effects on young people's behaviour, well-being and mental health, cognitive development, and relationships.

She goes on to say:

> In fact, there is no research that shows there are positive effects or benefits of corporal punishment on children's health or well-being; nor has there ever been research that highlights long-term benefits of physical punishment on children. Bill S-251 is central to Canadian children's legal protection from harm and violence and signifies Canada's human rights obligations to children.

For her part, Ms. Ratman stated:

> Bill S-251 is imperative to protecting children from harm, and the system has the responsibility to develop adequate supports and resources to support the health and well-being of families. [Section 43 of the Criminal Code] is outdated and is counterintuitive. [It is] as a country to support a law that is rooted in whiteness, and which perpetuates the breakdown of families, entire communities, and facilitates the breakdown of culture and identity in instances of forced family breakdowns — such as the child welfare system and legal system. What families need is adequate, equitable, accessible and culturally appropriate supports and resources, including mental health supports, rooted in healing and growth for all members unique to their divergent needs. . .

The sum of the comments of both these accomplished women is that it is no longer morally tenable for Canada to sanction child violence and simultaneously take moral leadership on the world stage or seek reconciliation here at home — in fact, it never was. There is a defect in Canadian law, and it must be fixed.

It must be fixed, because there is no evidence to support corporal punishment as an effective way of shaping better behaviours in children, as noted by our colleague Senator Kutcher when he spoke about an article in *The Lancet* published in 2021 — an article that spoke about the analysis of 69 longitudinal studies and concluding something that we all know: spanking is harmful.

Yet, fixing this issue is only the beginning of the large work we need to do to support healthy families in this country. Corporal punishment, as sanctioned by the Criminal Code, is symptomatic of a larger issue.

In considering this issue, my first assumption is that most parents love their children and would do anything to care for and love them well. The ability for parents to do so is eroded by many daily challenges like the high cost of housing and groceries, low-paying jobs, pressures on their mental health brought on by generational trauma, and a whole host of other challenges you and I are very familiar with.

Many parents resort to corporal punishment because they don't have the time, energy, capacity and understanding to sit and speak with their children, to gently teach them or use other methods of positive discipline. There simply isn't time, and corporal punishment can be perceived as the way to stop unwanted behaviour now — in a time-efficient manner. I don't think it's because parents are bad people who hate their children. I think that often they just don't have the time and understanding.

My second assumption is that children don't need to be hit to learn. Anyone who has spent any amount of time observing a child would be surprised and amazed at their many abilities. They're observant, curious and bright. They can learn and be taught. Our goal should be to enable parents, families and communities to work toward the moral and intellectual development of children from a very young age. Talking to them, teaching them, patiently reminding and encouraging them is the way parents can and should work toward children adopting appropriate behaviours. Using positive strategies to parent also shows these kids that words, when used patiently and deliberately, have the power to change hearts and minds in a more powerful and permanent way than physical intervention ever could, setting those children on the path to healthy adulthood.

I know many of us, even here in this chamber, have dealt with corporal punishment when we were kids. For some, it was something much worse than the occasional — but certainly still abusive — slap, pinch or twisted arm. If we're honest, it's not something we look back on fondly. It's something we got through and endured and, for some, may be accepted as part of what made us the successful, powerful people that we are. But there was a silent effect: something that impacted us subconsciously, and something we could never put our finger on but we know is still there. A silent impact that, for many, remains a source of pain for their entire lives. It may well be that we are where we are despite that treatment, not because of it.

• (2050)

We must have never been spanked out of anger, and it may well have always satisfied that "reasonable" criteria laid out by the Supreme Court, but that did not make it okay, colleagues.

I don't say this to make light of the situation many have gone through. I say this to cause us to reflect on whether or not corporal punishment is ever beneficial and to remind us that the effects on children are real and long-lasting. This is a deeply personal issue for many, and one that has rightly left deep scars, unresolved anger and open wounds.

Repealing section 43 alone will not be sufficient. Colleagues, meaningful steps to improve the well-being of families and children will be needed if we are to see the welfare of children improve, and if the rights of children are to be respected.

I will mention a few words on the experiences of other jurisdictions on the global stage. We know that many countries, including Sweden, Germany and New Zealand, have banned corporal punishment, and we can learn from their lived experiences. In these jurisdictions, the bans imposed worked. Those countries all report a significant drop in reports of corporal punishment. In Germany and Finland, that reduction was by nearly 50%. Also, these countries acknowledge the need for public education and for adequate family supports. They acknowledge the need to help parents and families figure out other ways to teach and discipline their kids.

I recognize the importance of these factors and would strongly recommend that our government here in Canada consider this and commits to making those investments when this bill becomes law.

Finally, the bans did not result in parents getting locked up for spanking their kids. In most countries, the response to corporal punishment was mostly referrals to social services that allowed families to get the right kinds of supports they needed. We will need to do much of the same here in Canada.

Colleagues, I end by saying it is our responsibility to repeal section 43. I'll close by saying that I support this bill again wholeheartedly and look forward to further discussion on this bill in committee, with your help. Thank you, *meegwetch*.

(On motion of Senator Martin, debate adjourned.)

NATIONAL FRAMEWORK FOR FETAL ALCOHOL SPECTRUM DISORDER BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Ravalia, seconded by the Honourable Senator Duncan, for the second reading of Bill S-253, An Act respecting a national framework for fetal alcohol spectrum disorder.

Hon. Colin Deacon: Honourable senators, I rise tonight to speak to Bill S-253, An Act respecting a national framework for fetal alcohol spectrum disorder, or FASD. I stand in strong support of Senator Ravalia's bill and am personally grateful for his initiative.

Immediately prior to my appointment to the Senate, I was a director and incoming chair of the Kids Brain Health Network, which supported the mobilization of research related to autism, FASD and cerebral palsy. It was in this capacity that I first began to learn about the shocking realities associated with FASD and the isolation, risks, pain and trauma that it visits on so many children and their families.

My remarks today are focused primarily on four points: First, FASD is an equal opportunity problem, the consequences of which are made so much worse because of judgment and shame. Second, the current cost of inaction across the lifetime of a child born with FASD far exceeds every other intervention alternative. Third, early diagnosis and intervention are essential to reducing the lifetime costs. However, the vast majority of current evidence-based approaches and tools are unavailable to most

families. Fourth, remote delivery options hold important promise and the opportunity for Canada to lead globally as we work to address the needs of children, families, educators and so many others affected by FASD. They are substantial indeed.

To my first point, FASD is an equal opportunity problem. In Canada, approximately 70% of women of child-bearing age drink, and 50% of pregnancies are unplanned. We know from various epidemiological studies that about 30% of pregnancies are alcohol-exposed to some degree, and most often during the first trimester, before the woman even knows she's pregnant.

A recent University of California San Francisco study found that one third of women discover they are pregnant at six weeks or later. This rises to almost two thirds of younger women, and marginalized women are even more likely to discover pregnancy past seven weeks.

Simply, in committee, I think it will be important to understand the degree to which judgment and shame actually discourage versus encourage willingness to access early diagnosis and treatment for FASD in those places where it is actually even available.

Now to my second point, which is the high cost of inaction. There have been a few attempts to calculate the cost of FASD to the Canadian economy. A Centre for Addiction and Mental Health — CAMH — researcher, using a population prevalence of 1%, found that the direct annual costs of FASD in Canada are approximately $1.8 billion per year. However, again, epidemiological studies have demonstrated that the actual prevalence of FASD in Canada is closer to 4%, so the annual costs are therefore very likely closer to $6 billion or $7 billion per year.

However, these costs are not concentrated in the health care system, as I initially expected they would be when I first started to learn about FASD. The tragic irony is that, by far, the largest costs associated with FASD in Canada are incurred by the justice system. Youth with FASD are 19 times more likely to end up in prison than those without FASD. The total estimated cost of FASD to our criminal justice system is almost $4 billion per year. Think about it: We spend almost $4 billion per year on criminal justice interventions involving those suffering from FASD, and we spend it because of the brain injury that they acquired while still in the womb, and it was not diagnosed and interventions were not available.

When Bill S-253 is studied in committee, I hope time is invested in trying to identify the costs of inaction for families, schools and for these children, and all the costs that are incurred in our social service, health care, justice and correctional systems.

Finally, and most importantly, please consider the opportunity costs resulting from lives that cannot and will not be lived as a result of our inaction.

Now to my third point — early diagnosis and intervention. Current Canadian guidelines recommend either making a diagnosis or providing an "at risk" designation for infants as young as six months. However, the reality is that most diagnostic clinics will not even see a child who is younger than six years of age, and those children who happen to be referred for an assessment typically sit on wait-lists for over two years because of inadequate diagnostic capacity.

Children younger than six years benefit most from interventions that have been demonstrated to mitigate the long-term consequences of prenatal alcohol exposure, yet, today, we are systematically closing this window of opportunity to virtually every child and every family.

Early identification enables early intervention. The Kids Brain Health Network championed and co-funded techniques that enabled FASD-diagnosed kids to be provided with effective supports at an early age so they could reach their full potential and achieve a far superior quality of life. A much brighter, safer and less-expensive future sits before these children and families if we choose to pursue it.

I hope that time will also be spent in committee to identify and find the ways to overcome the systemic barriers that are preventing effective and cost-efficient diagnostic and treatment approaches from becoming the standard of care across and throughout Canada.

Systemic barriers exist due to biases, limited resources and limited access to technology and connectivity, and they especially include the siloing that results from the fact that FASD is not the responsibility of any body or any group, either within or between levels of government. FASD is everyone else's responsibility, so it's no one's responsibility.

Fourth, I want to speak about the importance of harnessing remote delivery support for educators, parents and kids. Various remote support systems and services already exist. The Strongest Families Institute is one example. Based in Nova Scotia, they deliver service remotely in Nova Scotia, and in several other provinces and territories. Services like this train paraprofessionals to provide remote programming coaching to families, helping them to deal with issues such as inattention, impulsivity, non-compliance and aggression at home or at school — issues that are very common with children with neurodevelopmental disabilities like Fetal Alcohol Spectrum Disorder, or FASD.

• (2100)

As an entrepreneur who led a company that delivered an effective, cost-efficient and evidence-based reading intervention, as an entrepreneur commercializing university-based research and as a volunteer with the Kids Brain Health Network, I have seen far too much life-improving knowledge never applied in practice. You have heard me say countless times that Canada has a phenomenal research engine, but we have yet to build the reliable transmission that will convert that research excellence into opportunities, jobs and prosperity.

In the case of neurodevelopmental disabilities, this means that kids, families and communities are suffering unnecessarily, and society is paying a much higher cost. Kids, parents and families desperately need cost-efficient access to effective, evidence-based diagnostic and intervention tools across and throughout Canada.

As I conclude, I hope the committee in its review will be sensitive to the need that we do not unintentionally pit one underfunded, underserved disability group against another in a fight for all-too-scarce resources. As I say this, I'm thinking of Bill S-203, an act respecting a federal framework on autism spectrum disorder, which passed third reading here in the spring and has now been introduced in the other place. It is a wonderful bill, but there is justifiably pent-up resentment about the limited attention and resources available to address the overwhelming needs of these families. This resentment is exacerbated when one disability is addressed in a way that actively excludes those dealing with other disabilities.

As a consequence, when Bill S-253 is considered at committee, I hope that opportunities might be identified to help build a more inclusive, pan-disability response for children and parents struggling with the effects of neurodevelopmental disabilities. Thank you, colleagues.

(On motion of Senator Ataullahjan, debate adjourned.)

NET-ZERO EMISSIONS FUTURE

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Coyle, calling the attention of the Senate to the importance of finding solutions to transition Canada's society, economy and resource use in pursuit of a fair, prosperous, sustainable and peaceful net-zero emissions future for our country and the planet.

Hon. Ratna Omidvar: Honourable senators, I realize I have an impossible task as I stand between you and a good, well-earned rest, but I beg your indulgence. In turn, I promise to be really short — 10 minutes — and hopefully, I will leave you somewhat enlightened as I speak to Senator Coyle's inquiry on climate solutions.

I wish to thank Senator Coyle for her leadership on this matter, even as she is with other world leaders in Sharm El-Sheikh for COP27. I think it is entirely appropriate that I make this tiny contribution in our chamber today on this matter.

The evidence of climate change is before us, and it is undeniable: the increasing storms, melting glaciers, the rising temperatures in our oceans and the severe droughts. No country on Earth will be immune to these changes.

We also know that climate change will produce a knock-on effect in creating mass displacement, not just for the short-term as we saw in B.C., but for the abiding longer term. Already, as I have mentioned in this chamber, there are 100 million people on the move because of war, persecution, corruption and breaches of human rights. Now, we are beginning to see the mass influx of climate migrants. The International Organization for Migration, or IOM, has estimated that there will be over 1 billion environmental migrants in the next 30 years. Some estimates have it as high as 1.4 billion by 2060.

I ask this question, honourable senators: Where will those people go? How will they be absorbed? How will this movement be covered?

It is entirely possible that Canada and Canadians themselves will not be a receiving country of climate migrants but a sending country, so a global response to the climate migration challenge is imperative.

It also presents us with an opportunity to do business differently — to imagine a collective response that does not limit itself to what a nation state determines in its own narrow interest. More than in any other area, we need to move on from thinking that we belong to a particular land or that a particular land belongs to us because, as we know, climate change does not recognize borders. The solutions on climate migration must become central, then, both to immigration and the climate change movement, and not exist in separate silos as they do today.

There are a number of different proposals to consider.

In 1990, the Intergovernmental Panel on Climate Change warned that climate migration could be the single most important consequence of climate change. That was 30 years ago, but nations have only begun to discuss this impact in the last few years.

Former Canadian ambassador Rosemary McCarney wrote in a paper for the World Refugee and Migration Council that:

> There is no comprehensive international regime of "implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge" for addressing climate displacement. . . . there is a patchwork of initiatives . . . .

Initiatives that have disparate actors and silos that straddle multiple policy agendas. Ms. McCarney believes that both substantive and organizational actions are needed to address global governance of climate displacement. Responses should be grounded in fundamental principles of human rights, gender equality and inclusion. Gender-based analysis should be a key to understanding and assessing the gendered impact of climate change. She rightly concludes that this phenomenon needs an international legal framework to address climate change-related, cross-border displacement that can guarantee access to territory, assure status and rights during stay and offer long-term solutions.

Ms. McCarney also calls for the creation of a central institution or actor to serve as a focal point for policy implementation, supervision and research to bring about coherence, consistency and achieve a robust global governance. In other words, she is calling for a new international legal framework with a new international central institution.

There is much that Canada can do at the international level to push this policy agenda forward. However, we know that global change is not easily done. The calls for multilateralism at a time when there are strains and stresses upon existing frameworks — the logjam at the United Nations Security Council — do not bode well for such proposals, necessary and sensible as they may be. To get broad, far-reaching support from all nations will be challenging.

Therefore, we come to a second, less perfect but incremental proposal: a kind of "mini-multilateralism," as the World Refugee and Migration Council has suggested, through the creation of regional arrangements where neighbouring states come together because regional spillover is inevitable. To some extent, the regional coalition between Colombia, Ecuador and other neighbouring countries in response to the displacement of Venezuelans serves as a bit of an example for this idea. In the context of climate change and migration, a regional arrangement in the Americas to deal with the inevitable crisis facing the Caribbean islands could be a start. Most of The Bahamas, including Nassau, is projected to be under water by 2050 with an estimated population of 396,000 people who will come knocking on the doors of the United States, Canada and Mexico.

• (2110)

We already have well-crafted agreements with these three jurisdictions — such as the North American Free Trade Agreement, or NAFTA — and so these could be a springboard to craft other instruments on climate migration. This is akin to what Professor Craig Damian Smith of the Toronto Metropolitan University proposes: a coalition of the willing — of like-minded states — with a commitment to solidarity focused on climate refugee settlement to come together as a club — a club with standards, norms of behaviour and even targets for climate refugee resettlement. To borrow language from our Minister of Finance, it would be a sort of "friend-shoring" in the context not of global supply chains and trade, but in the context of climate displacement.

In the migration space, there are already far too many bad actors who threaten international norms by wildly going their own way. This coalition could be an alliance of the good cops to counteract the Rambos, and if it works on a regional level, it would be easier to imagine more nation states joining in.

Going even more narrowly and thinking bilaterally, Canada could partner on climate migration policies with a like-minded ally like Germany to develop shared policies, protocols and frameworks on climate migrants. Germany, as I have said before, is a natural partner for us. We are both nations of immigrants and both believe in the rule of law, but we also both know that the tail will wag the dog without proactive measures. In other words, neither of us want to be faced with thousands of climate migrants on our doorsteps without the proper legal frameworks in place.

Finally, Canada can do more on its own and in its own time. Our current immigration processes do not adequately encompass climate migration as a reason for admissibility into Canada — not in the refugee space and not in the economic space. We need to create a new space with additional new numbers, and with the appropriate machinery of government attached to it.

Further, Canada's policies for settlement agencies need to be updated. Currently, climate change migrants are not explicitly captured in this framework, and this may limit their ability to access services.

We have had many discussions on climate change in this chamber, and I think it is an über-complex issue. We have talked about the carbon footprint, resource extraction, pipelines and gas tanker bans. As we look at these issues, let's remember to place climate migration squarely on the agenda as well, otherwise the tail will truly wag the dog. Thank you, colleagues.

Some Hon. Senators: Hear, hear.

(On motion of Senator Clement, debate adjourned.)

(*At 9:15 p.m., the Senate was continued until tomorrow at 2 p.m.*)

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