SENATE SÉNAT

CANADA

# DEBATES OF THE SENATE

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OFFICIAL REPORT
(HANSARD)

Tuesday, June 20, 2023

The Honourable RAYMONDE GAGNÉ,
Speaker

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# THE SENATE

**Tuesday, June 20, 2023**

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

Prayers.

[*Translation*]

## ROYAL ASSENT

**The Hon. the Speaker** informed the Senate that the following communication had been received:

RIDEAU HALL

June 19, 2023

Madam Speaker,

I have the honour to inform you that the Right Honourable Mary May Simon, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 19th day of June, 2023, at 11:47 a.m.

Yours sincerely,

Christine MacIntyre

*Deputy Secretary to the Governor General*

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Monday, June 19, 2023:

An Act respecting Lebanese Heritage Month (*Bill S-246, Chapter 13, 2023*)

An Act to amend the Criminal Code and to make consequential amendments to other Acts (*Bill C-41, Chapter 14, 2023*)

An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts (*Bill C-13, Chapter 15, 2023*)

An Act to amend the First Nations Fiscal Management Act, to make consequential amendments to other Acts, and to make a clarification relating to another Act (*Bill C-45, Chapter 16, 2023*)

[*English*]

# SENATORS' STATEMENTS

## VICTIMS OF TRAGEDY

CARBERRY, MANITOBA—SILENT TRIBUTE

**The Hon. the Speaker:** Honourable senators, we were all shocked and saddened to learn of the tragedy near Carberry, Manitoba, on June 15, which left 15 people dead and others injured.

Our thoughts are with their friends and families, as well as the community of Dauphin, Manitoba, as we express our condolences for those lost, and our hopes for a full recovery by the injured.

Honourable senators, please join me in rising for a minute of silence in memory of those who did not survive this tragic incident.

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

[*Translation*]

**The Hon. the Speaker:** Thank you, colleagues.

[*English*]

## TRAGEDY IN CARBERRY, MANITOBA

**Hon. Donald Neil Plett (Leader of the Opposition):** Honourable senators, it is with a heavy heart that I rise today to speak to the tragedy that has shaken my home province and, frankly, the entire country. Last Thursday, June 15 is a day that has marked us all deeply — a day when 15 lives were lost and 10 people were injured due to the impact of a horrific collision between a semi-truck and a passenger bus that occurred at the intersection of Highway 1 and Highway 5 near the town of Carberry, Manitoba.

It was supposed to be a day of fun and relaxation for the 25 seniors travelling to a casino near Carberry, but it turned out to be the most devastating accident in Manitoba's history. I wish to offer my sincerest and deepest sympathies to the families and loved ones of the 15 victims who didn't survive this terrible accident.

In such a devastating tragedy, I am faced with the reality that words just don't seem to suffice. Please know that as you face these difficult times, we are praying for you. It is my hope that you also feel comfort in knowing that Canadians from coast to coast to coast are mourning with you.

As Canadians, we often pride ourselves on being united. In trials as difficult as this, that sense of community and support often bolsters strained families and relationships. My thoughts and prayers are also with the survivors, six of which are still fighting for their lives. These individuals have endured a lot physically. I pray for their full recovery.

Physical injuries are not all that we are dealing with here. Victims of the crash, families, witnesses, first responders and the entire community have been hit emotionally. They will need time to soothe their bodies and their minds. Their support system — often their loved ones — will hold a crucial role in the recovery process ahead.

I am touched by the acts of kindness and support that I'm hearing from the people of Dauphin, especially the Dauphin Active Living Centre. It is a heart-wrenching situation. There is tremendous beauty found in the community's reaction and support of all those affected. The sense of being there for one another — not only in good times but also, more specifically, in the face of such adversity — demonstrates the calibre of exemplary individuals. This is a testament to the seniors of Manitoba, as they have forged and laid out the foundation for such admirable and strong communities.

I also wish to offer my gratitude to the many individuals who were called to duty last Thursday. Training to prepare for the worst in situations of this magnitude is one thing. Everybody hopes they will never have to deal with such a crisis. Then, when you least expect it, you are called upon. But to lead, take charge and work through such a hardship forces individuals, even professionals, to face a very sombre and difficult reality. Please know that your work has not gone unnoticed.

• (1410)

It is my hope that all affected by this tragedy may find comfort and peace in God's grace.

Thank you.

## RESURGENCE AS FIRST NATIONS SOVEREIGN PEOPLES

**Hon. Mary Jane McCallum:** Thank you for the collaboration between the Canadian Senators Group and the Progressive Senate Group — the CSG and the PSG — for giving me their time today.

Honourable senators, there are two kinds of families: those we are born into and those we create. As First Nations children, we were forced to leave our birth families, despite our nurturing homes. Although scared and confused in navigating residential school, we already had strong familial experiences and were able to withstand years of oppression and assimilation. We did not fail each other; we formed families and lifelong friends.

I want to thank you — that is to my family from residential school — for inspiring me throughout my life and for keeping me safe when you could. Our love for each other gave us an unbreakable bond. You are the light that shines into my darkness.

There are lessons in everything, even in the things that break our hearts. Sometimes, we are overwhelmed and exhausted by the challenges that we face; yet, we cannot shy away from our responsibilities, despite the immense pressure. In my case, it was sitting alongside the team using ground-penetrating radar at the Guy Hill Residential School site last week. We know there are bodies there. Many think they are not in the open grounds but in the forest. It was there that adults were seen carrying tiny bodies and coming out empty-handed. Imagine those students who saw that, not knowing if they would be next. It's no wonder that many are still unable to visit the grounds.

Last week, I sat among my former fellow students and our supporters, many of whom also attended residential school, day school or were part of the Sixties Scoop. I listened to their stories and I saw their wisdom. I told them, "I see you as the powerful, wise, compassionate, joyful, humble and courageous spirits that you are. Who among us would have believed that we would have a Shaking Tent ceremony, a pipe ceremony, a sweat, drumming and singing, an eagle fan cleansing, a prayer, smudging and talking circles at the very site of the school that had removed all that from us?"

The First Nations across the country know we are regaining our ceremonies and languages, and reclaiming the power and the spirit that were taken from us. Know that we are in a time of resurgence as sovereign peoples.

[*Editor's Note: Senator McCallum spoke in Cree*.]

We belong to ourselves. We will determine our future.

To our children, grandchildren and great-grandchildren, know that you matter to us and that we will always be there together. How can we not be? We are family.

*Kinanâskomitinâwâw*. Thank you.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of Chief Roy Whitney of Tsuut'ina Nation, Chief Bobby Cameron of the Federation of Sovereign Indigenous Nations, Chief Aaron Young of Chiniki First Nation and Chief Clifford Poucette of Goodstoney First Nation. They are the guests of the Honourable Senator Tannas.

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

**Hon. Senators:** Hear, hear!

## MARY MERCHANT

### CONGRATULATIONS ON ONE HUNDRED AND SIXTH BIRTHDAY

**Hon. Pat Duncan:** Honourable senators, I rise today to share the story of Mary Merchant.

In 1917, Mabel and Samuel McAllister were living in Argentina, and as was the custom at the time, Mabel travelled back to Scotland, through the danger of German U-boats in the English Channel, to have a baby. When Mabel was about to give birth, a family friend named Mary brought over a steak-and-kidney pie. Mabel declared the pie so good that if the baby was a girl, she would be named Mary in her honour. Born on June 18, Mary was duly named, and steak-and-kidney pie remains a family favourite to this day.

Mary was the second of four children. When the family returned to Argentina, it was to a large ranch, Santa Elena, part of the Bovril company.

In 1929, Mary and her older sister Barbara returned from Argentina to attend boarding school in Scotland. They returned to Argentina two short years later as the Argentine peso was devalued against the British pound and school in Scotland became unaffordable.

The family moved around Argentina, as her father worked a variety of jobs, including running a brewery. Mary remembers taking visitors through the brewery and explaining the finer points of making beer: "It's all about the water."

While at the British Hospital in Buenos Aires, training for a lifelong career as a nurse, Mary became a pen pal with a young man named Walter Merchant who served with the British Army in Burma. So began a six-year correspondence, leading to marriage in 1947. Moving from Argentina to England in 1955, the family, now composed of the couple and two children, chose Canada, where employment prospects seemed rather brighter.

Those brighter employment prospects did not materialize for Walter. Mary retrained to meet Canadian standards as a registered nurse at the Royal Victoria Hospital in Montreal. The family settled in Cowansville in Quebec's Eastern Townships, where Mary spent 20 years nursing at the Hôpital Brome-Missisquoi-Perkins. After her retirement, Mary lived for several years in Fredericton, New Brunswick.

In 1995, Mary began yet another adventure and moved to the Yukon. She continued her life of service, teaching community members to sew, knit, save money and especially to eat a healthy diet by avoiding sugar, the exceptions being Scottish shortbread and Christmas pudding, of course. In Whitehorse, Mary is legendary for her knitting. In one year alone, she knitted 50 pairs of socks, along with baby sets, sold to support the community.

Senators who have been mentally calculating as I shared this story will recognize that, on June 18, Mary, who recently shrugged off a bout of COVID with her traditional good humour, turned 106 years young.

Although Mary's son, Philip, shared with me that Mary really cannot understand what all the fuss is about, it is an honour to wish her a happy birthday and share the story of a life well lived — one of service and contribution to communities in Quebec, New Brunswick and the Yukon.

Happy one hundred and sixth birthday, Mary.

Thank you, *gùnáłchîsh, mähsi'cho*.

**Hon. Senators:** Hear, hear.

## WORLD REFUGEE DAY

**Hon. Ratna Omidvar:** Honourable senators, I rise today, as I do every year, to recognize World Refugee Day on June 20.

I wish I had good news for you, but I don't. As per the UNHCR, more than 110 million people — a record high — have fled persecution, conflict, violence, climate change and discrimination. The war in Ukraine, refugees fleeing Afghanistan and fighting in Sudan have all contributed to this mass movement of people, either internally or across borders.

Colleagues, global displacement has been rising at an ever-increasing pace. Before the conflict in Syria in 2011, there were about 40 million refugees in the world, a number that had held steady for 20 years before then. Now, in just 12 years, that number has not just doubled; it has tripled.

As this number has risen, so too have the interdiction measures undertaken by nation states to prevent individuals from reaching safety and exercising their rights under the UNHCR convention. The EU has struck a deal with Libya. The U.K. has confirmed its intentions to offshore migrant processing to Rwanda. Turkey has come to a financial arrangement to hold refugees in its jurisdiction and prevent them from travelling westward. Most appallingly, colleagues, last weekend we willingly watched and waited and watched and waited and let 700 people die off the shores of Greece, including 100 children. We did nothing. We watched and waited.

• (1420)

Canada is, of course, proud to have set a record in welcoming and resettling refugees over the past four years — more than we ever have before and more than any other country. And yet we, too, have put a cap on private sponsorships in Bill C-47, and the government's Immigration Levels Plan sets out a reduction on government-assisted refugees. One could argue those are the most vulnerable.

In all of this despair, I stay true to my name and look for a point of light. I see that point of light in the resilience of refugees themselves, who painstakingly continue their search for a home, for safety and security. And when they find safety, they build our nation — like the captain of the Canadian soccer team, Alphonso Davies, or "chocolate king" Tareq Hadad.

But most importantly, I want to pay tribute to mothers and daughters, sisters and girlfriends who face a harsh future of human and sex trafficking and are most vulnerable. For their sake, for the sake of their children, let's do more, let's do it faster, and let's do it better. Thank you.

[*Translation*]

## RESIDENTIAL SCHOOLS NATIONAL MONUMENT

**Hon. Michèle Audette:** [*Editor's Note: Senator Audette spoke in Innu-aimun*.]

Honourable senators, before sharing something I experienced today, I'd like to thank Senator McCallum. *Tshinashkumitin*.

[*English*]

It was important for me to see you, to feel you and to listen to you this morning, along with other survivors and families who participated in this event.

Senator Patterson, you gave me your spot, so I will try to honour it.

[*Translation*]

First of all, I'd like to thank Senator Patterson for giving me this opportunity to tell you about the ceremony that many of us took part in this morning, where people came to show us the sacred site of a new monument that will remind us of part of Canada's history. It's part of a path of healing for many of us, including me.

It is also the subject of Call to Action No. 81 from the Truth and Reconciliation Commission, which states, and I quote:

> We call upon the federal government, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools National Monument in the city of Ottawa to honour Survivors and all the children who were lost to their families and communities.

It happened this morning to the sound of Inuit song, Métis fiddle and the words of a First Nations woman. It was powerful and moving. The committee to create this monument will be made up of people from different nations and territories and from the government, and it will reflect on how to honour these little children and the families affected by residential schools.

The beautiful thing about First Nations' protocols is that we must ask the permission of the people to welcome us. The Anishinaabe people were present and welcomed us with a lot of love and respect. This beautiful monument that we will one day see will be located where parliamentarians enter the building, on the west side of the Hill. It will be where everyone can see it, whether they are tourists, parliamentarians or people who come just to pay their respects to and commune with our ancestors.

I will close with some of the words that I heard spoken by men and women today: This is for the children who thought we did not love them. Every day, they will see that we carry them with us in our hearts.

*Tshinashkumitin*.

[*English*]

## WORLD REFUGEE DAY

**Hon. Salma Ataullahjan:** Honourable senators, I wasn't expecting to speak, but it being World Refugee Day, I thought I should speak. I want to remember the millions displaced and acknowledge their resilience and struggles. As senators have been speaking, I have been sitting and scribbling on paper. Senator Omidvar gave us the numbers, but I want to share with you that 52% of the current refugees are from three countries: Syria, Ukraine and Afghanistan. Over 43 million are children. We are witnessing the highest level of displacement on record.

Only 3% of refugee children will go to school or have higher education. For refugee girls, it's even more difficult. Refugee girls have less access to education than boys and are half as likely to be enrolled in school by the time they reach secondary level. UNESCO estimates that if girls completed primary education, child marriage rates would go down by 14%, and if they completed secondary education, the rates would plummet by 64%.

Canada, once again, has come out as the leader. We have been and continue to be a world leader in accepting refugees. But on this day I want to think back to the people I have seen in refugee camps. I want to mention the young boy whom I met earlier this year. I asked him about his education and the education of the girls. He was from a small remote village in Afghanistan. He was selling stuff in my hometown, and I stopped to talk to him. He said, "Girls? Girls don't get an education." He said, "I don't have an education. I went to class 6 and that was it."

I want to acknowledge the widow whom I met when the people of Swat were displaced by the Taliban. When I was in the camp, she told me:

> They keep telling me, "Bring your husband." I'm a widow. I have been a widow for 20 years. They won't let me have any aid unless I have a man by my side.

I think of the women whose tents I went into who said, "We need help; we need feminine products. We can't ask the men." And I was a spokesperson for these people. These are some of the stories that I have lived through, that I have seen, that we continue to see.

I want to thank every one of you, my colleagues. You have stood with us when we speak in support of the refugees, as we did on Bill C-41. I want to thank you for that. I want to remind you: Let's not forget those who are displaced and let's applaud their courage. Thank you very much.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of Dr. Sharon Allar, Adam Allar and their children. They are the guests of the Honourable Senator Marwah.

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

**Hon. Senators:** Hear, hear!

## ROUTINE PROCEEDINGS

### JUSTICE

STATUTES AND REGULATIONS—PROPOSALS TO REVISE ANOMALIES AND REPEAL CERTAIN PROVISIONS—DOCUMENT TABLED

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, I have the honour to table, in both official languages, the document entitled *Proposals to correct certain anomalies, inconsistencies, out-dated terminology and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes and Regulations of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect*.

### WHITECAP DAKOTA NATION / WAPAHA SKA DAKOTA OYATE

SELF-GOVERNMENT TREATY—DOCUMENT TABLED

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, I have the honour to table, in both official languages, the document entitled *A Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate*.

### LIBRARY OF PARLIAMENT

FIRST REPORT OF JOINT COMMITTEE PRESENTED

**Hon. Mohamed-Iqbal Ravalia,** Joint Chair of the Standing Joint Committee on the Library of Parliament, presented the following report:

Tuesday, June 20, 2023

The Standing Joint Committee on the Library of Parliament has the honour to present its

FIRST REPORT

Your committee recommends to the Senate that it be authorized to assist the Speaker of the Senate and the Speaker of the House of Commons in directing and controlling the Library of Parliament, and that it be authorized to make recommendations to the Speaker of the Senate and the Speaker of the House of Commons regarding the governance of the Library and the proper expenditure of moneys voted by Parliament for the purchase of documents or other articles to be deposited therein.

Your committee recommends:

(*a*) that its quorum be fixed at six members, provided that each House is represented, and a member from a non-government party or recognized parliamentary group and a member from the government are present, whenever a vote, resolution or other decision is taken; and

(*b*) that the joint chairs be authorized to hold meetings to receive evidence and to have that evidence published when a quorum is not present, provided that at least three members are present, including a member from a non-government party or recognized parliamentary group and a member from the government, provided that each House is represented.

Your committee further recommends to the Senate that it be empowered to sit during sittings and adjournments of the Senate.

A copy of the relevant *Minutes of Proceedings* (Meeting No. 1) is tabled in the House of Commons.

Respectfully submitted,

MOHAMED-IQBAL RAVALIA

*Joint Chair*

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

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

• (1430)

SECOND REPORT OF JOINT COMMITTEE TABLED

**Hon. Mohamed-Iqbal Ravalia:** Honourable senators, I have the honour to table, in both official languages, the second report of the Standing Joint Committee on the Library of Parliament entitled *Reappointment of Heather Powell Lank as Parliamentary Librarian*.

### AUDIT AND OVERSIGHT

NINTH REPORT OF COMMITTEE TABLED

**Hon. Marty Klyne:** Honourable senators, I have the honour to table, in both official languages, the ninth report (interim) of the Standing Committee on Audit and Oversight entitled *Annual Report of the Standing Committee on Audit and Oversight: Activities and Observations for Fiscal Year 2022-2023*.

## CRIMINAL CODE
## SEX OFFENDER INFORMATION REGISTRATION ACT
## INTERNATIONAL TRANSFER OF OFFENDERS ACT

BILL TO AMEND—FIFTEENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

**Hon. Brent Cotter:** Honourable senators, I have the honour to present, in both official languages, the fifteenth report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act.

(*For text of report, see today's* Journals of the Senate*, p. 1853.*)

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

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

## THE SENATE

NOTICE OF MOTION TO AFFECT THIS WEDNESDAY'S SITTING

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, notwithstanding the order adopted by the Senate on September 21, 2022, the sitting of Wednesday, June 21, 2023, continue beyond 4 p.m., if Government Business is not completed, and adjourn at the earlier of the completion of Government Business or midnight.

STATUTES AND REGULATIONS—PROPOSALS TO REVISE ANOMALIES AND REPEAL CERTAIN PROVISIONS—NOTICE OF MOTION TO REFER DOCUMENT TO LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the document entitled *Proposals to correct certain anomalies, inconsistencies, out-dated terminology and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes and Regulations of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect*, tabled in the Senate on June 20, 2023, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

MOTION TO AFFECT PROCEEDINGS ON BILL C-51 ADOPTED

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

> That, notwithstanding any provision of the Rules, previous order or usual practice, in relation to Bill C-51, An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation/Wapaha Ska Dakota Oyate and to make consequential amendments to other Acts:
>
> 1. if the Senate receives a message from the House of Commons with the bill after the adoption of this order, the bill, once read a first time, be placed on the Orders of the Day for second reading later that day, or, if the Senate has already passed second reading of government bills, second reading be dealt with forthwith;
>
> 2. if, before this order is adopted, the bill had been placed on the Orders of the Day for second reading at a sitting after the one on which this order is adopted, second reading be brought forward, upon the adoption of this order, to later on the day this order is adopted, or, if the Senate has already passed second reading of government bills, second reading be dealt with forthwith;
>
> 3. on the first day the bill is considered at second reading after the adoption of this order, debate on the bill not be adjourned, no vote relating to the bill be deferred, and, if the bill has not been disposed of at second reading by the time provided for the adjournment of the Senate, the Speaker interrupt proceedings at that time in order to put all questions necessary to dispose of the bill at second reading;
>
> 4. if the bill is adopted at second reading, it be referred to the Standing Senate Committee on Indigenous Peoples, and, for the purposes of its study of the bill, that committee have power to meet even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;
>
> 5. when the committee reports the bill:
>
>    (a) if the report is without amendment, the bill be placed on the Orders of the Day for third reading later that day; and
>
>    (b) if the report is with amendment or recommends against proceeding with the bill, the report be placed on the Orders of the Day for consideration later that day, and, after the report has been disposed of, the bill, if still before the Senate, be taken into consideration at third reading forthwith;

6. if the committee has not reported the bill by Routine Proceedings on the second sitting of the Senate after the bill was referred to the committee, the committee be deemed to have reported the bill without amendment, with the bill then being placed on the Orders of the Day for third reading later that day;

7. when the Senate considers a report of the committee on the bill or deals with the bill at third reading, debate not be adjourned, no vote relating to the bill be deferred, and if the bill has not been disposed of by the time provided for the adjournment of the Senate, the Speaker interrupt proceedings at that time in order to put all questions necessary to dispose of the bill; and

8. for greater certainty, if, under the terms of this order, the Speaker is at any time required to interrupt proceedings then before the Senate in order to put all questions necessary to dispose of the bill at a particular stage, no further debate or amendment be permitted except, if required, to move third reading of the bill, and, if a standing vote is requested after proceedings have been interrupted, the vote not be deferred and the bells ring once, and for only 15 minutes, without being rung again for subsequent votes necessary to dispose of the bill at that stage, with, on that day, any rules and orders relating to the time of adjournment being suspended until the Senate has concluded proceedings as required under this order.

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

**Hon. Senators:** Agreed.

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

**Hon. Senators:** Question.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## CANADA EARLY LEARNING AND CHILD CARE BILL

FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-35, An Act respecting early learning and child care in Canada.

(Bill read first time.)

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

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

[*Translation*]

## SELF-GOVERNMENT TREATY RECOGNIZING THE WHITECAP DAKOTA NATION / WAPAHA SKA DAKOTA OYATE BILL

BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-51, An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate and to make consequential amendments to other Acts.

(Bill read first time.)

(Pursuant to the order adopted earlier this day, the bill is placed on the Orders of the Day for a second reading later this day.)

• (1440)

[*English*]

## CRIMINAL CODE INDIAN ACT

BILL TO AMEND—FIRST READING

**Hon. Scott Tannas** introduced Bill S-268, An Act to amend the Criminal Code and the Indian Act.

(Bill read first time.)

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

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

## NATIONAL FRAMEWORK ON ADVERTISING FOR SPORTS BETTING BILL

FIRST READING

**Hon. Marty Deacon** introduced Bill S-269, An Act respecting a national framework on advertising for sports betting.

(Bill read first time.)

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

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

[*Translation*]

## PARLAMERICAS

PLENARY ASSEMBLY AND GATHERING OF PARLAMERICAS' PARLIAMENTARY NETWORK FOR GENDER EQUALITY, NOVEMBER 30-DECEMBER 2, 2022

**Hon. René Cormier:** Honourable senators, I have the honour to table, in both official languages, the report of the ParlAmericas concerning the Nineteenth Plenary Assembly and Fourteenth Gathering of ParlAmericas' Parliamentary Network for Gender Equality, held in Bogotá, Colombia, from November 30 to December 2, 2022.

## CANADA-EUROPE PARLIAMENTARY ASSOCIATION

FOURTH PART, 2022 ORDINARY SESSION OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, OCTOBER 10-20, 2022—REPORT TABLED

**Hon. David M. Wells:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-Europe Parliamentary Association concerning the Fourth Part of the 2022 Ordinary Session of the Parliamentary Assembly of the Council of Europe, held in Strasbourg, France, and Warsaw, Poland, from October 10 to 20, 2022.

[*English*]

## CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

CONGRESSIONAL VISIT, MAY 23-26, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Congressional Visit, held in Washington, D.C., United States of America, from May 23 to 26, 2022.

ANNUAL MEETING OF THE COUNCIL OF STATE GOVERNMENTS SOUTHERN LEGISLATIVE CONFERENCE, JULY 9-13, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Seventy-sixth Annual Meeting of the Council of State Governments' Southern Legislative Conference (SLC), held in Oklahoma City, Oklahoma, United States of America, from July 9 to 13, 2022.

ANNUAL SUMMER MEETING OF THE NATIONAL GOVERNORS ASSOCIATION, JULY 13-15, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Annual Summer Meeting of the National Governors Association, held in Portland, Maine, United States of America, from July 13 to 15, 2022.

ANNUAL MEETING OF THE COUNCIL OF STATE GOVERNMENTS WESTERN LEGISLATIVE CONFERENCE, JULY 19-22—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Annual Meeting of the Council of State Governments (CSG) Western Legislative Conference, held in Boise, Idaho, United States of America, from July 19 to 22, 2022.

PACIFIC NORTHWEST ECONOMIC REGION ANNUAL SUMMIT, JULY 24-27, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Thirty-first Pacific NorthWest Economic Region Annual Summit, held in Calgary, Alberta, Canada, from July 24 to 27, 2022.

ANNUAL LEGISLATIVE SUMMIT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, AUGUST 1-3, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Annual Legislative Summit of the National Conference of State Legislatures, held in Denver, Colorado, United States of America, from August 1 to 3, 2022.

CONGRESSIONAL VISIT, SEPTEMBER 12-15, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Congressional Visit, held in Washington, D.C., United States of America, from September 12 to 15, 2022.

COUNCIL OF STATE GOVERNMENTS NATIONAL CONFERENCE, DECEMBER 7-10, 2022—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Council of State Governments 2022 (CSG) National Conference, held in Honolulu, Hawaii, United States of America, from December 7 to 10, 2022.

CONGRESSIONAL VISIT, FEBRUARY 6-9, 2023—REPORT TABLED

**Hon. Michael L. MacDonald:** Honourable senators, I have the honour to table, in both official languages, the report of the Canada-United States Inter-Parliamentary Group concerning the Congressional Visit, held in Washington, D.C., United States of America, from February 6 to 9, 2023.

[*Translation*]

## FOREIGN AFFAIRS AND INTERNATIONAL TRADE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY INTERESTS AND ENGAGEMENT IN AFRICA

**Hon. Peter M. Boehm:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Foreign Affairs and International Trade be authorized to examine and report on Canada's interests and engagement in Africa, and other related matters;
>
> That the committee submit its final report no later than December 31, 2024;
>
> That the committee have permission, notwithstanding usual practices, to deposit reports on this study with the Clerk of the Senate if the Senate is not then sitting, and that the reports be deemed to have been tabled in the Senate; and
>
> That the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

[*English*]

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, I just want to remind you that all your cellphones should be on mute, the sound at zero or even the timers shut off, please. This is just a reminder. Thank you.

# QUESTION PERIOD

## PUBLIC SAFETY

COSTS OF LEGAL PROCEEDINGS

**Hon. Donald Neil Plett (Leader of the Opposition):** Senator Gold, in 2021, the Trudeau government fought the families of Kristen French and Leslie Mahaffy in court to prevent them from obtaining information from the Parole Board of Canada and Correctional Service Canada to prepare for the parole hearings of Paul Bernardo, who tortured and killed their daughters. The Trudeau government argued in favour of protecting Paul Bernardo's privacy rights, and they won the case.

Then, to its everlasting shame, Senator Gold, the Trudeau government asked the court to have these families pay the government's legal costs of $19,142.27. The judge later reduced it to $4,000.

Leader, a delayed answer tabled last fall failed to answer the question you were asked in 2021. Why did your government seek court costs from these grieving families, Senator Gold?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for the question. I regret that the answer that was provided didn't answer that. I'll certainly follow up and endeavour to find out why and what the answer might be.

CORRECTIONAL SERVICE CANADA—TRANSFER OF INMATE

**Hon. Donald Neil Plett (Leader of the Opposition):** Thank you, Senator Gold. I hope it won't take two years, but I appreciate you finding out.

Leader, this past January, the Trudeau government was fighting these families before the Federal Court of Appeal to keep Paul Bernardo's corrections and parole files a secret. Last week, we learned that your government did nothing to stop him from being moved out of a maximum-security facility. In fact, it's worse than that. Both the Prime Minister and Minister Mendicino pretended to be shocked and appalled when the jail transfer became public, and yet their staff, Senator Gold, knew for months that this transfer was coming up.

Leader, the minister has repeatedly said he's taken corrective steps with his staff for allegedly not telling him about the transfer.

My first question, Senator Gold is this: What are those corrective steps? As well, Senator Gold, on what date did the Prime Minister's Chief of Staff Katie Telford learn about Paul Bernardo being moved out of a maximum-security facility?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for your question. I think the answers to both questions are already in the public domain. However, the important point to make in response to your question — and, again, to this troubling incident, especially for the families who were so tragically affected — is that it is neither the law nor the practice, nor should it be, that ministers direct Correctional Service Canada with regard to whether they transfer inmates from one facility to another or the inverse. As the minister said, he asked for a review, which is the appropriate limit of political involvement in these matters.

• (1450)

With regard to the challenges that have been acknowledged with the transmission of information, the minister has addressed that internally.

## INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

### ELECTRIC VEHICLE BATTERY PLANT

**Hon. Elizabeth Marshall:** My question is also for Senator Gold. My question relates to transparency, Senator Gold, because you and the government are always reminding us how transparent the government is.

Last week, the Parliamentary Budget Officer released his report on government support for the Volkswagen battery plant. He said that the agreement is going to cost around $16 billion over the life of the agreement, but the government says it's going to cost around $13 billion, so I'll work with the $13-billion figure.

The government has already said that the cost of the agreement has been fully accounted for, but I can't find it in the government's fiscal projections. I specifically asked the Parliamentary Budget Officer if he could tell me exactly where that money is, because $13 billion is a lot of money, and he couldn't tell me.

I know that in the government's fiscal projections, there are a lot of big numbers floating around with no details provided. However, the Parliamentary Budget Officer said there's not enough information. He said you'll never figure it out.

My question to you is this: Where in the fiscal projections are the $13 billion?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for the question. Senator Marshall, if you can't figure it out, I may have some difficulty.

The important point to underline here with regard to the numbers to which you referred is that this arrangement with Volkswagen and the monies that the government has agreed to provide are tied to the performance of that factory — the degree to which and the timing with which that production comes online.

In that regard, it may well be that, first, the amount of the funds is not necessarily fully known, which might explain that.

I'll certainly bring your question to the attention of the minister.

**Senator Marshall:** Even that explanation was helpful, but I must tell you that this isn't uncommon. Quite often, we can't find large numbers and exactly what they're representing in the budget. Another example would the growth fund, which is $15 billion.

Why is the government so secretive about providing fiscal information so that parliamentarians can follow the money? With the information they're giving us now, it's just not possible to follow the money.

**Senator Batters:** Hear, hear.

**Senator Gold:** Thank you. I'm not prepared to accept that the government is "being secretive," but I do accept the point that you're making, namely that you are having difficulty following the money. That is an important point which I will certainly bring to the attention of the minister. It's a valid point and I take that point.

### RESEARCH FUNDING

**Hon. Stan Kutcher:** Senator Gold, the Parliamentary Budget Officer's recent fiscal analysis of Canada's support for Volkswagen's electric vehicle battery manufacturing plant estimated the government's financial commitment to be $16.3 billion over the term of the agreement. This is for one plant that is being built on today's technology, based on yesterday's science. Who knows what the scientific and resultant technological advances will bring us to in 2027, when it is projected to be online?

This is the same government that cannot seem to find investments to bring trainees, who are the scientists that will create the economy of tomorrow, up to a living wage today. These are young people whose innovative minds drive the research, development and economic growth of Canada's future. Without continued investigatory research, such manufacturing plants will become stagnant and redundant as quickly as our best and brightest head elsewhere.

Senator Gold, will the government commit to increasing the number and value of grants and fellowships programs through the Tri-Council for students in the fall economic update?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for that question. Thank you for bringing to our attention the important role played by the Tri-Agency, which comprises the Canadian Institutes of Health Research, the

National Sciences and Engineering Research Council of Canada and the SSHRC, or Social Sciences and Humanities Research Council.

The government remains committed to supporting Canadian researchers and scientists and the government, as I have said before in this chamber, recognizes the central role that our graduate students, our doctoral students and the post-doctoral community play within our research ecosystem. That's why, in October 2022, the government launched the Advisory Panel on the Federal Research Support System to provide independent expert advice on the structure and governance of the federal system that supports such research and talent.

In March, Minister Champagne and Minister Duclos released the panel's report with its finding and recommendations. I understand the government has been carefully reviewing this advice with a view to further supporting our researchers and talent. However, before we look to the fall economic update to which you referred, colleague, I certainly look forward to this chamber's third reading of what I hope will be its swift adoption of Bill C-47, the budget implementation act, 2023, No. 1.

**Senator Kutcher:** Senator Gold, tri-council-funded grants and fellowships allow entry points for marginalized postgraduate students, students whose families cannot support them as they continue their education.

How does the government plan to level the playing field for access to higher education for all who have merit so that Canada can continue to prosper and grow because those who are our best and brightest can access the positions they need to be in and not just those who are in a privileged position to do so?

**Senator Gold:** Thank you for the question and, again, underlining the questions that many researchers face in order to do the work upon which we depend for our present and future prosperity.

Colleagues, as you may recall, the government's previous budgets provided $40.9 million to support targeted scholarships and fellowships for, in this case, promising Black student researchers, and $38.3 million for the federal granting councils to add new Canada Excellence Research Chairs in the fields of science, technology, engineering and mathematics.

Again, I repeat: The government remains committed to supporting Canada's continued status as a global leader in research and innovation because our world-class researchers perform cutting-edge and bold work.

## FINANCE

### DEBT COLLECTION

**Hon. Kim Pate:** My question is for the Government Representative. Senator Gold, *The Globe and Mail* recently exposed the existence of internal government memoranda revealing that, last winter, the CRA resumed a practice of clawing back vitally needed benefits such as the Canada Child Benefit from low-income Canadians.

The government did so with little notice while housing and food costs skyrocketed and while knowing that this would result in financial hardship.

Revelations such as these heighten the skepticism of many, especially in the current context where the government says they will try to negotiate no clawbacks of the Canada disability benefit.

What commitment can you offer persons in poverty who receive benefits from the government now, whether it be the CERB — the Canada Emergency Response Benefit — the Canada Child Benefit, the Guaranteed Income Supplement or, in the future, the Canada disability benefit, that other forms of such guaranteed livable income will be received by the people who deserve them and are eligible for them and that they will receive every penny of the benefit regardless of the threat from federal, provincial and territorial governments, insurance companies or other clawbacks?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you, and thank you to our other colleagues who are tirelessly advocating on behalf of those in our country who are most in need.

The government has certainly heard and takes seriously the concern about possible clawbacks in these various areas.

I can assure my colleagues in this chamber that the government remains committed to working closely with the provinces and territories to harmonize the benefit, in this case the disability benefit, and to ensure that Canadians receive the assistance that they need. In that regard, I look forward, as we all do, to the debate on the message of Bill C-22, which I hope we will adopt today so that the Canada disability benefit can finally come into existence.

• (1500)

**Senator Pate:** Thank you very much for that, Senator Gold. Could you request from the government the rates at which they proceeded against CERB recipients through the CRA, as well as the rates at which they proceeded against companies that received the CERB for wages — and how much of that are they clawing back from companies and employers as well?

**Senator Gold:** I will certainly make inquiries. Thank you.

## TRANSPORT

### AIR SERVICE IN THE NORTH

**Hon. Dennis Glen Patterson:** Senator Gold, Canadian North and First Air proposed to merge in 2018 so that they could provide more efficient cost-effective service to their customers — as they have said — but the proposed merger would create a monopoly service provider in most of Nunavut. In June 2019, the merger was approved by the Minister of Transport and the Competition Bureau Canada — but with conditions — to ensure that the monopoly the merger would create in most of Nunavut would not allow for exploitation of cargo and passengers.

Despite strict conditions being placed on the merger, a press release — which was released late in the afternoon on Friday, April 21 of this year — from the Minister of Transport's office announced that the merger conditions had been lifted, and that Canadian North would be allowed to increase passenger fares and cargo rates up to 25% each year, providing they did not make an overall profit of more than 10% each year.

Canadian North was also allowed by the minister to reduce frequency to as low as one flight per week to communities where passenger loads did not reach 85% over six months. This has caused huge concern from smaller, isolated communities, as well as amongst the travelling public and businesses who rely on cargo to deliver supplies and export their products.

Senator Gold, was the Competition Bureau Canada involved in the lifting of the merger conditions, considering they were involved when the conditions to protect consumers were established? If not, why not?

**Hon. Marc Gold (Government Representative in the Senate):** Senator, thank you for your question and for, again, reminding this chamber of the challenges that communities in the North face, in this case with transportation and the costs associated with that.

I will certainly make inquiries with regard to your question, and I hope to have an answer soon.

**Senator D. Patterson:** Thank you. Senator Gold, the only check on the staggering 25% increase — potentially per year — in passenger fares and cargo rates is that the Minister of Transport will review the airline's financial statements every quarter and pay for an independent audit in order to ensure the monopoly does not make an overall profit of more than 10% each year.

Will the Minister of Transport provide a compliance report on the independent audits to advise the public whether Canadian North has met the criteria for profit, passenger fares and cargo rates?

**Senator Gold:** Thank you for the follow-up question. I will certainly add that to the inquiries I will make.

[*Translation*]

## IMMIGRATION, REFUGEES AND CITIZENSHIP

### VISA APPLICATION PROCESSING

**Hon. Amina Gerba:** My question is for the Government Representative in the Senate. Senator Gold, in my former life as an entrepreneur, I saw just how long it took to process visa applications and how many of those applications were denied. As a result, we have missed out on the participation of many Africans in our cultural and economic events.

This situation has been going on for decades and is only getting worse. Recently released figures indicate that a person from Senegal or Gabon who wishes to come to Canada must wait 320 days for an answer they cannot appeal, whereas an Indonesian visa applicant must wait only 11 days for a response.

Senator Gold, why the disparity in processing times, and what is the government doing to change this discriminatory policy, which is having a negative impact on our international events, particularly in Montreal?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you, colleague, for raising this issue. Generally speaking, the government takes all necessary steps to reduce backlogs in the short term while making our system more sustainable in the long term.

Senator, Immigration, Refugees and Citizenship Canada recognized, and I quote, "the presence of racism in Canada and within [its] own organization."

The department is taking measures geared at achieving racial equity. I have been assured that each case is assessed on its merits fairly and in accordance with Canadian laws. The government has clearly indicated that all applications must be treated impartially and professionally.

**Senator Gerba:** Thank you, Senator Gold. However, does the government have a reliable schedule in place for making changes to its immigration policies, particularly for Africans who are travelling to Canada on business?

**Senator Gold:** Thank you for your question. The government is strongly committed to its relationships with African nations. I want to point out that, when it comes to visa applications, Morocco and Seychelles are among the 13 new countries that are now eligible for the Electronic Travel Authorization program, or eTA. Eligible travellers from those African countries can request an eTA rather than a visa.

## NATURAL RESOURCES

### ATLANTIC LOOP

**Hon. Percy Mockler:** Leader of the Government in the Senate, the federal government has been talking about the Atlantic Loop for many years now. This morning, one of the great Canadian journalists, Adam Youris, reported that Prime Minister Trudeau was in Nova Scotia on the weekend to participate in the Atlantic Economic Forum. The Prime Minister took the opportunity to talk about the Atlantic Loop project, which will have a significant impact, especially on the Atlantic provinces. We're talking about a multi-billion-dollar project that would make Atlantic Canada a clean energy powerhouse.

Could the government leader give us an update on the proposed project? What options have been put on the table in order to carry out this project that is vital to all of the Atlantic provinces?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for your question and thank you for highlighting the importance of this proposed Atlantic Loop, which could revolutionize the life and the economy of everyone in Atlantic Canada by ensuring that their dependence on coal is replaced with cleaner energy.

I don't have the details on the negotiations and the discussions that are under way, but I will make an effort to obtain more information on this.

**Senator Mockler:** We're told the loop could go through northwestern New Brunswick. As a resident and senator from New Brunswick, I'm committed to working with all the stakeholders in the region, as well as with the Government of Quebec, on seeing this project through so that the northwest is given serious consideration as a main route. Indeed, this project worth several billion dollars will create good jobs in the region.

[*English*]

To the Leader of the Government in the Senate, the federal government seems to have finally discovered that the Atlantic Loop is a step in the right direction when it comes to addressing climate change and reducing greenhouse gas emissions in Canada and North America. The Atlantic Loop will, without a doubt, phase out coal-fired generating plants in Atlantic Canada.

Leader, when will the federal government officially announce the Atlantic Loop project? Actions speak louder than words.

• (1510)

**Senator Gold:** Of course, thank you for your question. As I said in my answer to your first question, this is a transformative project which, as you properly underlined, holds the potential for providing access to cleaner energy and reducing dependence on fossil fuels for the entire Atlantic region.

As you also underlined, it involves not only the four provinces of the Atlantic region but the province of Quebec, and not only them but the federal government.

This is a large project. Discussions are clearly under way. The Prime Minister was very clear when he took the opportunity to announce his support and encouragement for this project. I have every confidence that all of the governments will provide further information as their discussions progress.

[*Translation*]

## PUBLIC SAFETY

### MANDATE LETTER

**Hon. Claude Carignan:** Honourable senators, my question is for the government leader. Much has been said about your government's Minister of Public Safety, Mr. Mendicino, in recent years, and I'm sure you'll agree that he has made a remarkable number of missteps.

I've read his mandate letter, and one of his main objectives is to "continue to work to keep our cities and communities safe from gun violence." The *Journal de Montréal* has reported that the results for the city of Montreal alone as of March 2023 were as follows:

> . . . in just over four weeks, more than 20 gun crimes had been recorded, in other words half the total for this year so far.

The following is another objective in the minister's mandate letter:

> Engage with provinces, territories and municipalities that contract RCMP services to better connect the RCMP . . . .

What happened? There was a crisis in Ottawa and the Emergencies Act was invoked. The RCMP contradicted the minister, and coordination between police forces was a disaster.

Another objective set out in his mandate letter reads as follows: "Contribute to broader efforts to promote economic security and combat foreign interference." What happened? The Chinese interference crisis is one of the worst crises this government has ever faced, and the government's in complete disarray.

Leader, can you confirm whether Minister Mendicino received his mandate letter?

**Hon. Marc Gold (Government Representative in the Senate):** Yes, the minister received and read his mandate letter. He introduced an important bill, Bill C-21, which has the support of several opposition parties, but unfortunately not that of the official opposition. The bill also has the support of communities affected by gun violence. I look forward to the speeches at second reading in this chamber.

As for the other aspects of your question, I've responded to them several times. Yes, he received and read his mandate letter, and the government is confident in Mr. Mendicino's work.

**Senator Carignan:** If he read his mandate letter, can you confirm whether the Prime Minister plans to meet with Minister Mendicino between two days of surfing to dismiss him?

**Senator Gold:** As I said, I've been informed that the government has confidence in Minister Mendicino and the work that he does for us.

[*English*]

## EMPLOYMENT AND SOCIAL DEVELOPMENT

### WORKPLACE HARASSMENT AND VIOLENCE

**Hon. Marilou McPhedran:** My question is to Senator Gold, please. It relates to the follow-up to Bill C-65.

In 2008, Canada committed to addressing the pervasive problem of workplace violence and harassment by enacting Bill C-65 with new reporting requirements in the Canada Labour

Code, such as tracking occurrences of sexual violence, discrimination and harassment in federally regulated workplaces, including in this place for the first time.

Given the dearth of Canadian data on workplace harassment and violence and the severe effects on the affected workers, who are disproportionately women, members of visible minorities, persons with disabilities and gender-diverse people, this new law promised to shine a light on the nature and prevalence by requiring federal employers to submit annual reports to the minister and by committing the Minister of Labour to table annual reports in both houses of Parliament, summarizing the information submitted by employers. However, annual employer monitoring and reporting was delayed nearly three years after Bill C-65 became law.

As the five-year anniversary approaches since the bill came into force, and two employer reporting cycles have now come and gone, Canadians have yet to see the publication of any report by the Minister of Labour on the results of monitoring efforts so essential for strengthening harassment and violence prevention efforts and holding perpetrators accountable.

Senator Gold, why has the government delayed addressing the prevalence of federal workplace harassment and violence, in particular, sexual misconduct? When can Canadians expect to see the Minister of Labour's overdue reports? Will the minister's reports note if non-disclosure agreements have been secretly used to settle sexual misconduct complaints?

**Hon. Marc Gold (Government Representative in the Senate):** Thank you for the question and for highlighting the important issue of ensuring that those workplaces within the federal jurisdiction are safe, secure, healthy places for all who work there.

I will make inquiries with respect to your specific questions and hope to have an answer as quickly as possible.

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

FOREIGN AFFAIRS—GLOBAL AFFAIRS—HAVANA SYNDROME

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate)** tabled the reply to Question No. 191, dated January 31, 2023, appearing on the *Order Paper and Notice Paper* in the name of the Honourable Senator Plett, regarding Global Affairs Canada — Havana Syndrome.

FISHERIES, OCEANS AND THE CANADIAN COAST GUARD—POLAR-CLASS ICEBREAKERS

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate)** tabled the reply to Question No. 225, dated March 30, 2023, appearing on the *Order Paper and Notice Paper* in the name of the Honourable Senator Plett, regarding Polar-class icebreakers.

FISHERIES, OCEANS AND THE CANADIAN COAST GUARD—SALMON FARMING LICENSES

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate)** tabled the reply to Question No. 228, dated April 19, 2023, appearing on the *Order Paper and Notice Paper* in the name of the Honourable Senator Wells, regarding salmon farming licenses.

# ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: consideration of Motion No. 1, followed by consideration of the message from the House of Commons concerning Bill C-22, followed by second reading of Bill C-51, followed by third reading of Bill C-47, followed by consideration of Motion No. 110, followed by all remaining items in the order that they appear on the Order Paper.

[*Translation*]

## SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gold, P.C., seconded by the Honourable Senator LaBoucane-Benson:
>
> That the following Address be presented to Her Excellency the Governor General of Canada:
>
> To Her Excellency the Right Honourable Mary May Simon, Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.
>
> MAY IT PLEASE YOUR EXCELLENCY:
>
> We, Her Majesty's most loyal and dutiful subjects, the Senate of Canada in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.

**Hon. Ian Shugart:** Honourable senators, I feel privileged to rise to speak in this chamber for the first time today.

**Hon. Senators:** Hear, hear.

[*English*]

**Senator Shugart:** I put so much effort into writing what I had hoped to say, but it seems like I have finished.

[*Translation*]

Technically, my comments are in response to the Speech from the Throne at a time in our country's history that is full of both potential and peril.

It has certainly been interesting to transition from the executive branch to the legislative branch. It has also been somewhat difficult.

Canada is facing great challenges on many fronts: social justice, environmental crises and major economic and international security threats. To survive these realities, let alone thrive, we have to be at our best. The alternative is mediocrity. There is one area in which we need to be better: governance and politics.

• (1520)

[*English*]

Last week in this place, many honourable senators spoke about the risks to democracy in our country. Today, I would like to add what I hope might be a useful contribution to those observations. I am going to speak about the idea of restraint — an idea, a discipline, that has proven essential in our constitutional and institutional development.

Come with me to our past.

In 1981, the Supreme Court of Canada issued a decision on a reference from the Government of Canada in relation to the proposed package of constitutional reforms. Prime Minister Pierre Trudeau had negotiated with provinces on the package, and, even with best efforts, the negotiations were deadlocked. His question to the court: Would it be permissible to proceed with changes to the Constitution, given the lack of consent from a large majority of provinces? The court's answer: It would be legal to proceed, but not constitutional. Prime Minister Trudeau took that decision and reconvened the provinces, eventually clearing the way to the furthest-reaching reform of the Constitution in our history.

I have to note — with sadness, of course — that Quebec was not included in that consensus. I also note that the inclusion of the "notwithstanding" clause in the Charter, while anathema to Mr. Trudeau, was essential in reaching agreement on the Charter as a whole — providing, as it did, a resolution of the tension between legislative and judicial sovereignty.

Honourable senators, Mr. Trudeau acted with restraint.

In returning to the negotiating table and accepting the crucial demand of the key provinces, he made the Charter possible. Colleagues, I have to ask if either of the main party leaders today would practise that restraint; after all, Mr. Trudeau had in hand a ruling of constitutional legality from the court.

Now join me in the present.

Only last fall, the Government of Ontario was engaged in a dispute with the Canadian Union of Public Employees in the education sector. Legislation imposing a contract was passed in the legislature, along with invocation of the notwithstanding clause — pre-emptively guarding against constitutional challenge. Strike action followed, as did significant public outcry. The government undoubtedly felt it was within its rights; unions and others saw the action as an assault on workers and organized labour. The issue was resolved when Premier Ford repealed the legislation.

He had a legislative majority. And, while his use of the notwithstanding clause was, in my opinion, wrong, it is there in the Constitution. But, to his credit, Premier Ford acted with restraint.

Some have suggested, by the way, that resolving the "problem" of the "notwithstanding" clause lies in referring the matter to the Supreme Court for a judgment on when and how it should be used. But surely the Supreme Court itself has a direct interest in the matter and could not be the usual unbiased arbitrator. I strongly suspect that ultimately the use of the "notwithstanding" clause can only be resolved by the application of public vigilance and governmental restraint.

Colleagues, I invite you to anticipate the future with me.

In this Parliament, we have witnessed a sea change in the composition of the upper house. If the present government is re-elected, we can expect further evolution of the Senate. The further we get from a party-based Senate, the more entrenched will be the idea of independence and freedom of action. Taken too far, we could find ourselves with many senators effectively setting themselves up as a de facto opposition to the government. We could be left with a frequent or perpetual standoff between the two chambers, as more and more independent senators claim a right to block legislation coming from the elected chamber.

Alternatively, notwithstanding the current attention being given to foreign interference, I am convinced that our democratic institutions and process are healthy enough to give us a different government. Should that be the case, some senators may feel it is their right and obligation to oppose any legislation from the other place if it reflects a philosophical perspective with which they disagree. Given the numbers that can be projected, this could be a recipe for legislative paralysis. To be blunt, either scenario creates the possibility that this institution could be at risk of acting undemocratically — ironically, by allowing tightly held principle to trump constitutional convention and deference to the will of the elected chamber.

In either situation, we have the seeds of constitutional crisis. An essential ingredient in avoiding or resolving such a crisis will be the practice of restraint. Our Constitution is black-letter law and convention — practices developed over decades and centuries, in which the instinct to exercise raw power is restrained for the common good. Absent restraint, the convention that the Senate's duty is to scrutinize, amend and pass legislation — balanced against deference to the chamber that most directly reflects the will of the people — is incomplete.

Honourable senators, whether it is what we say to or about each other, or how we learn again to listen and dialogue with others who don't share our outlook, or how we guard the health of our institutions — we need to relearn the virtue of restraint.

Canada is a big, diverse country — geographically, socially, culturally, economically and philosophically. For each of us, for parties and for institutions, restraint may begin with acknowledging that our point of view — legitimate as it is — is not the only point of view.

We have benefited from restraint in this country, and, in these times, we need it again. May we all find it within ourselves to practise restraint.

Thank you, Your Honour.

**Hon. Senators:** Hear, hear.

(On motion of Senator LaBoucane-Benson, debate adjourned.)

• (1530)

## CANADA DISABILITY BENEFIT BILL

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION FOR CONCURRENCE IN COMMONS AMENDMENT AND
NON-INSISTENCE UPON SENATE AMENDMENT ADOPTED

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-22, An Act to reduce poverty and to support the financial security of persons with disabilities by establishing the Canada disability benefit and making a consequential amendment to the Income Tax Act

Wednesday, June 14, 2023

*EXTRACT, —*

That a message be sent to the Senate to acquaint Their Honours that, in relation to Bill C-22, An Act to reduce poverty and to support the financial security of persons with disabilities by establishing the Canada disability benefit and making a consequential amendment to the Income Tax Act, the House:

agrees with amendments 1, 4 and 5 made by the Senate;

agrees with the Senate proposal to make any necessary consequential changes to the numbering of provisions and cross-references resulting from the amendments to the bill;

respectfully disagrees with amendment 2 because it raises significant constitutional concerns by seeking to regulate the insurance industry specifically or contracting generally, both of which fall within provincial jurisdiction;

proposes that amendment 3 be amended to read as follows:

"New clause 10.1, page 4: Add the following after line 5:

"Appeals

10.1 Subject to regulations, a person, or any other person acting on their behalf, may appeal to a body identified in regulations made under paragraph 11(1)(i) in respect of any decision

(a) relating to the person's ineligibility for a Canada disability benefit;

(b) relating to the amount of a Canada disability benefit that the person has received or will receive; or

(c) prescribed by the regulations."".

**Hon. Marc Gold (Government Representative in the Senate)** moved:

That, in relation to Bill C-22, An Act to reduce poverty and to support the financial security of persons with disabilities by establishing the Canada disability benefit and making a consequential amendment to the Income Tax Act, the Senate:

(a) agree to the amendments made by the House of Commons to its amendment 3; and

(b) do not insist on its amendment 2, with which the House of Commons disagrees; and

That a message be sent to the House of Commons to acquaint that house accordingly.

He said: Honourable senators, I rise today to speak in support of the amended version of Bill C-22, the Canada disability benefit act, and respectfully ask senators to accept the message from the other place. Let me begin by thanking the bill's sponsor, Senator Cotter, for his tireless work in getting this bill to the finish line.

Colleagues, Bill C-22 was sent to us earlier this year after it was adopted unanimously in the House of Commons. The Standing Senate Committee on Social Affairs, Science and Technology held over 10 meetings on the bill, with 7 meetings of testimony from 44 witnesses, and received 48 briefs, hearing from many important voices in the disability community and identifying ways in which the bill could be enhanced. After carefully examining the bill, the committee adopted six amendments, which were returned to the other place.

[*Translation*]

On behalf of the government, I want to thank the committee members for their important work and for providing members of the disability community with a forum where they can share their stories, their views and their expertise on the purpose of the disability benefit and how it works.

[*English*]

In response to the Senate's work, the government has accepted amendments 1, 4, 5 and 6 without change, accepted amendment 3 with modifications and has respectfully opposed amendment 2.

[*Translation*]

The government agrees with amendment 1 proposed by Senator Dasko because it strengthens the wording of the bill's preamble. The committee heard a number of witnesses talk about the additional barriers faced by women, racialized Canadians and Indigenous people with disabilities. Recognizing these barriers in the preamble reinforces the intent of the bill.

[*English*]

With respect to amendment 4, which was introduced by Senator Lankin, the government agrees with this amendment. This change amends clause 11 of the bill, which outlines the amount of the benefit which will be prescribed by the regulations. Originally, clause 11 of the bill stated that the official poverty line as defined in section 2 of the Poverty Reduction Act must be taken into consideration when determining the amount of the benefit. This amendment further strengthens the bill by adding additional factors that must be considered when determining the amount of the benefit.

They are as follows:

> (b) the additional costs associated with living with a disability;
>
> (c) the challenges faced by those living with a disability in earning an income from work;
>
> (d) the intersectional needs of disadvantaged individuals and groups; and
>
> (e) Canada's international human rights obligations.

This amendment would serve to improve the regulatory process that is to be co-developed with the disability community, and reflects testimony heard at the Standing Senate Committee on Social Affairs, Science and Technology.

The government also accepts amendment 5, proposed by Senator Petitclerc, as it further clarifies the original intent of amendments adopted by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities during their consideration of the bill. This amendment would enable the Governor-in-Council to fix a date of the coming into force no later than one year after Royal Assent. This means that it could, in fact, be earlier than a year, but not longer than a year either. The government remains committed to co-developing the regulations with the disability community and having this benefit accessible to people as quickly as possible.

[*Translation*]

Finally, the government accepts amendment 6, as it agrees:

> . . . with the Senate proposal to make any necessary consequential changes to the numbering of provisions and cross-references resulting from the amendments to the bill;

[*English*]

Colleagues, the government understands and appreciates the intent behind amendment 2, which attempts to deal with clawbacks by private insurance companies. However, as has been previously identified and as I stated at committee, the government remains concerned with regard to the constitutionality of these provisions, as it would result in the federal government regulating the dealings of the insurance industry, which falls under exclusive provincial and territorial jurisdiction. I understand that Senator Cotter, given his considerable legal expertise, will address this issue more deeply as part of his remarks.

That said, the government certainly has concerns, and stakeholders have concerns, over how the private insurance industry will react to the introduction of the Canada disability benefit, and those concerns are not unfounded. The Minister of Employment, Workforce Development and Disability Inclusion is acutely aware of the potential for clawbacks and has committed to further engaging the private insurance sector once Bill C-22 is passed to ensure that the benefit is understood as a poverty-reduction measure meant to supplement existing disability benefits and supports — and that includes private disability insurance.

[*Translation*]

The government's objective is to work with the private insurance sector and other providers of existing benefits and supports to achieve the main objective of the Canada disability benefit, which is to reduce poverty and to support the financial security of working-age Canadians with disabilities.

[*English*]

I'll now turn to amendment number 3, as proposed by Senator McPhedran, which is about the appeal process.

The government has noted that this amendment makes some excellent points and most certainly strengthens the bill. What the government is now proposing is to build on that amendment and strengthen it even further. Bill C-22 does provide authority for the Governor-in-Council to make regulations respecting appeals. And now, with amendment 3, the bill would also include an explicit right to appeal in legislation. Many stakeholders made clear the need for that during the parliamentary process.

This amendment is aligned with the government's intention to provide a mechanism for appeals, but the phrasing of the Senate amendment can be understood as suggesting that a right to appeal the decisions would be immediate.

Indeed, it could be construed as suggesting that the regulations could not require a person to first seek a review or reconsideration before appealing, and the government is therefore proposing that the wording of the amendment be clarified to be more specific and provide clearer details on the appeal provisions.

For example, amendment 3 lists two specific areas of appeal, which might raise doubts as to whether further grounds of appeal could be provided for by regulations. The government's amendment to amendment 3 clarifies and strengthens the wording by widening the potential grounds of appeal as prescribed by regulations. Essentially, the updated amendment would make the appeals mechanism for the Canada disability benefit more consistent with those of Old Age Security and Employment Insurance.

In short, colleagues, the Canada disability benefit has the potential to make a real difference in the lives of working-age persons with disabilities and their families, and to reduce poverty in Canada. We can all agree that no person with a disability should be living in poverty in Canada.

[*Translation*]

Esteemed colleagues, the disability community and stakeholders have devoted an enormous amount of time, energy and emotion to Bill C-22.

• (1540)

[*English*]

They provided their expertise in witness testimony at committees, and they recently held a rally on Parliament Hill to ensure this bill is passed quickly. They are counting on us as we approach the finish line.

But it isn't just Canadians with disabilities who are waiting for us to move forward with the benefit today. It's their families, their friends and their advocates — people who understand their struggles.

[*Translation*]

The vast majority of Canadians agree that working-age persons with disabilities need this benefit. We know this because, according to a 2021 Angus Reid poll, almost 9 out of 10 Canadians support this benefit. Our objective, as well as theirs, is to improve the lives of persons with disabilities.

[*English*]

Therefore, colleagues, I urge you to support the message from the other place so that we can bring this bill one step closer to implementation and, ultimately, Royal Assent. Thank you.

**Hon. Kim Pate:** Would you take a question, Senator Gold?

**Senator Gold:** Yes, of course.

**Senator Pate:** Thank you, Senator Gold, and thank you for your comments.

Last week, the minister referred to a detailed federal-provincial-territorial work plan that all jurisdictions have agreed to — which will also be the basis for formal negotiations respecting the Canada disability benefit.

As you know, in the absence of the Senate amendment prohibiting private insurance clawbacks, if the government is to meet its commitment to ensuring zero clawbacks, it will need to negotiate with 13 different jurisdictions — not only about interactions between the Canada disability benefit and their numerous government benefit programs, but also about building prohibitions on clawbacks into provincial and territorial insurance legislation.

Will you provide us with a work plan and timeline for these federal-provincial-territorial negotiations on clawbacks, as well as the role that people with disabilities will play in that timeline and work plan?

**Senator Gold:** Thank you for your question. As you noted, the negotiations with the provinces and territories are being done with the involvement of the disability community. There is, as you mentioned as well, a fairly large number of governments at stake, as well as an important yet diverse community of persons with disabilities.

This work is under way. The minister has given her assurance of the good faith that she's encountering with the provinces and territories, and as those discussions progress, I have every confidence that Canadians will be updated in regard to their progress.

**Senator Pate:** Many people with disabilities and organizations have reached out to us with concerns that these negotiations will not be completed within the tight time frames established by the bill. I'm curious if there is any information you can provide around the schedule, including the schedule for negotiations with insurance companies.

**Senator Gold:** I do not have that information, but I am assured by the minister that they are proceeding diligently and seriously in these negotiations. This chamber should have every confidence that the government is committed, as are their partners in the provinces and territories, to concluding the negotiations in a timely fashion so that this benefit can finally be provided to those millions of Canadians in need.

**Hon. Donna Dasko:** Honourable senators, I rise today to speak to the message sent back to us from the House of Commons concerning the fate of Bill C-22, which establishes the Canada disability benefit. This important bill seeks to reduce poverty and to support the financial security of working-age persons with disabilities through the Canada disability benefit.

Notably, Bill C-22 is framework legislation, whereby the details and elements of the benefit will be developed through regulations and in consultation with the disability community, the provinces and the territories after the legislation is passed.

We learned from testimony at our Social Affairs Committee — for example, from Krista Carr of Inclusion Canada — that 40% of Canadians with a disability live in poverty, and we also learned from the bill's sponsor, Senator Cotter, that 23% of those who are working age live in poverty. Let's compare that to the 7.4% of all Canadians who lived in poverty in 2021, and we can understand the great need to take action.

The bill had first reading in the other place a full year ago on June 2, 2022, and it was sent to committee in the other place on October 18, 2022. A total of nine amendments were passed there before arriving here in February and at committee on March 22.

The bill arrived at our Social Affairs Committee with pleas from several major organizations representing those with disabilities, and from the government, to proceed without change. These pleas were accompanied by a substantial email campaign carrying the same strong message.

As committee work proceeded, it became clear, however, that the bill did, indeed, contain flaws and omissions — and several strong advocates came forward to urge that these flaws and omissions be addressed through amendments. Committee members were torn. Should there be amendments or no amendments? Would amendments delay the benefit, or even place the entire bill at risk?

Colleagues, we often receive admonitions to move quickly on legislation; this is not news to anyone. But I have to say that the pressure to review this bill without change was especially strong.

In the end, committee members did present amendments, and six amendments did pass at committee, which deal with vital issues including the following: a specification that the benefit cannot be clawed back by insurance companies; a guarantee of an appeal process; and a recognition that four additional factors — the additional costs associated with living with a disability; the challenges faced by those living with a disability in earning an income from work; intersectional needs; and Canada's international human rights obligations — must be considered in establishing the benefit. An amendment to the preamble recognized that persons with disabilities may face additional barriers because of their gender, racialized or Indigenous status or other intersecting statuses. Two amendments concerned the timeline and the coming-into-force provisions.

As we know, the government and the other place have accepted five of these six amendments.

I am deeply disappointed that the amendment designed to prohibit clawbacks of the benefit by insurance companies was not accepted. I felt that it was a strong addition to the bill, but it was turned back for reasons related to jurisdiction, which Senator Gold has just explained, so I will not delve into that now.

I am very pleased that the five other amendments were accepted, including an enhanced change to the amendment concerning the appeal process — I think that's a very positive change.

Before closing, I want to mention two points that particularly caught my attention in the debate on Bill C-22: In her third-reading speech, Senator Seidman drew our attention to clause 12 of Bill C-22, which calls for a review of the act — after its first anniversary, third anniversary and at each subsequent fifth anniversary — by a committee of the Senate, the House or both. Senator Seidman further drew our attention to a recent article by Charlie Feldman, former Parliamentary Counsel for the Senate, which identified provisions in many federal statutes that call for review by Parliament. Mr. Feldman found 51 such provisions in legislation in the period of January 2001 to June 2021, but he also discovered that many statutory reviews never happened, and others are many years behind schedule. Only 17 of the 51 had resulted in a report.

Colleagues, I know that we're not looking for more work to do, but it strikes me that vital and necessary work involving statutory review of legislation is not being done, and Parliament needs to step forward.

A second point caught my attention: It was Senator Cotter's comment — also at third reading — that an appeal process might be considered a matter of natural justice in legislation such as Bill C-22, whether an appeal is stated in law or not. This is an extremely interesting and important observation, which raises questions for me about the circumstances and conditions, in government or elsewhere, where appeal processes might be available to complainants as a matter of natural justice. I look forward to hearing and learning more about this. These are considerations for another day, however, but I thank both colleagues for these interventions.

• (1550)

Most importantly, the debate on Bill C-22 allowed us to learn more about and to understand some of the real challenges of life: the needs and concerns faced by those who live with disabilities. I am grateful to all of our witnesses, all of my Senate colleagues and the many folks who contacted me to express their views about the legislation before us.

I feel we have done some very good work on Bill C-22, and this chamber should be proud of our contribution. I urge acceptance of the message. Thank you.

**Hon. Rosemary Moodie:** Honourable senators, I rise to continue our debate on Bill C-22. I want to thank my colleagues for their comments so far.

Let me state from the outset that I will vote in favour of this message, fully respecting the prerogative of the government and mostly because the disability community has made it clear that they're satisfied with this bill in its current form.

I want to take a few moments to highlight the important work done by the Standing Senate Committee on Social Affairs, Science and Technology, of which I am a member. Our chair, the Honourable Senator Omidvar, noted clearly in her speech at report stage that our committee heard from 44 witnesses in addition to receiving 48 briefs, seven follow-ups and two letters. I want to add that many of our witnesses were members of the disability community and were given the accommodation needed to fully participate. Many of our witnesses were truly inspiring and went to extraordinary lengths to be with us, to be heard, and I'd like to thank these witnesses for their contributions to our study.

Not only did we study this bill in depth, but many of the committee members met on their own initiative with members of the disabled community for months before the study in anticipation of this bill's arrival and in acknowledgement of the historic nature and gravity of this bill. Our colleagues on the committee worked diligently and with great insight and understood that our job is to carry the voices and priorities of constituencies, along with the application of our best judgment. That is what we did.

Our colleagues proposed amendments, some of which were rejected, but many were adopted. It was not an easy undertaking. It required the courage to resist the strong internal pressure to simply let this bill pass, to do nothing and let the bill go through without the proposed amendments that we, as a committee, felt were needed based on what we heard from our witnesses, amendments that the government has now, in essence, adopted. You have heard five of six. As Minister Qualtrough put it in her speech in the other place on June 14, "These amendments enhance Bill C-22 in that they add clarity, precision and specificity."

Bill C-22 is going to impact the lives of millions of people. It will be — putting hyperbole aside — the difference between life and death for many Canadians with disabilities. It will be historic, not just here in Canada but on the world stage. Our contribution of "clarity, precision and specificity" is absolutely critical. In fact, I would argue that this is exactly why our institution exists — to make sure bills are precise, clear and specific for the good of all Canadians, including and especially for those who are vulnerable and who need us to work on their behalf to bring their voices forward.

I want to congratulate our colleagues on the Social Affairs Committee for resisting the pressure to do nothing and for doing what you knew was right despite the often-repeated warning that it would kill the bill. Colleagues, in a few moments we will adopt this bill, and it will become law. It will be a better law because we were unwilling to stand idly by, because we did our job.

Colleagues, we have a privileged and sacred role to play in this place. The Senate has an obligation and a duty to review legislation. Fulfilling our constitutional role must always be front and centre. Sometimes this may mean expediting bills, but I believe, for the most part, it means we must authoritatively, thoughtfully, deliberately and thoroughly consider every bill before us. Senators, that is how we should be, regardless of the pressure we may face to do otherwise.

Bill C-22 proves once more that all Canadians will benefit when we are willing to do what we are summoned to do — to be legislators, to do our part — and this is what I believe Canadians value.

To the thousands of Canadians who continue to email us, urging us to adopt this legislation, continuing to let us know and sharing your concerns — thank you. It is my hope that we have served you well. Like many of you, I was disappointed with the rejection of amendment 2 and believe that the burden to fight to make sure clawbacks do not occur should not be on your backs. Unfortunately, you may still retain that responsibility to ensure that you have full access to this benefit now.

Nevertheless, what I have heard loud and clear is that you are ready to take the next steps to make this benefit what you want it to be. I join with you in calling on the government to put this bill into force on the day it receives Royal Assent and to begin co-creation of regulations immediately. Should any issues arise, which may happen, you will find many of us here in the Senate of Canada behind you, ready to support you and to see that the full potential of the Canada disability benefit is met.

Thank you. *Meegwetch*.

[*Translation*]

**Hon. Chantal Petitclerc:** Honourable senators, we have heard all that needed to be said about Bill C-22, and so I will be brief. However, I really wanted to rise to speak today.

[*English*]

Allow me first to thank Senator Cotter for his work as sponsor of this bill in the Senate and, Senator Cotter, for your commitment in the Senate and outside Parliament to persons living with disabilities.

Colleagues, to this day, I remember the enthusiasm in the disability community when, in September 2020, the Canada disability benefit was announced in the Speech from the Throne. We knew then that the goal would be to reduce poverty and that it would be modelled after the Guaranteed Income Supplement for seniors, but we knew nothing about the amount of this future benefit, let alone the eligibility conditions.

• (1600)

Nearly three years later, we still are in the dark about who will be eligible or how much they will receive. However, it must be recognized that the enthusiasm and hope noted in 2020 are still strong and palpable. What I'm hearing is that the community is reassured by the guarantees provided by the amendments made in the House and here in the Senate.

[*Translation*]

Allow me to acknowledge once again the exceptional work of my colleagues on the Standing Senate Committee on Social Affairs, Science and Technology, who felt that these amendments, which were just today accepted by the House in response to our message, were necessary.

I especially want to thank all the organizations who inspired and motivated us to improve this bill through their briefs, testimony and correspondence.

All things considered, the work we chose to do improved the bill and will better serve the community.

Thanks to the Senate, the appeal process specifically provides for a procedure to deal with decisions made about eligibility for the benefit and the amount to be received.

Thanks to the Senate, the benefit will have to be based on not just the official poverty line but several other parameters as well, in particular additional costs associated with living with a disability and the intersectional needs of disadvantaged individuals and groups, among others.

Thanks to the Senate, the government now has the power to make the required regulations so that payments can commence within 12 months of the coming into force of the bill.

[*English*]

It's true, however, that concerns about clawbacks during the implementation of the proposed benefit, especially by private insurers, have not gone away. The government has acknowledged that these fears are well-founded and has said it is aware of this risk. I am trying to be reassured by the minister's commitment that she will be vigilant to ensure that the concerns expressed during the study do not turn into a sad reality.

[*Translation*]

In an email to Quebec senators, organizations in Quebec representing hundreds of thousands of people with disabilities and their families, including the Quebec Intellectual Disability Society, the Fédération québécoise de l'autisme and the Confédération des personnes handicapées du Québec, sent the following message:

> All but one of the amendments were adopted, and one was the subject of a subamendment. First of all, we are comfortable with the House's motion. Of course, we would have preferred to have guarantees in the act concerning insurance and the clawback, but the motion remains satisfactory overall.

Other national organizations, such as the Rick Hansen Foundation, the Canadian National Institute for the Blind, Inclusion Canada and the Disability Without Poverty movement, all sent similar messages and agreed that now is the time, following this legislative step, to move on to the next stage to improve the financial insecurity in which hundreds of thousands of Canadians live. I agree with these organizations.

[*English*]

I was tempted by way of conclusion to use the analogy that we are just about to cross the finish line with this bill, but I realize that this is not the right analogy because, really, this is not the finish line. With Bill C-22 being a framework law, it is fair to say it is now that the work begins.

A better analogy would be one of a relay race. We gave it our best, and it's now our turn to confidently pass the baton, not just to the government but especially to the ones with lived experience and expertise and to the organizations that were promised that they would be part of co-creating the regulations. These groups wanted their voices to be heard based on the principle of "nothing about us, without us." We can count on them, and I have confidence that they will carry out this duty with passion, expertise and rigour.

[*Translation*]

The real finish line will be reached when the first cheques are sent to the beneficiaries — by 2024 we hope.

I therefore invite you, honourable colleagues, to pass the baton by accepting this response, as we have received it from the House of Commons. *Meegwetch*. Thank you.

**Hon. Marilou McPhedran:** Honourable senators, hello, *tansi*.

As a senator from Manitoba, I acknowledge that I live on Treaty 1 territory, the traditional lands of the Anishinaabe, Cree, Oji-Cree, Dakota, and Dene, and the homeland of the Métis Nation.

I also want to acknowledge that the Parliament of Canada is situated on unceded and unsurrendered Algonquin Anishinaabe territory.

[*English*]

Honourable senators, I rise today to speak to Bill C-22, the Canada disability benefit act, with appreciation to Minister Qualtrough and Senator Cotter, the bill's sponsor here, for best efforts to shepherd it through the legislative process culminating in our review today.

Many parliamentarians understand how crucial this bill is. It is long overdue and deserves support for the millions of people with disabilities across Canada who live in poverty.

We can be proud of the thorough and thoughtful contributions made by members of the Standing Senate Committee on Social Affairs, Science and Technology, or SOCI, and of the trust placed in us by colleagues in this chamber in their support for these amendments, which result in a stronger Bill C-22 returning to us today with all but one of our six amendments incorporated.

The accepted amendments include an appeal mechanism by which applicants can contest decisions about their eligibility to receive the benefit and the amounts to which they are entitled. Also adopted was the expanded list of factors that must be considered in the benefit calculation, among which are Canada's poverty line, the costs created by systemic barriers to accessing work, the intersectional needs of applicants and Canada's human rights obligations as they relate to the disability community.

The final amendments accepted are those that provide for an expedited implementation timeline for the benefit by requiring that all the regulations must begin to pay out under the act and be in place within 12 months of the new act's coming into force date. These changes bolster this framework act by ensuring crucial implementation mechanisms rather than risking them to the uncertainty of regulations yet to be drafted.

One amendment has been rejected. I doubt Senator Gold intended to ghost me, but it was proposed by me on behalf of disability rights experts and organizations. Proposed for clause 9(c) of the bill, this amendment would have protected recipients of the Canada disability benefit act by preventing

private insurance companies from deducting the amount of the benefit paid out under the act from payments made under long-term disability policies.

These clawbacks by private insurance providers were not discussed in committee in the other place, but they were studied extensively when Bill C-22 was examined by the Senate's Social Affairs Committee. The amendment to stop rich insurance companies from clawing back the benefit from poor people with disabilities was endorsed by over 40 legal aid clinics, community leaders, academics and disability advocacy groups. On the question of its constitutionality, every provincial trial lawyers' association in Canada supported the amendment as viable in law.

Therefore, we have before us a bill that enables private insurance companies to claw back the new, publicly funded disability benefit regardless of whether Minister Qualtrough calls it a social benefit or not.

Many private insurance contracts are clear that they can set-off any government benefit, effectively subsidizing private insurers instead of providing additional financial support for members of the disability community as intended by the act.

• (1610)

Colleagues, concerns about industry clawbacks are not far-fetched or hypothetical. Clawbacks are happening now to available public benefits. Old Age Security benefits, for example, are already explicitly set-off from long-term disability payments by many private insurance companies while similar deductions have been made from insurance payouts to recipients of the dependent benefit under the Canada Pension Plan, or CPP.

Further, the courts have sided with private insurers. For example, in a 2008 class action, the court affirmed the legality of deductions from long-term disability payments of this nature absent any provision in either the policy or in the legislation prohibiting it, and private insurers leaped to enforce those deductions through litigation against disabled recipients.

For example, in a case involving the State Farm Mutual Automobile Insurance Company, the appellant's insurance company sought to enforce the deductibility of the CPP dependent benefit on the basis of the 2008 class action ruling. And in *Industrial Alliance Insurance and Financial Services Inc. v. Brine*, the private insurer sought to enforce deductions from a long-term insurance policy in the amount of benefits received by the policyholder under both the Canada Pension Plan and the Public Service Pension Plan.

Time does not allow me to list the many other cases wherein private insurers went to court to claw back payouts under long-term disability policies premised on the policyholder's receipt of public benefits. The rejected amendment prohibiting clawbacks of the new benefit by private insurers would have done what the courts have said needed to be done in order to protect recipients and ensure that benefits are received by those for whom they are intended rather than function to subsidize private insurers.

The time to respond to this concern is sooner rather than later. When the CPP dependent benefit offset was challenged in 2008, industry relied on the fact that its premiums were adjusted on the assumption that it could offset CPP benefits but held that without the availability of that offset, insurance premiums would undoubtedly rise. No such adjustment can presently be relied on by industry in relation to the Canada disability benefit, as premiums taking the new benefit into account have yet to be calculated.

Concerns were raised at the Social Affairs Committee and in this place as to the constitutionality of a provision that engages with the insurance industry by purporting to regulate insurance contracting as falling outside the jurisdiction of the federal parliament. The fact is that such a provision is not unprecedented in Canadian benefit regimes. For forty years, the Merchant Seaman Compensation Act, for example, has protected recipients with wording closely similar to that proposed in the rejected amendment. Forty years, honourable senators, with no court challenges, constitutional or otherwise.

Another relevant precedent can be found in the 2020 reference regarding the Genetic Non-Discrimination Act, which grappled with the constitutionality of a federal legislative scheme to regulate aspects of insurance contracting by preventing private insurers from requiring genetic test results as a precondition for health insurance eligibility. In reviewing the legislative scheme, the court determined that its overall goal was not regulation of the insurance industry per se, but rather the prevention of genetic discrimination in the provision of goods and services such that the insurance provisions at issue comprised only part of a broader regulatory scheme and were necessary in order to preserve the purpose of the federal legislation. Sound familiar?

Absent the act's protective insurance-related measures, the scheme's purpose would be seriously undermined, justifying the minor incursion into a matter traditionally falling within the ambit of provincial jurisdiction.

These real-life cases support the viability of a provision like the rejected amendment prohibiting set-offs by private insurers of payments under the Canada disability benefit act. It is clear in the act that the Canada disability benefit is designed to be supplementary for those who qualify under the act.

The legislative purpose of making a supplementary sum available to eligible recipients is undermined if private insurers are permitted to correspondingly claw back payments under their policies because, in practice, the recipient is left with substantially the same amount they were receiving before introduction of the benefit. Absent this simple operational protection, the bill before us today will effectively indemnify private insurers and deny the intended recipients the benefit.

Lifting disabled people out of poverty is the stated fundamental purpose of this bill. In this regard, it will become a mockery of Minister Qualtrough's promise to disabled people, who desperately need and deserve the Canada disability benefit. The exclusion of this amendment to prohibit benefit clawbacks by private insurers is a choice the Trudeau government has made: to not ensure that certain eligible recipients under the act receive the full supplemental benefit promised to them.

Time will tell how many private insurers will exploit this loophole given to them, and perhaps some day Parliament will have a second chance to bring justice to those disabled recipients who are now exposed to the legal force of rich private insurers.

But let's not pretend that the real cost will be borne by poor, disabled recipients who would be made to suffer because this government chose not to protect them. They will suffer, and the cost will be borne by them.

Last week, Senator Pate and I received a letter from Mr. Duncan Young, whose standard of living is determined largely by a private insurer. I share the following with his permission:

> I am not one of the many selfless volunteers who advocate on behalf of the disabled. Neither am I an activist or lobbyist for any such person or group. I am simply an "average" 55 year-old working-class Canadian, who happens to love his job, and is looking forward to working at it for as long as he can. Or at least I was...
>
> 3 years ago, I received a diagnosis of spinocerebellar ataxia 3 (SCA3): an extremely rare, hereditary, neurological disorder that causes the cerebellum to atrophy, thus completely destroying a person's motor skills; impairing walking, talking, swallowing, bladder control, etc.
>
> It is progressive, has no known treatment(s) to abate its development-and there is no cure. Of note, an affected person typically does not present symptoms until somewhere between ages 40-55: Meaning I (and most like me) are enjoying a full life, still in its ascendency, when suddenly your brain will not allow your legs to form the motion necessary to let you run to catch the bus, or let your fingertips stay still long enough to do up the tiny buttons on your button-down collar.
>
> Let me be clear: Without that amendment enshrined in statute, as worded, I will receive $0 from the creation of the benefit. It would be-in its entirety-an eligible clawback according to my LTD provider's contract. In short, the only beneficiary of such a benefit would be the shareholders of a publicly-traded insurance company-while I continue to slip below the poverty line. Both points here are not conjecture: They are quantitative facts.
>
> So now you know exactly, unquestionably and with detail, exactly what the passing of C-22 without this amendment will mean to myself and every disabled person in similar positions: Nothing.

I'm so sorry, Mr. Young, but at this stage we must hope that Minister Qualtrough and this government can somehow turn this around by actively convincing provinces and territories to ban private insurance clawbacks of the Canada disability benefit within their respective jurisdictional authority. Such advocacy should not be left, again, to the disability community to take on alone.

Honourable senators, we all know this disability benefit is long overdue and desperately needed. The disability community in Canada has advocated for stronger and more reliable income support for far longer than this bill has been in contemplation by Parliament.

• (1620)

I am grateful for the many insightful comments and valuable contributions to the development of this bill from community leaders and advocates, both in committee and various other capacities. Mindful of time, I can acknowledge only a few. I extend appreciation for the legal expertise provided to the Social Affairs Committee by witnesses who brought the clawback to our attention: David Lepofsky, Robert Lattanzio, Steven Muller and Hart Schwartz. For the sake of those eligible recipients who are unlikely to ever see a penny of the Canada disability benefit, I fervently hope that those experts will continue to be vital contributors to the minister's promised consultations to fill in the framework legislation.

Let us now pass this bill into law before we leave for the summer. Thank you*, meegwetch*.

**Hon. Kim Pate:** Honourable senators, Minister Qualtrough rightly called Bill C-22 a once-in-a-lifetime opportunity to lift people with disabilities out of poverty. Despite this tremendous step forward, the message from the other place risks turning this bill into an empty promise for Canadians who rely upon long-term disability insurance.

Our Senate amendment prohibiting clawbacks of the Canada disability benefit by private insurers would have protected the collective investments of Canadians in the well-being of the most marginalized from being diverted into the coffers of insurance companies. Our amendment put Canadians on the side of persons with disabilities, not wealthy corporations. The rejection of this amendment should leave us questioning: In whose interests did the government act?

Would insurance companies actually dare take the money belonging to persons with disabilities that they rely upon for necessities like food and shelter? The answer is "yes," as acknowledged by both Minister Qualtrough and our Senate sponsor.

Almost all group disability insurance policies and many individual policies allow insurers to deduct payments that the insured receives under any government-sponsored plan, as Senator McPhedran has just pointed out. Just one example that should be an affront to all of us is the clawback — again, about which Senator McPhedran spoke — by insurers of Canada Pension Plan, or CPP, payments from persons with disabilities, including the CPPD dependent portion earmarked for children of those with disabilities.

Disability advocates have worked diligently to expose this issue. Imagine the advances toward eradicating child poverty if this money actually reached persons with disabilities.

We have heard from some of the millions of Canadians to whom these types of policies apply. One working-class man wrote thanking us and urging us to persist. He has a hereditary degenerative condition that appeared later in life and incapacitated him. He was forced to leave his job. He needs the Canada disability benefit and should qualify for it, but he may not receive an extra cent because of clawbacks. Without the Senate amendment, every penny of this man's Canada disability benefit might be stripped from him and pocketed by a wealthy corporation.

Yesterday, his daughter underwent tests to identify whether she has inherited his condition and the same fate.

People may be even worse off if the Canada disability benefit application process is inaccessible. Insurance companies can actually reduce insurance payments if people are eligible for a benefit, even if they don't apply for it.

How on earth can we support these kinds of windfalls for insurance companies? Do we really want to increase the profit margin of companies while leaving some people with disabilities even worse off than they would have been before Bill C-22, potentially receiving less from their insurers? Surely, enriching wealthy insurance companies on the backs of people with disabilities and at the taxpayers' expense is not what the government intended. Why then has it rejected our Senate amendment aimed at preventing that travesty?

The government says it is concerned about infringing upon provincial and territorial constitutional jurisdiction. They propose to negotiate with each province and territory to change their respective insurance statutes, wait for these legislative changes to happen and then negotiate individually with a large number of insurance companies not covered by these statutes. That is in addition to the already significant negotiations planned with each province and territory to prevent clawbacks relating to all provincial and territorial government benefits.

We should all be concerned that there is no realistic way to accomplish this within the tight timelines for the rollout of the benefit. Furthermore, countless practising experts have provided compelling evidence that the Senate amendment is indeed constitutional.

Rather than repeat the argument that Senator McPhedran has already ably outlined, I will add two points.

My first point is that, like Senator McPhedran, I have consulted with constitutional experts who have framed an arguable case in favour of constitutionality on the grounds of the "necessary incidental," or "ancillary," doctrine. This doctrine allows a provision situated within a larger legislative scheme to be pulled into validity if two conditions are met. The first condition is that the larger legislative scheme must be valid federal jurisdiction. I don't believe anyone has questioned the validity of Bill C-22. It is an exercise of the federal spending power and perhaps federal powers relating to peace, order and good governance. The second condition is that even if the prohibition on private insurance clawbacks might be invalid if considered in isolation, it can still be valid if it has a necessary relationship to the larger scheme. Here, absent the Senate amendment, the benefit risks becoming a government subsidy for private insurance companies, with no impact or, worse yet, negative impacts, such as the loss of additional provincial benefits like drug coverage, et cetera, upon many disabled recipients.

If that is not necessary to the Bill C-22 scheme, I can't imagine what is.

My second point is that, as you might remember, the Senate amended a government bill on solitary confinement based on testimony from legal experts that the legislation was unconstitutional. That vote passed four years ago today, in fact. The government rejected the Senate amendments, and the previous Government Representative in the Senate explained to this chamber:

> . . . Neither I nor anyone else in this chamber can substitute our conclusions for that of the justices who may be called upon to evaluate . . . provision at some point in the future . . . .
>
> If there's one thing we know, it's that constitutional law is arguable, particularly in the abstract. . . .
>
> . . . the appropriate forum to resolve the issues with finality is the judicial branch. This is uniquely an environment where each litigant has a guaranteed procedural right to make a full case with the benefit of an exhaustive evidentiary record before an impartial decision maker.

I question why the government is not following that advice this time around. I hope it is not simply that the constitutional question concerns a Senate amendment rather than government legislation.

There is a reasonable case in favour of the amendment's constitutionality. Knowing that the bill without the amendment amounts to an empty promise to a significant number of persons with disabilities, why doesn't the government accept the amendment and then see whether insurance companies have the gall to challenge its constitutionality in court?

Four years after the government stated that the courts were the appropriate forum for dealing with constitutional concerns about its solitary confinement legislation, the barriers that people with the least political, legal and economic capital face when trying to defend their rights have thus far precluded a meaningful court challenge. Imagine trying to find legal assistance and mount a complex court case from a jail cell, while on the streets, while in pain or while figuring out how to keep yourself and your family fed and sheltered.

On top of that, the federal government might throw additional barriers to litigation in the way. For the solitary confinement legislation, the government had cases pending before the Supreme Court of Canada that would have given the court an opportunity to rule on its constitutionality. Instead, the government discontinued the appeals. Those seeking to challenge the bill now have to start from square one, which means several costly, personally draining and time-consuming hearings and appeals before they can hope to once again put this matter before the Supreme Court of Canada.

With Bill C-22, the Government Representative has flipped the script, but the bill similarly favours those with the deepest pockets. This leaves marginalized and impoverished persons with disabilities with the unfair burden of going to court to seek the supports that the government has undertaken to provide. Why exactly is the government choosing to stand in the way — again — of the most disadvantaged?

• (1630)

To grasp what the government's decision means very concretely, we need only look to a disability rights case litigated by Vince Calderhead, an internationally recognized human rights litigator. During his testimony on Bill C-22 at the Social Affairs Committee, he described a case that commenced 11 years ago. It took a decade of court challenges for judges to determine that the Nova Scotia government had discriminated against his disabled clients, two of whom suffered irreparably and died, so they will never benefit from the legal win. Without our Senate clawback amendment, how many years will persons with disabilities have to wait to bring a similar challenge? How long will they endure poverty? How many will die in the interim?

Here is the question: If someone must bear the burden of challenging government legislation, should it be a private insurance company with deep pockets and ample legal resources, or should it be an individual with a disability, who's sufficiently impoverished to be eligible for the Canada disability benefit yet unable to benefit from it? This is an urgent issue affecting real people — people with disabilities living in poverty — and not merely an abstract legal conundrum.

Do we want to clear the way for insurance companies to profit off the Canada disability benefit, or do we want to throw a lifeline to those abandoned to poverty who are facing seemingly insurmountable odds in claiming their Charter-protected equality rights?

I do not say this lightly: I am painfully aware of how urgently persons with disabilities struggling in poverty need relief. The Canada disability benefit, if done right, should ensure that they have the necessities, including food, shelter, medical products and care, that breathe life into the human rights — in particular, section 15 of the Charter regarding equality rights, and section 7 of the Charter regarding the right to life, liberty and security of the person — that Canada guarantees to all of us.



Minister Qualtrough acknowledged that current inequalities exist because our systems, laws, policies and programs were not designed with or for people living with disabilities. When we were debating medical assistance in dying, or MAID, we saw that suffering is often not inherent to having a disability but, rather, created by systemic exclusion and poverty. When MAID was expanded, the government promised to be vigilant in ensuring that no one was forced to choose death because they had not been provided with the supports they needed to live without suffering. The government has not lived up to that promise yet. As recently underscored by Ontario MPP Sarah Jama, people with disabilities from her community are applying for MAID because they cannot afford food.

Having lived and worked with persons with disabilities, I know about the formidable burden that disability communities are prepared to take on in order to hold the government to account, as well as how wrong it is to off-load onto them yet another fight for the Charter rights and human rights that most of us take for granted. Many of us are now extremely worried that some of the most marginalized persons with disabilities in Canada will spend years trying to fix our mistake.

What do we want the legacy of the Senate's work on Bill C-22 to be? Persons with disabilities are contacting us daily, urging us to be brave and do what is right. These words, incidentally, were echoed last week by the Chief Justice of the Supreme Court of Canada at a swearing-in for new lawyers, including several who previously worked in our office on this very issue. Chief Justice Wagner reminded us to be brave and courageous, and to stand up for what is right when others will not — words by which to live and legislate, dear colleagues.

*Chi-meegwetch*. Thank you.

**Hon. Wanda Thomas Bernard:** Senator Pate, in the other place the government has taken the position that if the Senate amendment prohibiting insurance clawbacks was included in Bill C-22, and challenged in court, this would:

> . . . create significant uncertainty and could impact the regulatory process, which could in turn impact benefit delivery. This could very well delay benefit payments.

This type of court challenge might create some uncertainty about whether insurers can claw back the benefit, but it's difficult to see how it would create uncertainty about the issues that the government would need to determine in order to proceed with regulations and with paying out the benefit, such as who is entitled to the benefit, the amount of the benefit and the application process.

Senator Pate, do you have any reason to believe that benefit payments would be delayed in the event of a court challenge to the Senate's private insurance amendment?

**Senator Pate:** To my knowledge — and certainly according to our review of the testimony — no insurance company has indicated that they would plan to claw back the benefit. No province has indicated that they would not support protecting the benefit.

**Hon. Brent Cotter:** Honourable senators, I rise to speak to the message on Bill C-22. We are on the verge of a great achievement for tens of thousands of Canadians with disabilities. We've reached this point through the leadership of Minister Qualtrough; the determined work of people with disabilities and advocates for disabled people across this country; and the commitment of every member of the other place, every member of the Social Affairs Committee and every member in this Senate. Senators' remarks today reinforce this.

I urge you to accept the message without modification so that this bill can receive Royal Assent.

First, I want to say, by way of context, that in these remarks, I'll speak only to the part of the message that deleted the Senate amendment related to the prohibition of clawbacks in insurance contracts — I will call this the "no clawbacks" amendment. The other amendments, in my view, are great. This one would be too if it were constitutional, and that's the point about which I will speak.

We heard from many witnesses and senators about the valid and serious concerns regarding the potential clawbacks of insurance benefits. I agree that all of these are legitimate and valid concerns, and I share them all. Unfortunately, for reasons I will explain, this is something that, as a federal Parliament, we cannot address through legislation. If it were an arguable case, I would be in favour of it.

The purpose of these remarks is to give you some comfort that we are doing the right thing by accepting — in its present form — the message that's come to us. In that regard, I note and applaud the statements of senators who strongly support the "no clawbacks" provision, but who have also indicated that they will, nevertheless, vote in support of the bill in the form before us.

You have heard arguments in committee and in this chamber about why we can do this. I'm going to take this time to explain why we cannot — not just as a competing opinion, but also to express a certainty that this provision is, regrettably, an unconstitutional intrusion into provincial jurisdiction.

I will now talk about the Constitution of Canada, and I apologize for this sounding like a lecture. Though the clause is small, the point is significant.

We know that the Constitution is the supreme law of Canada. We are empowered by it and, in some ways, constrained by it. One of those constraints is federalism. As you know well, in Canada, legislative authority is divided into two categories: federal authority, or heads of power, nearly all of which are enumerated in section 91 of the Constitution Act, 1867; and provincial authority, or heads of power, in section 92 of the Constitution Act, 1867. The key provincial one relevant to our discussion is property and civil rights within the province, which is universally understood to include the regulation of contracts in the province, and, parenthetically, virtually every aspect of the insurance sector has been ruled by our highest court to be of provincial jurisdiction.

We don't think very much about this next point: Everything we do in the Parliament of Canada has to be located in one area or other of federal jurisdiction. If it's a matter related to section 91, Ottawa has free rein to regulate. If it is a matter related to section 92, the provinces rule.

• (1640)

Let me provide two examples of section 91 authority that you know well, one being banks and banking. In this head of power, Ottawa gets to set the rules. This includes regulating contracts under this power — contracts concerning banks, minimum wages, employment standards for bank employees under the banking power.

Another is criminal law. If something is genuinely criminal, Ottawa can prohibit it, including contracts. Just this week we will do this by making loans above a certain rate of interest — contracts to provide loans — a crime, again, under the criminal law power.

Next, the spending power: There is a federal spending power. The spending power is not listed in section 91. It is based on the idea that Ottawa has property — in this case money — and can do with it as it pleases. This is true within limits I will explain. It is a powerful but limited federal authority.

All are agreed with respect to this legislation that it resides within the federal spending power, and only within the federal spending power. The question we are facing is whether the "no clawbacks" provision is a constitutional use in the exercise of the spending power.

I should just say parenthetically that despite Senator Pate's observation about ancillary provisions, ancillary powers do not apply to the spending power — and for obvious reasons I will get to.

At committee and in this chamber, three arguments were advanced to justify the constitutionality of the "no clawbacks" clause. Each of these is 100% incorrect. The first was the reference to the Merchant Seamen Compensation Act. This federal statute has a similar "no clawbacks" provision, which has never been constitutionally challenged, but the reason the Merchant Seamen Compensation Act provision has not been challenged is it's not an exercise of Ottawa's spending power. Indeed, it has nothing do with the spending power at all. It is an exercise of Ottawa's section 91 head of power over navigation and shipping, a section 91 power specifically. You only have to read a little bit of this bill to discover this. And just like banking has a specific head of power given to Ottawa, Ottawa can regulate entirely in that area, including, just like banking, it can regulate contracts.

The second argument to the effect that Ottawa can regulate contracts was the Supreme Court of Canada decision regarding the constitutionality of the Genetic Non-Discrimination Act, which dealt with contracts and was upheld by the Supreme Court of Canada. But when you read this case, you discover that what Ottawa did in this context — for example, with respect to the example Senator McPhedran identified, requiring employees to take genetic testing — is that Ottawa invalidated those contracts by making them a crime. And if it is legitimately a crime, Ottawa has the power to regulate — that is, prohibit — contracts under the criminal law power.

Indeed, but for the finding that Ottawa was exercising its criminal law power in those cases, the provisions would have been profoundly unconstitutional interferences with property and civil rights.

Furthermore — and this is important — just because Ottawa can regulate or prohibit contracts in one specific area does not make that authority transferable to another area and, in particular, not transferable to the spending power, and there are very good reasons, sadly, for that.

The third spending-power argument was a quote from a distinguished, now deceased, professor Peter Hogg, the dean of constitutional law in Canada. This is what the quote said, speaking about the spending power:

> . . . Parliament may spend or lend its funds to any government or institution or individual it chooses, for any purpose it chooses; and that it may attach to any grant or loan any conditions it chooses . . . .

Now, Professor Hogg had a bit more to say about the spending power, and the sentences that follow that quote explain what the limits of the spending power are.

Professor Hogg said:

> There is a distinction, in my view, between compulsory regulation —

— think here the "no clawbacks" provision —

> — which can obviously only be accomplished by legislation enacted within the limits of legislative power, and spending or loaning or contracting, which either imposes no obligations on the recipient . . . . There is no compelling reason to confine spending or lending or contracting within the limits of legislative power —

— meaning Ottawa can go where it wants with its spending, and it does, as you know —

> — because in those functions the government is not purporting to exercise any peculiarly legislative authority over its subjects.

That is, people can take the money or not. There is no legislative power engaged.

What this means is that in spending its money, Ottawa can spend in areas of provincial jurisdiction and can impose any conditions it likes on the recipient of the money, but it cannot use its legislative power to impose obligations on anyone else, obligations that are in provincial jurisdiction. To be sure of this, I read every case Professor Hogg cited, and all of them confirm this.

The bottom line is that Ottawa can attach conditions to the receipt of money by the recipient but it can't go beyond that. Think of it like a pipeline down which money can flow. Ottawa can attach terms and conditions to the flow of that money. If the terms are not met, it can cut off the flow or it can require money to flow back, but it can't legislate outside the walls of the pipeline.

Let me suggest for you an example of the most significant use of the spending power in this country and a compelling example of its limits: funding to support health care. Ottawa transfers billions of dollars to the provinces to support the delivery of medicare under provincial jurisdiction. It does this in the exercise of the spending power and it attaches conditions to the transfer of the money. You know it well, particularly the five principles of the Canada Health Act.

One of the most obvious concerns is that Ottawa does not want doctors to extra-bill patients for insured services under medicare. You've heard this a million times. If, as is argued, the spending power is essentially unlimited, the most obvious way to achieve this would be for Ottawa to transfer the money and then simply legislate that doctors can't extra-bill. I hope you can see the parallel.

But Ottawa does not do this. A condition of the health transfer is that doctors aren't allowed to extra-bill, but that obligation is imposed by the provinces. The prohibition against extra billing in every province in this country is done by provincial legislation not because Ottawa wouldn't want to do it — by God, they would — but because, constitutionally, they can't. And it's the same with the "no clawbacks" provision: It would be great to do it, but we can't. Just because it's a very good idea, doesn't make it constitutional. Section 91 does not have a head of power called "good ideas."

Now, this is a small provision, but constitutionally the overall issue is enormous, quite frankly. If Ottawa can, through the use of the spending power, wade into provincial jurisdiction whenever and wherever it wants to spend money, as the proponents of this provision would have it, it would actually be destructive of federalism.

Senator Plett spoke a while ago about the attention we need to pay to regional interests. I would invite you to focus for a moment on provincial interests and our duty to be respectful of provincial jurisdiction on which those interests rest.

There is likely to be litigation if this clause were implemented, and here is an awkward, tragic dilemma: The provinces, even sympathetic to the intentions of this clause, would have to join with insurance companies to avoid an unprecedented expansion of spending power into provincial jurisdiction.

Whether we like it or not — and I don't — the "no clawbacks" clause has within it the seeds of an almighty constitutional fight which Ottawa would assuredly lose, to say nothing of the way in

which it would poison federal-provincial relations just at a time when federal-provincial cooperation in the delivery of this benefit is at its most crucial.

Some have suggested that declining to include the "no clawbacks" provision by the government and 314 members of Parliament — twice — is being done in deference to the insurance industry. I would invite you to think of it in a different way. It's actually an expression of respect for the provincial jurisdiction at play here and a statement that honours the provinces and signals a desire to work with them rather than against their interests.

• (1650)

Indeed, this approach increases the possibility mentioned here earlier that provinces will exercise their own jurisdiction to protect this benefit by disallowing insurance clawbacks and it increases the prospect of working out protocols with industry whereby the disability benefit will not result in clawbacks.

I'm not happy with that outcome. I am as concerned as anyone about the stories that both you and I have heard, but there are limits to what we can do. Indeed, we have an obligation to respect those limits whether we like it or not.

I hope and trust that this will give you some degree of comfort that, in adopting the message as received, we are doing the right thing as we now have the opportunity to launch this bill and its great benefits for our most deserving citizens.

Thank you.

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

**Hon. Senators:** Agreed.

(Motion agreed to.)

## SELF-GOVERNMENT TREATY RECOGNIZING THE WHITECAP DAKOTA NATION / WAPAHA SKA DAKOTA OYATE BILL

BILL TO AMEND—SECOND READING

**Hon. Brent Cotter** moved second reading of Bill C-51, An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate and to make consequential amendments to other Acts.

He said: Before I begin, I want to acknowledge that Canada's Senate is located on the unceded traditional territory of the Algonquin Anishinaabeg people.

I want to begin my remarks by talking about the War of 1812. Now, I wasn't there, and I don't think most of you were either, but it was a fairly important war. It was our only war with the United States of America, and you might recall that we won. Indeed, though lost to a degree in the mists of history, the political and governance structure of this continent and this country would be vastly different if that war had had a different outcome.

The Dakota were critical military allies of the British in that war. During the War of 1812, they defended what is Canada today and were presented with King George medals and promises that their lands and rights would be protected.

This was a major moment in an otherwise formative period of the Crown-Dakota/Lakota relationship that began in the mid-18th century, and in a context of increasing conflict between British North America and the United States.

In the years that followed, the Dakota did not feel particularly welcome — that is, those who resided in the United States — and Chief Whitecap was one of the leaders that journeyed north with his community to Canada. They wanted to remain part of a British territory and reminded authorities of the promises made to them.

It is an understatement to say that their commitment to British North America did not make them popular in the United States and, as I will emphasize later, since time immemorial the Dakota, and specifically the Whitecap Dakota, have governed themselves.

I will now say a few words about the history of the Dakota and, in particular, the Whitecap Dakota, and then a bit about self-determination and self-government for the Whitecap Dakota First Nation and leading to this bill and agreement. In doing so, I hope to show why the bill we're speaking about is critical to advancing reconciliation in Canada. I hope to show that, while some of the bill's details might be new, the concepts of self-determination and self-government it is based on are not new. Indeed, what we're doing is reviving what previously existed.

The Dakota are part of the Oceti Sakowin Oyate, the People of Seven Council Fires, which was an alliance of seven Dakota, Lakota and Nakota groups. These groups shared similar languages, history and culture and their territory spanned central regions of the United States and Canada.

The word "Dakota" means "friends, or allies" — meaningful in the context of the War of 1812, I think — and the Dakota/Lakota Nation successfully built alliances to establish peace and prosperity.

In the early 1860s, when many Dakota people sought refuge in the north, they were led by Chief Whitecap, Chief Standing Buffalo and Chief Little Crow. Chief Whitecap established his community along the South Saskatchewan River, and — you may find this amazing — went on to co-found the city of Saskatoon, my city.

Most of the bands are located in Manitoba and Saskatchewan. The Whitecap Dakota band is on a reserve about 30 kilometres south of Saskatoon. It is a small First Nation with a population of 692. It has a small parcel of reserve land, much smaller than other treaty nations in Saskatchewan. It's near the South Saskatchewan River. It's not on good land, and for more than a century the Whitecap Dakota struggled.

Let me speak a bit about its history, in particular dating to 1991, more recently, when Chief Darcy Bear became chief. The nation had an unemployment rate of 50%, its social and health services for its people were in tatters and the band's finances were abysmal. Chief Bear told me recently that when he became chief, he was attending university and was in business school. As a student, he had a small amount of money in his bank account. By comparison, the band's bank account had nothing and, in fact, it was overdrawn. He was, in a way, richer than his whole First Nation.

Where is the Whitecap Dakota Nation now? The band has developed services for its people in education, social services and health. It has established a range of business enterprises and it has an almost nonexistent unemployment rate. Among their best-known businesses and enterprises are a First Nations casino — the most spectacular and successful in Saskatchewan — a world-class golf resort and an adjacent hotel resort. When it opened, the Dakota Dunes Golf Links was selected the best new golf course in Canada. The Professional Golfer's Association Tour Canada, or PGA, stops there every July.

The nation's wise land management, a range of economic development initiatives and efforts to build a tax base for their own-source revenues is exceptional.

The Whitecap Dakota Nation is well known across Canada for this remarkable socio-economic development and the various successes of its business ventures and partnerships, many with the private sector and with the Province of Saskatchewan.

Though the reserve is small and the population, as I said, is only 692 people, its enterprises generate millions annually in own-source revenue for their community. This prosperity extends beyond Whitecap Dakota's reserve and has significant benefits for neighbouring local businesses and the city of Saskatoon. For example, the on-reserve businesses employ as many non-First Nations people from off-reserve as there are citizens of the Whitecap reserve in total. About 650 non-members are employed at Whitecap; Whitecap is an economic engine for my city. In short, Whitecap is a strong, thriving community and has a long history of self-governance.

The Crown promised assistance and protection following their participation in the War of 1812. How did that work out?

• (1700)

Well, that promise was broken. Talk about breaking promises early. The war occurred in 1812, and promises were broken in the negotiations that concluded with the Treaty of Ghent in 1815 — three years later. These are the negotiations that ended the War of 1812.

The Dakota were not welcomed by the Crown as allies. Instead, they were permitted to stay in Canada but branded as "American-Indian refugees" in the decades that followed. When the Crown began entering into the numbered treaties with First Nations in Western Canada in the late 1860s, the Dakota were purposefully excluded from the numbered treaties.

As a result of unfair policy decisions made over a century ago, the Dakota have been denied formal recognition as Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982 — denied recognition as Aboriginal peoples until, hopefully, Thursday of this week. In every way but one, the Dakota nations have been treated as any other First Nation, Your Honour, and, generally speaking, the treatment has not been favourable. They were subjected to the Indian Act, residential schools, the Sixties Scoop, the pass system, the theft of their children, the reserve system and various other laws and policies that have failed Indigenous people and Canada writ large. The Dakota have shared in this experience and, at the same time, do not even have a constitutional foothold the way that other Indigenous communities have. They continue to exist today as "American-Indian refugees," present in Canada at the pleasure of the Crown.

The Whitecap Dakota self-government treaty we're talking about today in Bill C-51 will change all of that. It will reinforce the Dakota spirit of alliance, as was recognized way back when. What does the Whitecap Dakota Nation think of this bill? It is acknowledged to be the next step toward the First Nation's vision of self-determination. The treaty is a product of 12 years of negotiations. Senator Arnot was an early proponent of this, and I hope he will speak about it himself in his remarks. It was approved by Whitecap Dakota membership through a community approval campaign that was aligned with their customary decision-making processes with 92% support in the fall. When, finally, the membership voted on this governance treaty, the vote was 100% in favour. Sounds fairly positive to me: strong community support.

What does Bill C-51 do? The bill does two things: First, it recognizes Whitecap Dakota as a First Nation pursuant to section 35 of the Constitution. This changes their status from refugees to an Aboriginal people recognized under section 35, correcting more than a century of injustice. Second, it removes Dakota Whitecap from the oversight of most aspects of the Indian Act and recognizes a range of governmental authorities for Dakota Whitecap in the self-government treaty. As we know, many federal laws and policies, including the Indian Act, have constrained First Nations governance.

First, the Indian Act imposed a colonial form of governance on Dakota Whitecap, and so many other First Nations, with limited forms of local administration. For decades, the Dakota Whitecap have been working to leave the Indian Act. They had a series of initiatives from 1989 to 2012 and have removed themselves, as if percentages matter, from about 35% of the Indian Act's control over Whitecap Dakota — steps toward reclaiming self-governance.

To replace this very large Indian Act framework in this treaty and self-government agreement, the governance treaty provides that the Government of Canada will recognize the First Nation and give it jurisdiction over core governance; membership; language and culture; lands management; emergencies; public order; peace and safety; taxation; environment; resource management; agriculture; public works and infrastructure; local traffic and transportation; wills and estates; education; health; licensing, regulation and operation of businesses; economic development; alcohol, gaming and intoxicants; landlord and

tenant matters; and the administration and enforcement of Whitecap Dakota laws. It's a pretty spectacular range of governmental authority.

I want to say a word or two about taxation, and here I will leave my prepared remarks, if I may.

One of the great constraints of the Indian Act and the Canadian relationship with First Nations, in my view, is that we have not moved to models like own-source revenues and the building of financially accountable governments. We have relied too much on transfers from Ottawa.

We need to build the models of government that communities need and want. One of the keys to that is building a taxation regime that a government can administer itself. From my briefs with government officials over the past few days, I understand the Department of Finance has been working to negotiate a complementary real property tax agreement and tax treatment agreement setting out the scope of Whitecap Dakota's tax jurisdiction on reserve lands.

The department highlighted that Whitecap Dakota have proven successful with innovative taxation tools and powers and that these complementary agreements yet to come will provide the community with added taxation powers to advance this interest. In fact, the real property tax agreement set out in this legislation is the first agreement of its kind in the country.

Senators, this is good legislation. It puts decision-making power back in the hands of Indigenous governments to make their own choices about how to deliver programs and services to their own communities. The bill also, I should say parenthetically, renames the self-governing entity the Whitecap Dakota Nation. They lost their name when they left the Indian Act, and they needed a new one. This is the one the community wanted, and it is a good one.

This bill is a major step to revive self-governance and self-determination for the Whitecap Dakota people who have contributed to our country for a very long time, and that contribution has not been well recognized. It is also an important step for reconciliation, moving past colonialism and paternalism, toward legislation grounded in equality and respect.

Honourable senators, I encourage you to join me in taking this next step.

Thank you, *pidamayado*.

**Hon. Mary Jane McCallum:** Would Senator Cotter take a question?

**Senator Cotter:** I certainly would.

**Senator McCallum:** Dispossession of land was the most devastating action against First Nations.

In the key elements of bill, the Whitecap Dakota government would have jurisdiction over the following areas: core governance, lands and resources, regulations and programs. All of this has to do with land.

Under lands and resources, it says they would have jurisdiction over lands and natural resources management. We passed the Building a Green Prairie Economy Act before Christmas where, as the sponsor, you said the province has jurisdiction or owns the natural resources. Which one is it? Who will own the natural resources? Will it be the Whitecap Dakota government or the province?

**Senator Cotter:** Thank you. I didn't hear the first part of the question, Senator McCallum. I will do my best to answer the part about land.

The land focus here is on-reserve land, which would be under the full control, in terms of resource development, of the Whitecap Dakota. There are issues that you are aware of. Whitecap Dakota feel that they received an infinitesimally small set-aside of land when the people of the nation came to Canada, and they have a land-claim agreement.

In Saskatchewan, many of those land-claim agreements have been addressed. The Treaty Land Entitlement framework agreement made significant amounts of money available to First Nations after the government shorted them on what they were entitled to a century or so ago.

• (1710)

I can't say for sure that it will happen in this case, but it is not unusual for First Nations to be provided with financial resources in order to purchase land — that makes it become reserve land. If they buy land that includes subsurface resources, for example, they come to own those. That has happened across Saskatchewan and, I suspect, in some other provinces as well. I hope that's helpful.

**Senator McCallum:** You are aware, then, that all of Saskatchewan is covered by treaty. It is all unceded territory, so why is it under provincial jurisdiction?

**Senator Cotter:** All of the territory is covered by treaty, but most of the lands that are not reserves could be described as traditional territories. You are asking a question that is about provincial jurisdiction, but the view taken — as a result of the Natural Resources Transfer Agreement in the 1930s — was to transfer what Ottawa asserted it owned as federal lands into provincial lands.

The land that is governed by reserves is governed by First Nations. The lands that are traditional territories are subject to a more contentious set of authorities.

**Hon. Yonah Martin (Deputy Leader of the Opposition):** Senator Cotter, thank you for your speech. I enjoyed the historic piece on the journey of the Whitecap Dakota Nation.

Honourable senators, I rise today to speak to Bill C-51, An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate and to make consequential amendments to other Acts.

On Tuesday, May 2, 2023, the Whitecap Dakota Nation signed a self-government treaty recognizing them as a section 35 rights holder in Canada. Those negotiations began in 2009 under the former Harper government. The agreement was co-developed in consultation with the Whitecap Dakota First Nation, and affirms their inherent right to self-government under the Constitution Act, 1982. The treaty is the first of its kind in Saskatchewan.

The Whitecap Dakota First Nation was an ally of the British Crown, as explained by Senator Cotter, and, through historical oversights, they were never given that proper recognition. This legislation aims to correct the oversights from past governments, and to provide the Whitecap Dakota First Nation with its own self-government treaty.

This legislation has been in negotiations for 13 long years, and has been a joint effort between the Whitecap Dakota First Nation; Conservative Minister Chuck Strahl and Conservative Minister John Duncan; and Liberal Minister Carolyn Bennett and Liberal Minister Marc Miller.

I am pleased that it was expedited through the other place, and I hope that we can accomplish the same here in the Senate.

The bill recognizes that the Whitecap Dakota First Nation has jurisdiction and law-making powers on their reserve lands over governance, land, natural resources, membership, cultural matters, language revitalization and preservation, education, financial management and accountability, health and social services. The treaty is seen as an important opportunity for the Whitecap Dakota First Nation to move out from under the Indian Act.

The bill does several important things: It recognizes the Whitecap Dakota First Nation as Aboriginal peoples with full section 35 and section 25 constitutional rights. It constitutionally protects their inherent right to self-government as set out in the treaty. It strengthens their position to treat with Canada in the future on lands and titles. It removes the First Nation from the Indian Act. And it ensures that the Whitecap Dakota First Nation can still access the First Nations Fiscal Management Act.

The Whitecap Dakota First Nation fully supports the bill, with Chief Darcy Bear stating:

> I am incredibly proud of our community as we make history together to better the lives of generations to come. Our Governance Treaty with Canada affirms our place as Dakota peoples alongside all other Aboriginal Peoples in Canada with constitutional protections. It also establishes a Whitecap Dakota government with the tools and status to continue to build our nation and contribute to Saskatchewan and Canada as whole.

The entire community was part of the process; a Whitecap advisory committee of elders, youth, women and community members helped to shape the agreement, and ensure the process protected First Nation perspectives, culture and customs. As a result, 92% of Whitecap members voted to approve the treaty, which affirms the First Nation's inherent right to self-government.

When asked about the importance of finally being recognized as a section 35 rights holder in Canada, as well as what that means for his community, Councillor Dwayne Eagle said to the House of Commons Standing Committee on Indigenous and Northern Affairs:

> I'll get a little personal. Sometimes when there's a dispute with other First Nations, they say something like, "go back to where you came from." We're from Canada. That's our land and territory. Once they recognize us as Aboriginal peoples of Canada —
>
> That's one of the things that we talked about with our community. They want that. They want to make sure that's included in the agreement. It's pretty important for us.

Honourable senators, I have kept my comments brief in recognition of the importance to pass this bill as quickly as possible. The recognition inherent in Bill C-51 is important to Whitecap Dakota First Nation members and elders. It protects their self-government treaty, and from here we can move forward and build on reconciliation efforts with the community.

As Fraser Tolmie, MP for Moose Jaw—Lake Centre—Lanigan in Saskatchewan, said to the House of Commons Standing Committee on Indigenous and Northern Affairs yesterday:

> . . . one of the frustrating things for me when I go through this history and this recent history is that it seems so simple. This should have been done such a long time ago . . . .

Honourable senators, let us not delay this any further. Conservatives support treaty rights and the process of reconciliation with Canada's Indigenous peoples — and we support Bill C-51.

**Some Hon. Senators:** Hear, hear.

**Hon. David M. Arnot:** Honourable senators, I rise to speak in support of Bill C-51, An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate and to make consequential amendments to other acts.

Colleagues, Bill C-51 represents a full circle moment for me. More than 25 years ago, I was the Treaty Commissioner for Saskatchewan, and I had a mandate to research, document and capture the meaning of the treaties in a modern context in the Province of Saskatchewan.

In January 1999, the minister of the former Department of Indian and Northern Affairs and Northern Development and the chief of the Federation of Sovereign Indigenous Nations, or FSIN, directed me to facilitate discussions between the Dakota and the Lakota on treaty adhesion claims in Saskatchewan.

There are three Dakota First Nations in what is now Saskatchewan — the Standing Buffalo, the Wahpeton and the Whitecap — and there is one Lakota First Nation: Wood Mountain. These First Nations never negotiated treaties, or adhesions, with Canada. It was not, however, for a lack of trying on their part.

Mr. James Morrison, a legal and historical researcher, found that several Dakota chiefs had expressed interest in adhering to the treaties at the time they were made — Treaty 4 in 1874, and Treaty 6 in 1876: According to the minutes of the council with Treaty 4 commissioners, Lieutenant Governor Alexander Morris told the Dakota that they should settle away from the American border. They would be entitled to the same consideration as the Dakota who had been offered reserve lands on the Little Saskatchewan River, which is now in part of Manitoba.

In 1862, Chief Whitecap, came north of the 49th parallel after the Minnesota massacres. However, the Dakota people had been in the territory for centuries before that, and they were able to demonstrate that.

• (1720)

In 2003, I was fortunate to see and hold a centuries-old medal during the discussion at the treaty table. This medal, known as the "Lion and Wolf" medal and called "Mazaska Wanpin" by the Dakota, represents the forging of the relationship with the Crown.

This medal was on display at the Office of the Treaty Commissioner for some time. If you looked at the obverse side of the medal, you could see that it was well worn and you could tell that it was proudly worn by Dakota chiefs for some 200 years.

On August 17, 1778, in Montreal, 11 Dakota chiefs received "Lion and Wolf" medals from the British general Frederick Haldimand. The lion symbolized the British Crown, and the wolf symbolized the American government nipping at the heels of the lion. The chiefs were given the medals because they were essential in the British campaigns in Illinois and Kentucky during the American Revolution.

The Dakota also received seven "Lion and Wolf" medals during the War of 1812, most likely in June of 1812 at Chief Wabasha's village. Dakota warriors played an integral role in the British capture of Michilimackinac and the siege of the American Fort Meigs during that war.

A much more unique and compelling history of the bond between the Crown and the Dakota people was offered during discussions at the treaty table in Saskatchewan.

I wrote a report recommending that the Dakota people be allowed to adhere to Treaty 4 and Treaty 6, respectively. I also recommended that, in the alternative, Canada enter into treaty discussions with the Dakota people because the Government of Canada could choose to enter into treaty with whomever they want to, and that should happen in a modern context. Most importantly, it would be the right thing to do.

Despite the goodwill and good faith of the parties to the discussion, and despite the hours of interest-based discussions that took place, the process — which I was part of — was ultimately not successful. However, I believe that those original efforts laid the groundwork for the bill we are considering today. The comprehensive self-government negotiations, which began anew in 2009, were built on the relationships that were forged a decade earlier at the treaty discussions in Saskatchewan.

An understanding, appreciation and acceptance of the oral history, as well as the historical record, bring us here today. There is much evidence that the Dakota people had been in the territory for centuries. Historical records tell us that even in the absence of treaty signing or adhesion in the latter half of the 1800s, promises were made to the Dakota people.

Dr. Sarah Carter, professor of history at the University of Alberta, detailed the meeting with Treaty Commissioner and Lieutenant-Governor Alexander Morris, on September 16, 1874:

> [Chief] White Cap began by saying that "he does not know what to do as he heard the country is going to be sold and wants advice on how to live. He puts his hand in the governor's to show he shakes hands with the Queen —
>
> — Queen Victoria —
>
> — His ancestors used to do the same." Morris said that we don't want all your friends [from the United States] to come over . . . [However] who have been here a number of years it is different. He stated he had the ability to give each family 80 acres of land.

Colleagues, the first statement in the preamble of Bill C-51 clarifies the importance of history as we look to the future. It states:

> Whereas the Whitecap Dakota Nation and the Government of Canada recognize distinctive historical relationships between certain Dakota communities and the Crown based on, at various times, treaties or alliances of peace and friendship . . . .

With an understanding of the past, and as we reflect on the needs of the present — as the drafters of Bill C-51 have done — this act requires us to look to the future of the Whitecap Dakota First Nation, a future largely free from the constraints of the ndian Act, founded on the principle of the inherent right to self-government and based on a government-to-government relationship.

We are all aware that the Whitecap Dakota First Nation signed their self-government treaty with Canada on May 2, 2023. This treaty confirms Whitecap Dakota First Nation's jurisdiction on their reserve lands over governance, natural resources, membership, financial management and accountability, health, language and culture promotion and preservation, and education. Affirming their section 35 constitutional rights as Aboriginal peoples signifies a historic shift in Canada's position on the Dakota and enables ongoing reconciliation.

Bill C-51 and this governance treaty have been a long time coming for the Whitecap Dakota peoples, their community and leaders — by one estimate, nearly 140 years.

Colleagues, I wish to acknowledge the leadership, guidance and determination of Chief Darcy Bear. Chief Bear is an extraordinary leader, relationship builder and entrepreneur. I have had the good fortune to get to know him and work with him over the course of the last 30 years. He has been notably successful in many areas, including housing on the reserve, the creation of a casino and hotel, and the establishment of a world-class golf course, as has been mentioned.

I also want to acknowledge the contributions of two long-time councillors, Mr. Frank Royal and Mr. Dwayne Eagle.

I am grateful to the elders who help guide Chief Bear and his community. They were also involved in the processes in which I took part.

I am deeply indebted to Elder Melvina Eagle and the late Elder Mel Littlecrow — two elders who freely provided their knowledge, wisdom and guidance to the parties and to me those many years ago. Their knowledge is fundamental to this bill, to the relationships that have been forged and to the reconciliation that this treaty represents, which is encompassed in this bill.

Colleagues, the Whitecap Dakota First Nation people have always had high expectations for their community and for themselves. Bill C-51 acknowledges their rightful place within the Canadian state. I believe this legislation is in Canada's best interest, and I ask you to join me in supporting this bill, which rights a historical wrong and represents a modern-day example of reconciliation. Thank you.

[*Translation*]

**Hon. Renée Dupuis:** Would Senator Arnot accept a question?

[*English*]

**Senator Arnot:** Yes.

[*Translation*]

**Senator Dupuis:** Thank you, Senator Arnot. Could you clarify who owns the reserve lands on which the First Nation plans to set up its self-government?

[*English*]

**Senator Arnot:** In my opinion, the Whitecap Dakota people will own those lands.

[*Translation*]

**Senator Dupuis:** Could I draw the attention of the committee to this question? Perhaps it could provide an answer to that question in its report on this study.

**Hon. Michèle Audette:** Under the Indian Act, women who marry non-Indians were expelled. I understand that, according to the document, the Canadian Charter of Rights and Freedoms will apply, but can you tell us whether Indigenous women of this nation, who are not recognized in Bills C-31, C-3 and S-3, have been reinstated, or not at all?

[*English*]

**Senator Arnot:** My answer to that is that the Whitecap Dakota First Nation will have control over their membership. They will make the determination themselves and not be constrained by any of the rules under the Indian Act. It is up to them. They will have self-determination in their self-government agreement. That is my interpretation of what this means.

• (1730)

**Senator Audette:** It means that what happened in the past is a question that I should ask to the witnesses when they come to the Indigenous Peoples Committee. Thank you.

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

**Hon. Senators:** Question.

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

**Hon. Senators:** Agreed.

(Motion agreed to and bill read second time.)

(Pursuant to the order adopted earlier this day, the bill is deemed referred to the Standing Senate Committee on Indigenous Peoples.)

[*Translation*]

## BUDGET IMPLEMENTATION BILL, 2023, NO. 1

### THIRD READING—DEBATE

**Hon. Tony Loffreda** moved third reading of Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023.

He said: Honourable senators, it is with pleasure that I rise to speak at third reading of Bill C-47, budget implementation act, 2023, No. 1. I'm particularly pleased to rise to discuss a bill that wasn't amended in committee.

Budget 2023 comes at an important time for our country. The bill that accompanies the government's latest budget contains important measures that will help entrepreneurs, workers, students and families.

Some of those many measures are the Canada Growth Fund and the new Canada innovation corporation. These two entities will help Canada meet its net-zero emissions goals. They should also be able to help to accelerate and increase investment in Canada, which will drive domestic economic growth and create jobs.

[*English*]

Colleagues, you can all breathe a sigh of relief. I will not speak for 45 minutes today, although I'm tempted to because I feel Bill C-47 is such a good piece of legislation.

In my second reading speech, you may recall that I provided a detailed account of half of the measures in the bill, so I don't feel the need to rehash everything today. I thank Senator Marshall for her comprehensive speech, too. Like it was for me, I know it was difficult for her to condense everything she wanted to say into 45 minutes. I'm always impressed with her detailed analysis of the government's budgetary measures. We are lucky to have her on our National Finance Committee, for sure.

Thank you also to Senator Colin Deacon for raising some concerns regarding division 39 of the bill that deals with the Canada Elections Act. I would second his call to action that the political parties in our country, with their large databases of information on their members and supporters, need to start adhering to strong international norms in terms of privacy policies.

Today, I will not discuss the content of Bill C-47 specifically. I did that in detail in my second reading speech. Rather, I will do three things. First, I will provide a more detailed answer to the question raised by Senator Wallin at second reading on the Air Travellers Security Charge. Then, I will discuss the four observations of our National Finance Committee on Bill C-47. As usual, great work has been done by our committee, and I think it is important that we bring out the observations and work of all of the committees that have helped to build Bill C-47. Finally, I will wrap things up with a few words of thanks.

As you may recall, Senator Wallin asked about the rate increase to the Air Travellers Security Charge, or ATSC. The government is proposing to increase the rates by 32.85% in May 2024, which would, on average, increase the cost of a domestic return trip by about $5. Senator Wallin wanted to know about how and where the money generated from this measure will be used. As you know, air travel security expenses include CATSA operations, but also include the contracting of RCMP officers on selected flights.

When Minister Alghabra appeared before our Committee on Transport and Communications, Senator Harder asked him if 100% of the fees generated by this increase will be dedicated to CATSA, and the minister said, "Yes." The minister added:

> CATSA has not seen an increase in its fees in 13 years. The last time we increased those fees was 2010. Again, during the pandemic, we saw some of the vulnerabilities and some of the capacity issues and technologies that they need to improve upon. So this was a reminder to us as a government and a country that we need to modernize CATSA. That is the purpose of this new proposal.

I hope this answers Senator Wallin's question.

The second item I want to highlight are the observations our National Finance Committee included when we adopted the bill last week. I thank my colleagues on the committee for their insightful contributions and for proposing the following four observations.

First, the committee urges the government to undertake a comprehensive review of how the tax system can be updated in order to help lift some Canadians out of poverty. The Income Tax Act is over 3,400 pages. It's overly complicated, and our committee believes a thorough overhaul of the tax system is long overdue. We need to find ways of promoting fax fairness, as well as substantive equality and accessibility.

Second, as you may recall from my second reading speech, much was said about the GST/HST treatment of payment card clearing services and the application of a retroactive tax. Allow me to read, verbatim, our observation:

> Members of the National Finance Committee expressed reservations about certain provisions of sections 114 to 116 of Bill C-47 which would make the GST/HST applicable retroactively to payment card clearing services even though the Federal Court of Appeal had clearly ruled in January 2021 that these services are financial in nature and therefore exempt from GST/HST. According to the testimonies heard, this would also constitute a certain inconsistency with the international practices in force in countries where a value-added tax like the GST/HST is in place.
>
> In the eyes of the committee members, the 26-month delay observed by the federal Department of Finance in reacting to a decision by the Federal Court of Appeal is not only unacceptable but also constitutes a dangerous precedent according to the Canadian Bar Association.

Third, and as stipulated by the Committee on Transport and Communications, the provisions on the extension of interswitching also raised some questions among the members of the National Finance Committee. As we wrote:

> The Committee has reservations about the interconnection extension provided for in section 22 of Part 4 of Bill C-47, considering, among other things, that these measures had already been put in place in 2014 and were subsequently eliminated because they were deemed inadequate.

Personally, I accept that the government is implementing this new pilot, which is in response to the National Supply Chain Task Force's 2022 final report. Although railways are not supportive of this measure, many other industries are calling for its implementation. It will allow the government to gather data to assess the value of extending interswitching on a permanent basis.

Finally, our committee's last observation is one I addressed in my second reading speech. Senator Marshall raised similar concerns in her remarks. Our committee ". . . expresses its concern about the continued use of Omnibus Bills." It feels that:

> . . . many sections . . . are unrelated to the fiscal policy of the Government, such as the amendments to the *Criminal Code* and the *Canada Elections Act*.

As I said a few weeks ago, there are many legislative changes in Bill C-47 that could have, and probably should have, been introduced with their own stand-alone pieces of legislation. Senators will likely agree with our committee ". . . that insufficient time was provided to the Senate to thoroughly study the Bill, and to determine its impact." I am also preoccupied with the swift manner in which we must always deal with budget implementation acts, or BIAs. Although it has become part of parliamentary convention, it still does not make it right.

However, despite these very legitimate concerns, Canadians can feel confident in the work of our committees. Including the clause-by-clause consideration of the bill, our committees held 40 meetings in total, and there have been 210 unique committee witness appearances. We heard from cabinet ministers, dozens of government officials and a long list of relevant stakeholders.

Would we have appreciated more time to study the bill? Of course; there is never enough time. Could we have questioned more witnesses and obtained more testimony? Most certainly, but we did our work despite tight deadlines. There's no doubt about it.

This brings me to my final comments.

Sponsoring a budget implementation act through the Senate is a big undertaking. I want to thank Senator Gold's office and the Deputy Prime Minister's office for all their assistance. They have been instrumental in helping me navigate the legislative process, and provide the support and appropriate information to senators and their staff when needed and in a timely manner. Thank you.

• (1740)

I want to thank all the staff at the National Finance Committee and all those behind the cameras that make our committee run like clockwork. A special thank you to Ms. Aubé, our clerk, and her assistant, as well as our two analysts. Once again, thank you to all the committee members — those on national finance and all the other committees — who did great work on Bill C-47, which I strongly support.

Once more, I want to acknowledge the work of our eight Senate standing committees that supported the National Finance Committee in pre-studying Bill C-47. Your reports were very helpful, and I know we all appreciated your work.

I want to take this opportunity to thank all my colleagues for their insight, comments, and interventions, for supporting me in my role as sponsor of Bill C-47 and I wish you all a pleasant and restful summer. Hopefully, this will be if not my last intervention, one of my last, but we never know in this chamber. So we're ready when it happens, but hopefully it's one of my last.

Before we adjourn, I would urge all my honourable colleagues to support the passage of Bill C-47 not because the government wants us to, but because it's a good bill with great measures that many stakeholders are calling for. Thank you, *meegwetch*.

[*Translation*]

**Hon. Clément Gignac:** Colleagues, I rise today to share my thoughts on Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023. Given that we are at third reading stage and about to rise for the summer, I will keep all of my thoughts on the state of the Canadian economy to myself. I also want to thank Senator Loffreda for his restraint because it means I will be able to give my speech before dinner. We will wait until we come back in the fall to talk about the economy.

As our colleague, Senator Mockler, already mentioned, the Standing Senate Committee on National Finance, of which I'm also a member, held eight meetings and devoted nearly 14 hours to an in-depth study of the bill. We heard from some 74 witnesses. That may seem like a lot, but this is a huge bill with dozens of regulatory tax initiatives, some of which, quite frankly, should have been introduced in separate bills. In fact, an observation to that effect was made by the committee, which finds the practice to be unacceptable.

[*English*]

Before addressing my discomfort with the retroactive tax measure contained in this budget, let me share with you my concern about the rapid increase in the size of the federal government in recent years.

[*Translation*]

The best way to illustrate this rapid expansion of the federal government is to point out the actual number of employees in the public service. From 2016 to 2023, the public service workforce grew from 340,000 to nearly 425,000 full-time equivalent, or FTE, employees. That means it grew by 25%. Even more troubling is the increase in payroll, which has risen by 70% over the past seven years. As Parliamentary Budget Officer Yves Giroux pointed out, this dramatic rise can be attributed to the growing number of programs brought in by the federal government in recent years.

Another way to illustrate how the federal government has grown in size is to express budgetary expenditures as a percentage of gross domestic product, or GDP. As an economist, I find this method even more relevant because it offers the advantage of taking into account population growth and inflation, and it facilitates comparison over time. If we exclude debt servicing, budget spending can be grouped into three broad categories. The first is transfers to individuals, such as Old Age Security, or OAS, and EI. The second is transfers to the provinces, and the third is government operating expenditures, also known as direct program expenses.

In my opinion, the category we ought to pay the closest attention to when referring to the increase in the size of government is the last one, operating expenditures. Indeed, these expenditures increased from 6.6% of GDP in 2016 to 8.1% of GDP in the last fiscal year. However, during this same period, transfers to individuals and to the provinces remained relatively stable, about 4.1% to 3.1% of GDP respectively.

[*English*]

It should also be noted that the national defence sector included in the federal government's operating expenditures is not the cause of the increase of the size of the federal government since 2016 since the ratio of military expenditures to GDP has remained relatively flat for seven years, around 1.3% — a figure still very far from the official 2% target recommended by the North Atlantic Treaty Organization, or NATO.

On this subject, despite a full chapter in the budget dedicated to Canada's leadership in the world, I was very surprised to find out last spring, after examining the budget document, that the national defence budget will still be around 1.3% of GDP five years from now. As a member of the National Security, Defence and Veterans Affairs Committee, I find this a little awkward, especially with the new geopolitical context since the invasion of Ukraine by Russia.

Honourable senators, I am also very disappointed with the absence of a budgetary anchor in the 2023 budget. Contrary to what was observed after the 2008-09 financial crisis, the current government has not committed yet to return to a balanced budget or shared any precise calendar to return to the previous federal debt-to-GDP ratio seen before the pandemic. More disturbing is the fact that the federal debt-to-GDP ratio will increase from 42.4% to 43.5% over the next year despite an economy running at full capacity. The government is content to reiterate its intention to reduce the debt-to-GDP ratio over the medium-term.

[*Translation*]

According to several experts, the federal government's lack of fiscal restraint has helped stimulate economic activity, making the Bank of Canada's job of controlling inflation more difficult. Honourable senators, the government and certain other observers have argued that Canada has the lowest ratio of net public debt to GDP of all G7 countries and a triple-A credit rating. That's right.

However, senators should know that this top position is largely due to the significant financial assets held by our public sector pension plans. Here in the Senate, we keep hearing over and over that their operations, including those in tax havens and in certain autocratic nations, are at arm's-length from the government.

Colleagues, I don't want to linger on these two concepts of net public debt and gross public debt, because that might eat up the rest of my speaking time. I'm sure that, with Senator Marshall and Senator Loffreda, I'll have the great pleasure of doing so in the fall.

However, everyone agrees that one notion illustrates the weight of public debt, that of debt servicing, which has gone from 7 cents per dollar of recorded revenue before the pandemic to roughly 12 cents for this year. What's more, this rate will likely go up since it's based on the assumption that the interest rate will be lowered below the 3% mark as early as next year. Fortunately, we're far from the 38-cent rate we saw in the mid-1990s, a time when Canada was at risk of being placed under the stewardship of the International Monetary Fund, the IMF. However, that shouldn't be an excuse for being complacent or nonchalant.

Honourable colleagues, I'm also very skeptical about the fiscal projections set out in Budget 2023 regarding a gradual reduction in the deficit and the size of government. First, unlike the good governance practices put in place by former Liberal finance minister, the Right Honourable Paul Martin, and maintained almost every year by the various Liberal and Conservative finance ministers who followed since the mid-1990s, this budget doesn't set out a contingency reserve. Simply put, if the Bay Street economists, who all agree, are wrong about the direction of the Canadian economy and the country goes into a recession, then the budget deficit for the current year will go up because there's no emergency cushion or contingency reserve.

Second, Budget 2022 created expectations by announcing the launch of a comprehensive strategic policy review to assess program effectiveness and identify opportunities to save, but, oddly enough, there's no further mention of that in Budget 2023. As the Parliamentary Budget Officer said, and I quote:

> Aside from proposing to reduce spending on consulting, other professional services and travel, Budget 2023 does not identify opportunities to save and reallocate resources "to adapt government programs and operations to a new post-pandemic reality" . . . .

[*English*]

In the absence of any exhaustive review of programs by the Treasury Board, I have some doubts about the projected spending reduction five years from now to get back to the 2016 level of 6.6% of GDP. I believe that this figure will be revised upwards with the implementation of the future dental insurance and drug insurance programs, not to mention the pressure to be exerted by the Pentagon and our other NATO allies to finally commit to the 2% of GDP target for military spending.

• (1750)

[*Translation*]

Colleagues, as a final point, I'd like to talk about the tax measure — which is retroactive to boot — that really upset me. Senator Loffreda has already spoken about it. It has to do with certain provisions in clauses 114 to 116 of Bill C-47 that make payment card clearing services subject to GST retroactively. This is a technical measure that hasn't won much sympathy from the public, because it affects financial institutions.

As pointed out by the Canadian Bankers Association, the Desjardins Group and even the Canadian Bar Association, the legitimacy of the government's decision to introduce new tax rules in the budget isn't in dispute. Rather, it's the retroactive nature of this measure that's problematic.

This saga began in 2015, when CIBC decided to formally challenge, before the Tax Court of Canada, CRA's interpretation that these clearing services were administrative, not financial, in nature. Accordingly, these services would be subject to the GST. Based on the testimony we heard, the fact that the federal government lost in Federal Court in January 2021, didn't appeal to the Supreme Court and came back 26 months later with a retroactive measure is unprecedented. This sets a dangerous precedent, as mentioned by the bill's sponsor, Senator Loffreda, whose perseverance and leadership I commend.

Honourable senators, despite everything I told you, despite my reservations and my disappointments, I will support Bill C-47. My discomfort with the last fiscal measure I talked about earlier was the subject of an observation presented by the committee, and not an amendment.

Let's clarify, for new senators, that bills related to the budget, unlike other bills, are rarely amended.

The last time an amendment to a budgetary bill was accepted was in 2016. My colleague Senator Harder must remember, since one of the measures clearly interfered in Quebec's jurisdiction with respect to the Consumer Protection Act. It was the government representative in the Senate who proposed this amendment on the suggestion of the Minister of Finance following pressure from Senator Pratte and the Government of Quebec. It is possible, but rather rare, for amendments to be made to budget implementation bills.

In conclusion, honourable senators, I'd like to take this opportunity to put both current and future governments on notice: My support for budget bills is not unconditional. During the pandemic, I supported this government's emergency measures to keep the country from sinking into a recession because I felt it was the right thing to do.

However, I believe that the authorities would be well advised to adopt fiscal anchors soon to avoid fuelling inflation before they implement expensive new social programs like pharmacare and dental care, especially since these are under provincial jurisdiction.

As a former politician whose face once appeared on campaign signs, I'm well aware that we, as senators, don't have the same legitimacy as representatives in the other chamber. I accept that. I don't miss it. However, the Senate is an institution of sober second thought that is now made up mostly of independent senators from all walks of life. Their qualifications are the envy of the boards of directors of many large Canadian corporations.

Moreover, we now have a minority government holding on to power thanks to an alliance with a third party. This situation demands vigilance on our part because many initiatives didn't necessarily get the support of a majority of Canadians in the last election. In fact, some weren't even on the governing party's platform.

This independence from a political party and this freedom of speech prompted several of us to apply to join the Senate to work together in the interest of Canadians. In my humble opinion, the current or future government and Canadians in general should be delighted with senators' intellectual independence, even if it sometimes causes delays because of in-depth studies by committees and proposed amendments. After having heard the wise comments made by Senator Shugart in this chamber, I recognize that we're definitely in uncharted waters. I'm counting on him and all of you, esteemed colleagues, to guide me in carrying out this role of second sober thought, while believing that there's added value in my sitting in the Senate and commenting on Bill C-47.

Thank you for your attention.

[*English*]

**Hon. Kim Pate:** Honourable colleagues, I rise today on behalf of Senator Galvez to deliver her remarks on Bill C-47, the 2023 budget implementation act.

> This omnibus bill seeks to implement some, but not all, provisions set forth in the 2023 budget, as well as provisions that were not specified in Budget 2023.
>
> The bill has four parts covering a vast number of both economic and non-economic topics over a total of 408 pages. As is usual, specific sections have been referred to some committees for study. In the limited time I have available, I will focus on three sections with environmental impact that my team and I believe are of utmost importance to bring to the public's attention.
>
> The first pertains to the crucial issue of remediating the Faro Mine in Yukon, a site that has posed environmental problems to Indigenous and non-Indigenous communities for decades. Second, I will touch upon issues relating to the Canada Growth Fund. Lastly, I will discuss the significance of making changes to the mandate of the Office of the Superintendent of Financial Institutions, or OSFI, using a budget bill.
>
> Bill C-47 authorizes the remediation of the Faro Mine in Yukon with an estimated cost of $1 billion plus $166 million for the first 10 years of long-term operation and maintenance. This is a huge budget and a very long duration, but most important is the message it sends; it enforces the belief that the principle of "polluter pays" can't be avoided because the government will assume remediation costs. We need to have stronger legislation to prevent similar situations in the future. For example, it is now that, with respect to oil sands tailings ponds, we need to clearly establish how much the remediation will cost, what treatment will be used, when they will be remediated and who will pay.
>
> The Faro Mine, an area the size of Victoria, B.C., holds a significant place in Canada's mining history. It was once one of the largest lead and zinc mines in the world, operating from 1969 to 1998. The environmental consequences of the mine's operations became apparent after its abandonment in 1998, when it left behind 70 million tonnes of tailings and 320 million tonnes of waste rock. The vast amounts of

tailings, waste rock and water, with high concentrations of heavy metals, pose severe risks to the surrounding ecosystem and communities.

The mine site contains various hazardous substances, including heavy metals such as lead, zinc and cadmium, which can contaminate water sources and soil. Exposure to these contaminants can have severe health consequences, particularly for local Indigenous communities who rely on the land and water for their traditional practices and sustenance. Prolonged exposure has led to various health problems, including neurological disorders, developmental issues in children, respiratory ailments and an increased risk of certain types of cancers.

The remediation efforts aim to mitigate contamination and restore the affected ecosystems. Importantly, the goal is not necessarily to remove the contamination but to cover it and push that responsibility of environmental stewardship onto future generations.

An official of the Government of Yukon told the committee that ". . . active management at the Faro Mine . . . will be measured in hundreds of years."

• (1800)

**The Hon. the Speaker pro tempore:** I am sorry, Senator Pate, but you will have 11 minutes upon our return.

Honourable senators, it is now six o'clock. Pursuant to rule 3-3(1), I am obliged to leave the chair until eight o'clock, unless it is your wish, honourable senators, not to see the clock.

Is it agreed not to see the clock?

**Some Hon. Senators:** No.

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker pro tempore:** Honourable senators, leave is not granted. Therefore, the sitting is suspended, and I will leave the chair until 8 p.m.

(The sitting of the Senate was suspended.)

(The sitting of the Senate was resumed.)

• (2000)

## THIRD READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Loffreda, seconded by the Honourable Senator Gold, P.C., for the third reading of Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023.

**Hon. Kim Pate:** I will continue.

The Faro Mine is just one example of a larger issue that extends beyond its specific case. Across Canada, we have witnessed the troubling pattern of resource development companies declaring bankruptcy and leaving behind contaminated sites, burdening taxpayers with the responsibility of remediation. This issue is not limited to the Faro Mine; it resonates with the challenges faced in provinces like Alberta and Saskatchewan, where the proliferation of orphaned oil and gas wells has become a significant concern. These orphaned wells, left behind by both financially and morally bankrupt companies, pose environmental risks and financial liabilities that ultimately fall on public funds. It is crucial that we address this systemic issue, reinforcing the principle of the "polluter pays" to hold companies accountable for the environmental consequences of their operations and to protect taxpayers from bearing the brunt of remediation costs.

The Faro Mine is situated on traditional lands of the Kaska and Selkirk First Nations, and the remediation project must prioritize the concerns and aspirations of these communities. Meaningful consultation and collaboration with Indigenous peoples are paramount to ensure that their rights, interests and cultural heritage are respected throughout the remediation process.

It is wrong to force the development of the economy of a town or region to a "decontamination economy." This thinking is captive to the broken window fallacy and entraps communities in the boom-bust cycle that has already ensnared the economies of some entire provinces that are now desperately seeking to diversify. While the decontamination economy can provide short-term economic benefits, we must also explore sustainable and diversified economic opportunities for the long-term well-being of these communities.

One striking realization is that while we grapple with the consequences of past mining activities, new mining projects adjacent to the old Faro Mine are already under way. This serves as a stark reminder of the urgent need to reinforce the "polluter pays" principle and hold resource development companies accountable for the environmental impact of their operations.

Another key proposal within Bill C-47 is the Canada Growth Fund. With a budget of $15 billion, the fund is designed to attract private capital and stimulate investment in low-carbon projects, technologies, businesses and supply chains.

However, there are concerns regarding the lack of clarity surrounding the criteria used to allocate funds to specific projects. It is important for the government to provide transparent guidelines and selection criteria to ensure that investments made through the fund align with Canada's environmental objectives and climate commitments so that it can contribute effectively to the transition to a clean economy.

The decision to entrust the management of the fund's assets to the Public Sector Pension Investment Board, or PSP Investments, has also raised questions among members of the National Finance Committee concerning the independence of PSP or, in my case, the absence of their commitment to achieve net-zero emissions by 2050. PSP Investments continues to invest in fossil fuel companies without a clear decarbonization plan, undermining the purpose of the fund. Additionally, the presence of a corporate director of Imperial Oil on the PSP board of directors reveals appearance and potential conflict of interest, according to corporate governance experts.

In light of these issues, it is crucial for the government to address these concerns, provide clarity on investment criteria, manage potential conflicts of interest, establish performance indicators and ensure transparent and accountable governance. This will not only enhance public confidence in the fund but also strengthen its ability to attract private capital and drive the growth of Canada's clean economy.

The third and final issue I would like to raise is the expansion of OSFI's mandate to determine whether financial institutions have adequate policies and procedures to protect themselves against threats to their integrity and security.

Omnibus bills, which encompass both fiscal and non-fiscal items, have been employed as a strategic tactic by governments to pass significant legislation. Bill C-47 is no exception, featuring a wide array of provisions including amendments to the Criminal Code and electoral laws.

The expansion of OSFI's mandate is worth noting because such a significant amendment would typically be the subject of a separate bill, allowing for public consultation and stakeholder input. OSFI's mandate, as it stands, has garnered widespread agreement among experts in sustainable finance that it needs revision to incorporate considerations of environmental, sustainability and social factors, including climate risk. It is essential to align the oversight of our financial sector with emerging risks identified by reputable international organizations like the Organisation for Economic Co-operation and Development, or OECD. While the bill alludes to these risks, including the mention of one specific risk, it leaves room for ambiguity that could potentially pose challenges if legally contested. Furthermore, the absence of an associated budget allocation for this aspect raises further concerns.

Colleagues, climate change represents a significant threat to the integrity and security of our financial sector. CSIS has warned us that climate change could undermine global critical infrastructure, threaten health and safety, create new scarcity and spark global competition and that it might open the door to regional or international conflicts. As we strive to transition to a low-carbon economy and mitigate the risks associated with climate change, it is essential that our financial institutions are well equipped to assess and manage these risks.

The amendments proposed in Bill C-47 acknowledge the importance of protecting financial institutions from various threats, and it is only logical that climate change, with its far-reaching implications, is considered among those threats.

I encourage you to vote in favour of passing Bill C-47 because Canadians need stability and increased trust in our democratic system, but it is up to us parliamentarians to scrutinize and reflect in efficient ways on the expenditure of taxpayer funds.

Thank you. *Meegwetch*.

[*Translation*]

**Hon. Pierrette Ringuette:** Honourable senators, I rise today to speak to a specific section of Bill C-47, the budget implementation bill.

In this bill, division 34 of part 4 amends section 347 of the Criminal Code in order to lower to 35% the criminal rate of interest, in accordance with generally accepted actuarial practices and principles.

As many of you know, this is an issue I have been endeavouring to fix for a very long time, nearly 10 years.

**Hon. Senators:** Hear, hear.

**Senator Ringuette:** The battle is not over.

I introduced my bill several times, but each time it died on the Order Paper when an election was called or Parliament was prorogued. I introduced it again in this Parliament. It is entitled Bill S-239, An Act to amend the Criminal Code (criminal interest rate), and it is currently at second reading.

When I saw Bill C-47, I thought that maybe I should withdraw my bill. However, after giving it some thought, I decided that I wouldn't take any chances. I will leave it until it is a done deal, from beginning to end.

Whereas Bill C-47 sets the limit at 35%, my bill would tie the criminal interest rate to the Bank of Canada's overnight rate plus 20%.

In Quebec, the interest rate limit is currently 35%, the lowest rate in Canada. That rate is similar to what is currently set out in Bill C-47.

I tied my rate to the overnight rate so that it could be adjusted based on the evolving economic situation. The past year has shown how relevant this proposal is, because the rate went from 0.25% in January 2022 to 4.75% last week. Let's not forget that more hikes could be coming.

The rate proposed in my bill would therefore be 24.75% as of today, about 10 points lower than the rate in Bill C-47.

Based on what I heard from many Canadians and what I've learned from my own research over the years, instalment loans are being granted at unreasonable, even abusive, rates that can be as high as 39%, 45% and even 59.9%, just within the 60% limit. I have seen public services charge late fees of 42%.

• (2010)

One area where I wanted to see lower rates was credit card interest rates, but this rate will not affect that.

Most credit cards have interest rates below 20%, but there are some, especially store cards like Home Depot, whose interest rates are around 30%. I think these rates are too high, and I would like to see them come down, but my bill targets the very high rates charged by instalment loan providers and public services, such as Bell and Telus, as anyone who checks their bill can see.

I should also point out that the government has made progress in another area I'm concerned about, namely interchange fees. There have been bills about this. Processing fees in Canada are among the highest in the world. They drive prices up, and we all pay for that. The government recently announced agreements with Visa and Mastercard to reduce these fees to, on average, 0.95%, which is a considerable improvement over a few years ago, when the rates were at 3%.

This limit is not as low as that imposed elsewhere, for example in the European Union, which set a limit of 0.3% on transaction fees more than 10 years ago.

I therefore thank the government for continuing to keep its budgetary promises in this regard.

I would also like to point out that the budget indicates — and the Minister of Finance also said it — that there would be new consultations to determine whether the interest rate should be lowered further. I am very pleased about this, because I believe that the rate should be lower than 35% and perhaps equal to the overnight rate plus 20%. Imagine that.

I will be closely following these consultations, and I will continue to apply pressure to ensure the rate is lowered.

[*English*]

Consumer debt is a serious and growing problem in Canada. This problem is of particular concern with respect to inflation and the rising cost of living. According to TransUnion, consumer debt from all sources has increased by 5.6% year over year to a new high of $2.32 trillion. That's the debt load that Canadians have.

Instalment loans are down 5.76%, but Canadians still hold an average of $20,846 in debt — and these are often at the highest rates of interest. It is worrying that debt continues to climb, and measures like this — to help Canadians deal with their debt load — will not do a lot to improve or perhaps reverse this trend.

This bill also addresses a related issue that I have been watching closely: In 2006, Parliament made a major mistake. We carved out a section of the Criminal Code as long as the provinces would make the regulation. Here is the regulation that they made: The criminal interest rate was amended to exclude short-term loans under $1,500, otherwise known as payday loans. I believe that this was a mistake, and this budget has taken steps to recognize this error. The bill grants the Governor-in-Council the power to set rates by regulations for these loans.

The current rates in the provinces are as high as $17 per $100; you might think that $17 per $100 isn't that much. As stated in the budget, the government aims to set the limit at $14, in line with the lowest rate which is in Newfoundland right now. Colleagues, $14 in interest for every $100 in loans for a two-week period is an annualized rate of 365% in Newfoundland. With the exception of Quebec, all of the other provinces' and territories' rate is 395%. And then we ask the following: Why are Canadians in so much debt? This is highway robbery. I'm going to hold the government to account to ensure they keep their word, do the proper consultations, take that out of the provinces' hands and bring it back under the Criminal Code, as it should have been.

I would say that the whole section, excluding payday loans, should be removed; I support this action being taken. I hope that future consultations lead the government to remove this, carve it out entirely from the Criminal Code and bring these loans under the same limit as the current 35% — hopefully it's 20% in the future.

After years of pushing this issue, listening to Canadians and talking to stakeholders and government officials, it brings me joy — I am honest — to see that there's finally hope, as well as some action being taken with the promise of further action in the fall to lower these rates. This will be a great benefit to the most financially vulnerable, who often find themselves in this position through no fault of their own. And these measures cost zero dollars for the federal government.

I continue to believe that an even lower rate is a reasonable goal, but I do appreciate the government taking this action in the budget. It is long overdue, and it will help Canadians in these uncertain economic times.

I support this action by the government, and, even though it is not what I would have preferred, it is a step in the right direction. That being said, I urge the government to keep an eye on this and be open to considering further changes, as this is an issue that affects the well-being of all Canadians, which also affects us all. Thank you, once again, for listening to my speech on criminal interest rates.

**Some Hon. Senators:** Hear, hear.

**Hon. Paula Simons:** *Tansi*.

Honourable senators, I rise today to speak to Bill C-47, or the budget implementation act — specifically Division 23 of Part 4, which deals with the air passenger bill of rights.

For days now, I've had this famous quote from Shakespeare's *Richard III* stuck in my head, and I'll stick it in your heads now:

> Now is the winter of our discontent
>
> Made glorious summer by this son of York,
>
> And all the clouds that loured upon our house
>
> In the deep bosom of the ocean buried.

I think it's because this has been a winter of deep discontent for Canadian air travellers. But then, it was also an autumn of discontent, and a spring of discontent; alas, I see little evidence that the clouds are breaking or that the glorious sunny summer of air travel is upon us.

When the worst of the COVID-19 pandemic shut down airports and radically reduced air passenger demand, airlines and airports took much of their service off-line. Starting Canada's air system back up again after that shutdown has not been easy. There are labour shortages at every pinch point: We don't have enough air traffic controllers. We don't have enough pilots. We don't have enough security screeners. We don't have enough ground crews, flight crews, baggage handlers or passenger service agents.

Airport and airline executives keep telling us that things are getting better. But we — senators — who travel so much, know intimately that the air travel experience is still nothing like it was before the pandemic struck. Flights are chronically delayed or cancelled. That's if you're lucky enough to find a flight since many smaller centres — and by "small," I'm also including cities as "non-small" as Ottawa and Edmonton — have lost many of their direct flights, compelling flyers to change planes in already overwhelmed Toronto and Montreal airports. And when flights are delayed or cancelled and connections are missed, it often feels as if the airlines have simply abandoned frustrated and frightened passengers to their fates.

• (2020)

Senators, who fly so often, are often lucky enough to rack up enough travel points to qualify for a chance to call a special "elite" customer service line to get help. But most passengers have no such access to assistance. When your flight home for Christmas gets cancelled and all you get when you call is a recorded announcement telling you someone will get back to you in three days, no wonder overwhelmed passengers often lash out, taking out their fury on cabin crews and gate agents who themselves have neither the answers nor the authority to fix passenger problems.

Everybody understands that sometimes unexpected things happen. I think Canadians could deal with such crises relatively calmly if they got timely answers and real support from airlines when things went wrong. Airlines can't control the weather. They can, however, control the number of passenger agents and customer service agents to help stressed and distressed people when things go awry. To blame everything on the weather in a country where we have rather a lot of weather is insufficient.

It's a terrible system to navigate for people who don't fly often, like grandmothers going to visit grandchildren, students returning home from campus, families going on vacation or people who need to be on time for a wedding or a funeral. The most heart-rending scene I witnessed this winter was a woman who was desperate to get from Edmonton to Cape Breton, where her mother was on her death bed. The scream of anguish she let out when she realized our flight was extremely delayed and she would miss her connection to Sydney and not get home in time to see her mother one last time — that scream haunts me still.

But it's also a terrible system for frequent flyers who need to travel for work and can't reliably get to their meetings or conferences. It's not just an inconvenience we can shrug off; it's a drag on our economy and a blight on our international reputation.

I have anecdotes. You have anecdotes. Heck, complaining about our most recent travel stories is one of the things that bonds senators from all corners of this chamber. But you don't need to rely on anecdotes to understand the scale and scope of the problem. During our hearings on Bill C-47, our Transport and Communications Committee heard that publicly available, monthly on-time performance data shows that Toronto Pearson, Montréal-Trudeau and Vancouver International consistently underperform compared to comparable U.S. airports like Seattle, Detroit and Chicago O'Hare. About 1.5 to 2 flights out of every 10 at comparable U.S. airports are delayed. In Canada, we have closer to 4 flights out of every 10 delayed at Canada's three largest airports. That means that if we're lucky, 60% of flights depart on time.

We do have an air passenger bill of rights, which allows passengers to complain if they don't get satisfaction from the airlines in resolving their issues. Our committee heard from witnesses that people flying in Canada filed some 40,000 official formal complaints about their treatment by the airlines last year alone. But the complaint system is totally broken. As of last month, there was a backlog of 46,000 complaints, which would suggest that virtually none of the 40,000 people who complained last year has had their issue resolved — unsurprising since, on

average, it takes the Canadian Transportation Agency a full 18 months to resolve a complaint. A backlog of 46,000 complaints is bureaucracy at its most absurd — consumer justice delayed and denied. If we're honest, we have to recognize that those 46,000 complaints are just the tip of the iceberg. Most Canadians who've had terrible travel misadventures don't even bother to file a complaint, either because they don't know the complaint system exists or because, with cool-eyed cynicism — no, make that world-weary realism — they recognize the reality that filing a complaint in a system like this accomplishes next to nothing.

Therefore, I was more than a little thrilled to learn that the government was updating the bill of rights in an effort to give aggrieved passengers a little more support and recourse.

In her testimony before our committee, France Pégeot, Chair and Chief Executive Officer of the Canadian Transportation Agency, attempted to explain how this proposed new system would be better than the ineffective and inefficient system we now "enjoy."

Under the status quo, passenger entitlements depend on how a flight disruption is categorized: within airline control, within airline control but required for safety or outside airline control. This has made it difficult for passengers to understand their rights, and it makes the regulations difficult to enforce.

Bill C-47 would eliminate the three categories of flight disruptions. Under the new and simplified framework, air carriers would be required to compensate passengers unless there were exceptional situations. What's an exceptional situation? We don't know yet. The Canadian Transportation Agency will define the term later in regulations. But what we do know is that as soon at the provisions of Bill C-47 come into force, the burden of proof will be shifted. Right now, passengers must prove that they have a right to compensation. Under the new rules, the onus would flip. Airlines will now have to prove that they don't have to pay compensation.

Bill C-47 would also attempt to deal with the overwhelming number of complaints by streamlining the claim resolution process. Under the proposed new rules, each complaint would need to be resolved in 120 days — a far cry from the current 18-month timeline. On top of that, the Canadian Transportation Agency would also be allowed to recover the cost of air passenger complaints from the airlines, which should encourage airlines to address customer complaints directly with travellers as soon as possible.

The bill would also allow passengers to file claims not just for lost luggage but for luggage that disappears and goes on holiday for days or weeks or months. Companies that don't comply could now be fined up to $250,000, a significant increase from the previous maximum of $25,000.

It sounds great. But there are serious questions about whether the changes will accomplish much at all.

During our committee hearings, for example, I asked Madame Pégeot about what these new rules would mean for people who get trapped on airplanes on the tarmac for hours and hours, whether because of bad weather, a shortage of available gates and ground crew or some combination. I myself got stuck on the Montreal runway for almost seven hours last June, exactly a year ago, and I know lots of you, my Senate colleagues, have had similar experiences.

Here was my question to Madame Pégeot:

> Oftentimes in Canada a flight is delayed because of weather conditions, for which the airline takes no responsibility. But it has been the experience of many Canadians that the airlines provide them with nothing — no food, no water, no arrangement of accommodation — if they are forced to overnight some place. In the worst instances, people have been trapped on planes for 7, 8, 12 or 18 hours, unable to access food, water or working toilets.
>
> Can you tell us what will be the rights of passengers in conditions where they have been denied humanitarian access to food, water and working toilets for up to 15, 18 hours?

Here was her answer:

> Under the current regulatory framework, when the situation is outside the power of the company, like you said, a weather event, there is no obligation for the airline to provide assistance, whether it be food or accommodation for passengers. The current legislation before Parliament does not address that issue. But we note it, and that's certainly something that we can look into, as we would have to — assuming the legislation goes through — review the regulation.

That seems a rather large issue to have left out.

The bill also does not seem to have any provisions to let people off the plane to get a breath of air or use a working toilet after they have been stuck waiting for a gate and ground crew for hours and hours.

Gábor Lukács is the President of Air Passenger Rights, Canada's independent, non-profit organization of volunteers devoted to empowering travellers. Before our committee, Mr. Lukács testified that Bill C-47 perpetuates existing loopholes and will create a new one. In spite of the government promises to the contrary, he told us, ". . . the bill retains the "required for safety reasons" excuse for airlines to avoid paying passengers compensation." He called this a ". . . made-in-Canada loophole . . ." that has ". . . unnecessarily and disproportionately complicated adjudication of disputes between passengers and airlines. . . ." Since, he noted, all the evidence for the reasons for a flight disruption is in the airlines' exclusive control, passengers are at a great disadvantage in enforcing their rights to

compensation. And while he and his group are concerned about the complaint backlogs currently, he also argued that this new system of fast-tracking complaints could backfire and strip some passengers of their full rights to adjudication.

In the meantime, we've heard plenty of anger from those in the air travel sector who have told us in hearings and meetings that these changes will raise prices, reduce the number of flights on offer and be a particularly heavy burden on small, regional airlines that serve our smaller regional airports. They also complain that they shouldn't be held responsible for delays that are a knock-on effect caused by NAV CANADA's air travel control systems or other hold-ups at the airport.

I wish I could tell you definitively if I think this new complaints system will work. Unfortunately, by wrapping all these changes inside this Turducken of an omnibus bill, the government severely limited the work our committee could do to unpack the details. I understand the urgency to get these changes enacted, if not for this summer, then at least in time for the fall and winter travel season. Packing them into the budget is undoubtedly efficient in the short term. I dearly wish, though, that these changes had come to us in a stand-alone bill and that we'd had more time to study them properly.

Disciplining the airlines for bad customer service — emotionally satisfying though that feels — is not enough to fix our snarled-up air travel system. We need to address the shortage of highly skilled pilots by finding a way to make expensive training programs more accessible and affordable. We need to reinvest in our airport infrastructure to make our airports more comfortable and user-friendly for passengers and airlines alike. We need to ensure that NAV CANADA, the private company that provides air traffic control services, has the necessary capacity to do its job. We need to encourage competition so that passengers are not held hostage to one or two airlines. We also need to come up with integrated, coherent emergency plans to deal with the extreme weather events to ensure that our airports and airlines are able to deal with the new realities of climate change.

• (2030)

COVID is not the only thing that has turned our world upside-down. We need to get ready to build an air service system robust and flexible enough to serve our magnificent, complicated, sprawling country with both convenience and compassion.

Thank you, *hiy hiy*.

**Hon. Pat Duncan:** Honourable senators, I rise to speak to third reading of Bill C-47.

As senators may know, Part 4, Division 20 of the bill contains amendments to the Yukon Act. The specific section amending the Yukon Act is related to the management and remediation efforts of the abandoned Faro Mine. It is notable that on the one hundred and twenty-fifth anniversary of the Yukon Act receiving Royal Assent in the Senate of Canada on June 13, 1898, we are discussing an amendment to the same act. This is proof that the Yukon Act — which is considered by Yukoners as our constitution — is a living, dynamic document, reflective of our times and the growth and development of the territory.

Although I will be discussing the constitutional development of the Yukon Act in greater detail once I initiate my inquiry on it, I do think it is appropriate at this time to provide a brief refresher on the constitutional significance of the Yukon Act and amendments to it, such as I'm discussing today.

The act was discussed 125 years ago. It provided for the appointment by Canada of a commissioner and an appointed territorial council to oversee the administration of the Yukon. The population of the region had exploded due to the Klondike Gold Rush, and Ottawa felt a need to set up a local administration to ensure peace, order and good government, and the regulation of liquor. The appointed council and commissioner acted on behalf of, and under the control of, Ottawa.

Moving ahead to 1979, then-Minister of Indian Affairs and Northern Development Jake Epp authored a letter to the commissioner of the Yukon Territory advising her that she was to take the direction of the duly elected territorial council and:

> request the Territorial Government Leader that he shall constitute and appoint a body known as the Cabinet or the Executive Council which will have as its members those elected representatives of the Territorial Council who are designated from time to time by the Government Leader who enjoys the confidence of the Council.

The letter included that the commissioner was no longer to be part of the council. In other words, in plain language, the first territorial cabinet was formed from a duly, democratically elected legislative assembly, a legislative assembly elected on party lines. Today, the Yukon remains the only territory with party politics.

The Epp letter was issued at the time when former Yukon senator the Honourable Ione Christensen was the commissioner.

Honourable senators, as significant as that event was, members of the National Finance Committee with whom I have had the honour to work will appreciate the importance of following the money. As important as the Epp letter was, although not enshrined in the Yukon Act, more significant to my mind, as a former finance minister, was an event in 1985: the establishment of the Territorial Formula Financing arrangement.

Previously, the commissioner would go to the Minister of Indian Affairs and Northern Development every year, cap in hand, and say, "Please, may we have enough money to run the territory for you?" With the advent of the Territorial Formula Financing arrangement, we became partners at the table on a similar footing to the provinces with their equalization payments.

Although the Yukon now had control over our finances, it was the Devolution Transfer Agreement, or DTA, wherein we truly became the masters of our own house. The Devolution Transfer Agreement gave the territory land- and resource-management responsibilities. The initial agreement was signed in 2001 by myself on behalf of the Yukon, and its implementation took place in 2003.

The DTA negotiations included many discussions about the remediation of the Faro Mine site. Once the largest open pit lead-zinc mine in the world, the Faro Mine officially opened in

1969. After nearly 30 years of operations under different ownership and having formed more than 30% of the Yukon economy, the last owners declared bankruptcy and abandoned the mine in 1998.

Seventy million tonnes of tailings and 320 million tonnes of waste rock with the potential to leach metals and acid into the surrounding land and water were left behind. The amounts spent by Canada on the remediation of the Faro Mine site clearly show the significance of the cleanup. Last fiscal year, Canada spent over $86 million on remediation, and care and maintenance costs. For the previous two years, $92 million and $103 million were spent, respectively.

Referencing back to the formula financing arrangement, clearly with a territorial budget of $535.5 million in 2001, the Yukon could not carry the financial burden of the Faro Mine cleanup. Yet the DTA was supposed to make us masters of our own house, which leads us to the changes in Bill C-47.

The DTA identified the Faro Mine as a shared responsibility between the federal and territorial governments. Canada was financially responsible for care and maintenance and for the development and implementation of longer-term remediation plans, while the Yukon was responsible for carrying out the activities.

The arrangement soon led to major challenges in the Yukon government's ability to influence the direction, scope, scheduling and budget of the project. The net result for contractors working in the field was delayed payments and a very frustrating process. In 2020, a transitional agreement was entered into for the federal government to carry out interim care and maintenance under delegated authority from the Yukon Minister of the Environment.

This amendment to the Yukon Act would remove the need for that delegation. It would put the governance of the project, financial responsibility for the remediation and statutory power to manage risks at the site in a single federal minister.

Honourable senators, providing this background is not the complete picture. I would like to outline for you the essential role of Yukon First Nations. While June 13 is the one hundred and twenty-fifth anniversary of the Yukon Act, honourable senators have heard me speak earlier this year to the fiftieth anniversary of *Together Today for our Children Tomorrow*.

In 1993, the Yukon and Canada signed the Umbrella Final Agreement, or UFA. Since then, 11 of 14 Yukon First Nations have concluded self-government and land claim agreements. The UFA included chapter 12, which provided for the Yukon Environmental and Socio-economic Assessment Act, or YESAA, a development assessment process that is referenced in Bill C-69, which received Royal Assent in June 2019.

It is important to include the development of YESAA as part of the UFA and the Canada-Yukon-Council of Yukon First Nations agreement, and is appropriate in discussing such items as the remediation of the Faro Mine site. YESAA provides for the Yukon Environmental and Socio-economic Assessment Board, a regime that evaluates all development projects — everything from highway right-of-ways to mines to ensure First Nations rights, the environment and the social and economic development of the territory are appropriately recognized and reviewed before development proceeds.

I will reference the timeline for the Faro Mine Remediation Project. In 2003, an oversight committee formed involving key representatives from the Government of Yukon, Indigenous and Northern Affairs Canada, Kaska and Selkirk First Nations to help develop the remediation plan. From 2002 to 2004, technical consultation sessions were held to gather input from First Nation communities. In 2006-08, the remediation options were refined following a series of consultation sessions involving the Kaska, Selkirk First Nation, the Town of Faro, governments and regulatory agencies and scrutiny by independent experts. In 2009, the remediation option was selected and signed off by Canada, the Yukon government, the Kaska and the Selkirk First Nations.

• (2040)

These are examples of how the government-to-government-to-government relationships work today with YESAA and on such important items as the Faro Mine Remediation Project.

Part of the Faro Mine Remediation Project is the Rose Creek diversion project. Rose Creek is located in the traditional territory of the Ross River Dena Council and the Liard First Nation. Ross River Dena Council and Liard First Nations are also two First Nations who have not completed land claim agreements with Yukon and Canada.

Stephen Mead, the Assistant Deputy Minister of Mineral Resources and Geoscience Services at the Yukon government told the Standing Senate Committee on Energy, the Environment and Natural Resources about the success story of this particular part of the remediation project.

Fifteen years ago he was standing on the face of a dam when the water was coming out of a rock where it hadn't before. There was a creek or a river that the tailings had been put in through the decades of mining. The river, at a very early part of the system, had been diverted around the tailings. The river is called Rose Creek. New contamination appeared from waste rock that hadn't been in place before. There was a need to do some large-scale upgrades, changes and improvements to make sure the clean water flowing across the site was kept clean.

The Ross River Dena Council, to whom the area has been the main hunting, medicinal gathering and culturally important area for millennia, is very engaged in this project and has been for many years. They play a vital role in guiding the decisions made on that site. The river and Rose Creek itself have particular significance. Mr. Mead said:

> There was a part of that creek where, as long as oral history can track, people gathered to collect water to make special medicinal tea. That was literally in that Rose Creek component of the system. It was very important for that work to get done in that regard.

The reason for this discussion and this amendment to the Yukon Act in Bill C-47 is because of work such as what has occurred at the Rose Creek diversion.

The people who are most affected by this amendment are those on the ground involved in the cleanup. This amendment ensures timely payment, as the contractors are dealing with one administration rather than several.

Senators, I would be remiss in offering sober second thought to the provisions in the Yukon Act if I did not also offer the opinion that the amendment is interpreted by some as a potential step backward from our devolution agreement and changes to the Yukon Act by the House of Commons voted in this place in 2002.

I appreciate that concern raised and I vividly recall the back and forth regarding the responsibility for the remediation required at the Faro Mine site. Should we, the Yukon, take it on when Canada permitted the project and, quite honestly, reaped the benefits in millions of tax dollars and mineral royalties during the mine's operation between 1969 and 1998, and who really should be responsible for that cleanup?

On the other hand, having worked so hard to be masters of our own house in settling land claims and negotiating a devolution transfer agreement, should we really be giving Canada back control over the land in this change to the Yukon Act? As I said, some see it as a step backward in the political evolution of the territory.

This amendment allows for Canada to uphold its responsibility and allow for the federal funding to flow smoothly, with less administrative burden for both governments. And it is on this specific site only.

Indigenous rights are maintained, as all works at the Faro site have to go through the YESAA regime, which ensures the role of First Nations and First Nation governments. I would also add that the Yukon Act section 56(1) ensures that the Yukon government must be consulted before any amendments to the act are introduced. Just as we are reminded of the strength of the voice of a duly elected House of Commons, I am reminded that the Yukon government, in supporting this amendment, are the duly elected representatives of the population who have requested this amendment to their constitution.

Colleagues, I appreciate the time you have given me tonight to explain the background behind this amendment to the Yukon Act. I thank you for your time and attention. I would express to you my support for the amendment to the Yukon Act in Part 4, Division 20 of Bill C-47. I, along with the duly elected Yukon government and our member in the other place support this initiative and commend it to the chamber. *Gùnálchîsh*, *mahsi'cho*, thank you.

(On motion of Senator Martin, debate adjourned.)

## PUBLIC SECTOR INTEGRITY COMMISSIONER

MOTION TO APPROVE APPOINTMENT ADOPTED

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate),** pursuant to notice of June 8, 2023, moved:

> That, in accordance with subsection 39(1) of the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46), the Senate approve the appointment of Ms. Harriet Solloway as Public Sector Integrity Commissioner.

**Hon. Donald Neil Plett (Leader of the Opposition):** Honourable senators, I want to take just a few minutes to go back to Ms. Harriet Solloway's appearance at Committee of the Whole and explain our position on her appointment as the Public Sector Integrity Commissioner. During her appearance, I was quite concerned by some of Ms. Solloway's answers.

First of all, the process for her appointment does not appear to have been at all a serious one. She admitted that she had a 10-minute conversation with the President of the Treasury Board, Minister Mona Fortier. The minister called her from the airport, and Ms. Solloway is under the impression that the minister was focusing on her ability to speak French. This is not a serious effort at due diligence, colleagues.

Secondly, from the answers that we got, it does not look like Ms. Solloway was tested on her vision of the work of the commission, the challenges it poses or how she is equipped to meet those challenges. With this government's track record for appointments, one would expect Minister Fortier to do more than a 10-minute call from the airport to test the level of conversational French of a candidate. However, I must say, having had this window into the hiring process of the Trudeau government, we can now certainly understand better why some of their previous appointments have fared so poorly.

But in addition, colleagues, to the clear shortcomings in the process, I was also alarmed to hear that Ms. Solloway will be faced with a steep learning curve on this job. I have no doubt in her personal and professional qualities, but from the evidence we received from her, one has to wonder how it was decided that she would be the best candidate for this position. She admitted not knowing the Canadian public sector, having been outside the country since 1996.

She was questioned by several senators, including myself, on her plans for the commission. While we cannot expect candidates to come up with a detailed plan when they appear in front of Parliament, we can expect to be given a general understanding of

how the candidate will approach their role. Otherwise, I am not sure how we can assess whether the nominee is well-suited for this position.

Ms. Solloway said it very clearly: She has no general plan for this position and no plan for specific issues raised by senators. And from the answers given to Senator Cardozo, she does not seem to fully understand the role and the functioning of the commission.

• (2050)

Colleagues, we do not feel that we are in a position to stop the appointment of Ms. Solloway, but we felt it was important to put our observations and concerns on the record. For this reason, we will not stand in the way of this appointment, but we will certainly only allow it to go ahead on division.

Thank you.

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

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

**Some Hon. Senators:** Agreed.

**An Hon. Senator:** On division.

(Motion agreed to, on division.)

## BILL TO AMEND THE INTERPRETATION ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

SECOND READING—DEBATE ADJOURNED

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate)** moved second reading of Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts.

She said: Honourable senators, I am pleased to take the floor today to begin second reading of Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts.

The bill proposes, quite simply, to make a single addition to the federal Interpretation Act, which is the law that guides the interpretation of all other federal laws. The Interpretation Act sets out a single uniform standard for reading all acts of Parliament. It includes things like an explanation of what preambles are for and how to apply coming-into-force provisions. If Bill S-13 is adopted, it will also include this:

> Every enactment is to be construed as upholding the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982,* and not as abrogating or derogating from them.

This is what is known as a "non-derogation clause." Currently, several dozen Canadian laws include a clause like this, such as the Fisheries Act, the Firearms Act, the Species at Risk Act and many others.

But some laws have them, and others don't. Over the past 40 years, these clauses have been added to various bills in an ad hoc manner. Often, Indigenous peoples have had to advocate for their inclusion during the parliamentary process, meaning these clauses were often tacked on at committee and are often phrased differently in different acts.

Bill S-13 proposes to remove the non-derogation clause from most laws that currently have one and instead add this provision to the Interpretation Act to create a uniform standard for the interpretation of all federal laws. In other words, if Bill S-13 is adopted, it will be as though every act of Parliament has the same non-derogation clause, ensuring that all federal laws and regulations are interpreted to uphold and not diminish the rights of Indigenous peoples as affirmed by section 35 of the Constitution Act, 1982.

Indigenous organizations have been advocating for this for many years, colleagues. The specific engagement process that led to this bill began in 2020, when officials from the Department of Justice Canada initiated preliminary discussions with certain key partners.

In December 2020, a targeted consultation process was launched. The goal of the early part of this process was to inform Indigenous partners of the initiative, provide opportunities for input and fulfill statutory requirements of the Yukon Act and the Mackenzie Valley Resource Management Act, both of which require consultation before they can be amended.

This targeted process revealed that there was considerable support among Indigenous partners for the proposed amendment to the federal Interpretation Act. In December 2021, the Minister of Justice announced a second phase to undertake broader consultation and cooperation consistent with the United Nations Declaration on the Rights of Indigenous Peoples Act, or UNDRIP Act, passed in 2021.

Meetings were held throughout 2022 to consider options and discuss potential legislative approaches. More than 70 meetings were held with Indigenous peoples and their representative organizations, and more than 45 written submissions were received from Indigenous peoples and their representative organizations. The process respected the distinctions-based approach requested by Indigenous partners. Most meetings were bilateral so that partners could focus directly on what was most important and relevant to them.

The final phase of consultation and cooperation began with the posting of a draft legislative proposal on the Department of Justice Canada website from March 1, 2023, to April 14, 2023. This method of proceeding allowed for further transparency in the consultation and cooperation process.

One of the main points of discussion that arose during consultations was the specific wording of the new provision in the Interpretation Act. In particular, some partners wanted to include the term "Indigenous peoples," while others maintained that there was a need to use the expression "Aboriginal and treaty rights of the Aboriginal peoples of Canada," which is the wording of section 35 of the Constitution Act, 1982.

Ultimately, Bill S-13 reflects a compromise. It refers to ". . . the Aboriginal and treaty rights of Indigenous peoples . . . ." with a clarification that the term "Indigenous peoples" has the same meaning as ". . . aboriginal peoples of Canada. . . " in the Constitution.

Another point of discussion was what to do with existing non-derogation clauses in other legislation. In the end, most Indigenous partners preferred repealing all of the other existing ones to achieve the objective of having one single non-derogation clause applied consistently and uniformly to all federal laws. That is the approach Bill S-13 proposes with three notable exceptions: the Mackenzie Valley Resource Management Act, the shíshálh Nation Self-Government Act and the Kanesatake Interim Land Base Governance Act. In these three cases, the acts directly involve particular First Nations that wanted to keep the non-derogation clause specific to them. Their wishes are being respected.

This approach of having one overarching non-derogation clause in the Interpretation Act and generally repealing the rest is also in keeping with the recommendation of the 2007 report from the Standing Senate Committee on Legal and Constitutional Affairs, entitled, *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights.*

I note that our colleague Senator Jaffer is the one remaining member of that committee still in our chamber today, so this has, obviously, been a long time coming, and I hope this is a satisfying moment for Senator Jaffer, in particular. Colleagues, this should also be a satisfying moment for Indigenous people and all Canadians.

By passing this bill, we promote compliance with the UNDRIP Act, which requires that measures be taken to ensure that the laws of Canada be consistent with the United Nations declaration. We would be eliminating the need for Indigenous peoples to press for a new non-derogation clause each time Parliament considers new legislation potentially affecting their section 35 rights, and we would be underscoring the importance of section 35 rights phrased in both the positive and the negative. With Bill S-13 in place, all laws adopted by the Parliament of Canada will be interpreted so as to uphold Indigenous rights, and no federal law could be interpreted as derogating from them.

Indigenous peoples have been pushing for this ever since section 35 was added to the Canadian Constitution over 40 years ago. Indigenous peoples came to the Senate 16 years ago to make their pitch, and I would just like to take a moment to acknowledge all the chiefs, leaders, Indigenous lawyers and Indigenous scholars who have asked for this change to the Interpretation Act for years. Particularly, I am thinking about the late Harold Cardinal. I would love to have a coffee with him right now to talk about this change and how monumental it is.

For the last three years, Indigenous peoples have been working with the government through extensive and cooperative consultations to finally make this happen. This bill is one more step on the road to reconciliation, and it is a major one, because it affects every existing and future federal law.

As the Standing Senate Committee on Legal and Constitutional Affairs wrote back in 2007:

> . . . non-derogation clauses serve the important purpose of expressing to all Parliament's clear intention that legislation is to be interpreted and implemented consistently with section 35.
>
> . . . we find it preferable, in the interests of upholding the honour of the Crown, to make inclusion of a non-derogation clause in all legislation the default position through the insertion of a provision in the *Interpretation Act* . . . .

That is exactly what this bill proposes to do. Given where we're at in the calendar, the Government Representative Office, or GRO, will work with the Department of Justice to schedule a technical briefing early in the fall. In the meantime, I encourage you to reach out to me or to my office to discuss this bill further, and I hope all honourable senators will support it when we return in September.

*Hiy hiy*.

(On motion of Senator Martin, debate adjourned.)

• (2100)

## BILL TO AMEND CERTAIN ACTS AND TO MAKE CERTAIN CONSEQUENTIAL AMENDMENTS (FIREARMS)

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Yussuff, seconded by the Honourable Senator Boehm, for the second reading of Bill C-21, An Act to amend certain Acts and to make certain consequential amendments (firearms).

**Hon. David Richards:** Honourable senators, I am going to speak to Bill C-21. However, before I start, I want you to know that I have six police officers, one judge and two lawyers in my extended family, so I agree with the rule of law. Except for stealing chocolate milk from the creamery when I was a child, I have kept my nose pretty clean — but I have some problems with this bill. I think it's a bill that targets rural Canadians.

**Senator D. Patterson:** Hear, hear.

**Senator Richards:** And it is done by urban Canadians who don't understand what rural Canadians do, or who they are.

My rifles were used for hunting an age ago. Though I no longer hunt, they are my keepsakes from years gone by. However, they are in the crosshairs of a new and earnest regulation. It is a regulation that hopes to mitigate crime, but it refuses, in many cases, to direct its focus on those who would commit them.

I want to believe that Bill C-21 means well, but it is a bill that is arrogant in assumption, and concocted by many people who have never owned a weapon, have never used one, have never scouted for moose or deer, have never set up a moose stand in the rain or have never waited on a rut mark until dark. These are extremely important abilities and valuable knowledge for any rural Canadian — White, First Nation, French or English.

To depart from my speech for a minute, if you are a rural Canadian and live in the Maritimes, or anywhere in rural Canada, you probably know about running a river, which means that you take a canoe down the river in early spring for fiddleheads. Then, you head down with your rod and fish trout. You wait for the salmon to come in June, and then the grilse follow the salmon. Next, you fish for the big trout later in the summer. By then, you are scouting for moose and setting up your moose stand. Then, in November, when it becomes cool, you are hunting deer. This tradition has gone on for as long as I have been alive, and for centuries before that. This is a tradition that urban Canadians don't understand regarding regulations for guns.

I refuse to say that their intentions are malicious, but perhaps they're ill-conceived. Many who will be exploited by this law — those who will be scrutinized — have done nothing to deserve such scrutiny. I would agree that it's fine if it were to stop the great majority of crime and murder, but I am not convinced that it will. More regulation will seem to do so — and that is what this law not only proposes, but also desires. It fits the pattern of Canadian oversight that is often both rigid and ineffective. More regulation is the new and treasured opioid of the masses.

Why are people writing to me about these laws? Why are they so angry about this bill? It is because they are being lectured, once again, by a government that assumes and presupposes a superior moral nature against certain members of its own citizenry, and acts with uppity condescension toward so many who have done no wrong, suspecting them — without evidence — of things they would not do, while being unable to stop those who will continue to do wrong despite the regulations they continuously and tiresomely propose.

This bill targets only those it feels comfortable in targeting.

**Senator D. Patterson:** Hear, hear.

**Senator Richards:** It has been a long time since we've enjoyed the gratitude of a government for our truckers and common men, as well as gratitude for ordinary Canadians being extraordinarily generous and decent human beings. It has been a very long time. In fact, we are told that we are not allowed to see ourselves as such until we agree to the propositions in many bills before us — to correct who we are to fulfill a mandate set up by governmental people who are often far more gullible than ourselves about whom Canadians actually are.

This bill is actually cowardly in whom it points the finger at and blames, and it still will not solve the problem of violence. I wish it did, but this bill will not stop the gangs. The law, in its own blind way, actually proposes to recruit them.

This new law solicits others and promotes the idea of a red flag snitching program. We are asking for a community of little snitchers. The net will be cast so wide that among the guilty too many innocents will be caught in the web.

Sooner or later, no one will be immune. All of us will be suspect if we raise the ire of the wrong person. This is where the new bill fuses concern and propaganda in order to make gun owners culpable without trial, done in secret by unknown accusers. You had to have belonged to the inner circle of a high school glee club at one time to think this was a good idea.

The right person's guns may be confiscated. But, over time, many innocents will be marked. Yet, nothing like this will stop the trade of illegal handguns, the smuggling in and out of certain reserves and the import of weapons through clandestine means by biker gangs and others. This is where the majority of illegal guns used in crimes are acquired.

Will grandfathering a rifle that I bought when I was a boy of 18 years old, because I can carry eight in the clip, stop someone from illicitly purchasing a semi-automatic handgun on some desperate night in Scarborough, Ontario?

This bill makes thousands guilty by association to a new broad illegality. Our government becomes offended when people decry it, but people have every right to see a glaring absurdity in its regulatory framework that no oversight will correct.

I'm not saying that there should be no laws regarding this; I am not, for one moment, saying that. However, I am saying that these clauses are, for the most part, ineffective. I wish they weren't, but they are. They point out how the government feels about Canadians who they can assume are guilty without trial. There is a bullying trait here — make no mistake.

The two most violent acts in our country in the last three years were done by a venal psychopath obsessed with police cars, who did not have much to do with hunting, as well as another sick, violent man with a bloody knife on a Saskatchewan reserve.

Our government has used the horrendous murders in Nova Scotia and in Uvalde, Texas, as an asset to support their position. In both cases, the unfortunate missteps of the law ordered to protect us played their part as well.

Honourable senators, Canada is very different from the U.S.

An RCMP officer bravely gave her life when she was ambushed because no one gave her the information she needed. She managed to draw her weapon; she managed to fire back. She did the only thing that was left for her to do.

I also believe that a person has the right to a firearm for protection as much as anyone else. If one lives an hour from the nearest RCMP detachment, a gun in the hand is better than a police officer on the phone if someone is intent on harming you or your family. The very human right to self-protection has become vulnerable by laws given to us by people who have security guards and panic buttons.

I am not dismissing the violence in Canada; I grew up with it. I know there has been much damage by violent men. But so much about this law is sophomoric housekeeping, impotent against rage and hate.

I believe that Plato was right when he said that good people do not need laws — the bad will never ever recognize them.

I will end with this: There was a moment in Uvalde, which I saw — I didn't want to see it, but I happened to turn the television on. I saw a little girl seated at her desk — a child's desk — with her pencil in its pencil groove, and with her hands folded neatly and blood on her dress. She was trying to explain to the man about to shoot her that this was wrong, that she wanted to see her mom and that this was a bad thing to do. Her soul was generous and alive, but his damnable soul was dead. I will never forget her — ever — seated at her elementary child's desk, with the blood of one of her classmates on her dress. The police were in the hall with their guns, totally impotent and frozen.

I believe there is not a man or a woman I know — with whom I have hunted and fished — who would not have given their life to protect that little girl. I am sure that the same goes for every man and woman in this chamber — those who support this bill, those who do not. It is true that they would have shot him dead because they would have had to do so. They would have had no other choice in the matter. Like that RCMP officer drawing her gun in Nova Scotia, there was no other way.

That is the difference between good and evil when it comes to guns, and, unfortunately, when it comes to the misdirection of Bill C-21. For these reasons, I will be voting against it.

• (2110)

Thank you very much.

(On motion of Senator Martin, debate adjourned.)

## BUSINESS OF THE SENATE

**Hon. Patti LaBoucane-Benson (Legislative Deputy to the Government Representative in the Senate):** Honourable senators, with leave of the Senate and notwithstanding rule 5-13(2), I move:

That the Senate do now adjourn.

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

**Hon. Senators:** Agreed.

(*At 9:11 p.m., the Senate was continued until tomorrow at 2 p.m.*)

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