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(HANSARD)

Wednesday, June 14, 2017

The Honourable GEORGE J. FUREY
Speaker

CONTENTS

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THE SENATE

Wednesday, June 14, 2017

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

Prayers.

SENATORS' STATEMENTS

WINNIPEG ART GALLERY

INUIT ART EXHIBITION—WASHINGTON, D.C.

Hon. Patricia Bovey: Honourable senators, Canada's Inuit artists are highly esteemed at home and abroad. Since the 1950s their works have been collected widely by individuals, corporations and Canada's public art galleries.

The Winnipeg Art Gallery, the first to focus seriously on developing an Inuit art collection, did so from 1951 under the directorship of Ferdinand Eckhardt. Spurred by the insights, knowledge and many northern travels of George Swinton and Jerry Twomey, the WAG's collection has been greatly enhanced over the decades by donations and contributions from many.

Now the largest and most significant collection of contemporary Inuit art globally, it includes sculpture, prints, drawings, paintings and textiles, and includes every Inuit community. Important ground-breaking scholarly work has been produced by successive WAG Inuit art curators: Jacqueline Fry, Jean Blodgett, Bernadette Driscoll, and since 1986, Darlene Coward Wight.

The WAG has also been working for many years to develop an Inuit art centre. The participation of the Government of Nunavut in this initiative is particularly exciting and important, and the Nunavut government's Inuit art collection is now on loan to the WAG. The gallery is hoping to break ground on this new centre this fall, right behind the gallery itself.

Tomorrow night marks another first, the opening of a special exhibition, "Ningiukulu Teevee: Kinngait Stories," organized by the Winnipeg Art Gallery at our Canadian embassy in Washington. It is the first solo exhibition of any Inuit artist ever held in the U.S.

Teevee's drawings explore the relationship between abstraction and representation. Inspired by patterns in nature and traditional stories, the 28 drawings and photographs document her and contemporary Cape Dorset. In addition to creating art, Teevee has also written a children's book which was shortlisted for the Governor General's Literature Awards, and her art is in a number of major public galleries and museums.

I applaud the Winnipeg Art Gallery and curator Darlene Wight for this project. Of course, my special congratulations and thanks go to artist Ningiukulu Teevee, an artist of whom we should all be very proud. I also thank Dorset Fine Arts for their participation.

This exhibition runs in the Canadian embassy in Washington until October, and I know, honourable colleagues, that any and all of you will be very warmly welcomed.

An important milestone, I am truly sorry I cannot be in Washington for its opening, but they know I am there with them in spirit, as I trust all of you are too.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Alex Fan and Steven Su from the Taipei Economic and Cultural Office in Canada. They are the guests of the Honourable Senator Martin.

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

Hon. Senators: Hear, hear!

CHINESE ECONOMIC COOPERATION ASSOCIATION

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I had the great honour and privilege of travelling with fellow parliamentarians Senator Ataullahjan, MP Ali Ehsassi, MP Jati Sidhu and led by our good captain Senator Thanh Hai Ngo on a fact-finding trip to Taiwan. We were accompanied by our good friend Alex Fan from the Ottawa-based Taiwan Economic and Cultural Office, under the capable leadership of Ambassador Chung-chen Kung, who assisted our delegation from the start to the very end.

We arrived in the beautiful, bustling city of Taipei during the first anniversary of President Tsai Ing-wen's inauguration to celebrate Taiwan's shining example of democracy, strengthen our trade relationship and people-to-people ties.

On our arrival, we were quickly entranced by the Taiwan's natural splendour, its history and its harmonious diversity. We learned about Taiwan's strongly rooted traditions by visiting the National Palace Museum and other such sites, experiencing popular tourist attractions like the Maokong Gondola; Taipei 101, the fourth tallest building in the world; and, of course, by indulging in some of the best Asian cuisine that Taipei has to offer.

I'm certain my colleagues fondly remember visiting the Maestro Wu Steel Company, a world renowned knife manufacturer located on Kinmen Island, where handcrafted knives are made from the remains of a quarter million artillery shells fired by mainland China between 1958 and 1978.

We also had the privilege of meeting with the Vice-President of Taiwan, Chen Chien-jen; the President of the Legislative Yuan, President Chia Chung Hsu; officials of the Bureau of Foreign

Trade, the Ministry of Economic Affairs, the Ministry of Foreign Affairs, Mainland Affairs; legislators of all political stripes, outstanding business leaders, professors and industrious citizens, who share our vision and aim to uphold democratic freedoms, create economic prosperity and opportunities, and deepen our long-standing relationship.

Our delegation received a welcome at a special reception hosted by Mario St-Marie, Executive Director of the Canadian Trade Office where we met Canadians who are working and living in Taiwan with great success; and we were pleased to witness the launch of the Canada 150 media event that week as well.

Honourable senators, we left Taiwan in awe of its beauty and encouraged by its people's unwavering belief in democracy, human rights and the rule of law.

Taiwan has been a good friend to Canada and remains an important partner in a key region where democracy and freedom are frequently threatened.

Thanks to our gracious hosts, the Chinese International Economic Cooperation Association, it was indeed our good fortune to experience Taiwan, a beacon of freedom and stability in East Asia that should continue to be supported and encouraged by Canada and the international community.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Sandy Garossino. She is the guest of the Honourable Senator Duffy.

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

Hon. Senators: Hear, hear!

MICHENER AWARDS 2017

Hon. Michael Duffy: Honourable senators, I rise today to recognize the 2017 Michener Awards, which will be handed out tonight at Rideau Hall. This award, founded in 1970 and named after the then-Governor General, the Right Honourable Roland Michener, recognizes outstanding journalism in the service of the public good.

This year's finalists were: The CBC, the *Toronto Star* and Radio-Canada; the *Globe and Mail*; the *London Free Press*; *La Presse*; the *Toronto Star* and the *National Observer*. It sounds like a list of the usual suspects, but among these finalists there is a new name — the *National Observer*. It is a privately funded online news site, which this month celebrated its second anniversary. And what a ground-breaking two years it has been.

The *National Observer* made history in May 2016 as the first digital-only publication ever to win a National Newspaper Award.

Their nomination for the 2017 Michener Award was the result of a series of stories about the National Energy Board, which, as you know, is holding hearings into the Energy East Pipeline project.

• (1410)

The *National Observer*'s meticulous reporting raised questions about the pattern of cooperation between the NEB and the industry it's supposed to regulate. As a result of their enterprise reporting, the NEB's chief executive and the entire federal hearings panel recused themselves from the process.

At a time when legacy news organizations are seeking government handouts and "dumbing down" coverage in pursuit of "clicks," the *National Observer* stands out. With leaders like Linda Solomon-Wood and Sandy Garossino, who is with us today in the visitors' gallery, the *National Observer* is showing every day that there is a market in Canada for tough but fair reporting.

Congratulations to the *National Observer*.

NEWFOUNDLAND AND LABRADOR

LINGUISTIC UNIQUENESS

Hon. Fabian Manning: Honourable senators, today I'm pleased to present chapter 22 of "Telling Our Story."

Nelson Mandela once said, "If you talk to a man in the language he understands, that goes to his head. If you talk to him in his own language, that goes to his heart."

With that thought in mind and the knowledge that some of you, including my good friend Senator Gold, who, along with his wife, will be visiting our province for the first time this summer, I thought it would be a good idea to enlighten and educate you, my colleagues, on what many say is the unique language of Newfoundland and Labrador.

It is difficult to deliver a full lesson in my three minutes, so for those of you who may be yearning for more knowledge and understanding, please feel free to consult *The Dictionary of Newfoundland and Labrador*. Yes, we have our own dictionary!

Newfoundland and Labrador has a language all its own. Borne from the interaction of the early English, Irish and French settlers, and preserved by isolation, the uncommon speech of our province is a dialect of English that has been deemed one of the most distinct in the world, and these dialects vary from one community to the next.

Though you should be able to understand our accent fairly easily, the odd grammar and alien words and phrases in common use on the island may leave you shaking your heads or staring in blank incomprehension at the speaker.

When you first meet a Newfoundlander and he or she says, "Ow's she cuttin', me old trout?" it means "How are you, my friend?" If you are asked, "Where ya longs to," that means "Where do you come from?" If that is followed by, "Who knit ya," they are politely asking, "Who are your parents?"

A staple phrase is "Yes, b'y." That can mean many things, depending on its intonation. It can mean "Okay" or "No way" or "I don't believe you" or "Is that so, now?" You'll just have to take that one in context.

If you are talking about the weather and you hear, "It's a mausey ole day," that means it's a foggy, wet day — not that we have many days like that in Newfoundland and Labrador. If someone says to you, "I knows you're not stunned," or "You're as stunned as me arse," please don't consider either one of those to be a compliment. They are telling you that in their opinion you are just not that smart or bright.

If you tell them you are politician, they may answer, "Oh me nerves, you got me drove," which means "You are driving me crazy." Or they may refer back to "You're as stunned as me arse."

If you stand proud and tell them that you are a member of Senate of Canada, they may respond with "You lucky shagger; you got her scalded," which means you are a lucky person and you have it really good.

When someone is wishing well to a girl or a woman, they may say, "Take care, me ducky," or "All da best now, me love." And if you are walking out on the wharf in some small outport community and a fellow shouts out to you, "Stay where you is to and I'll come where you's at," that means "Stay where you are and I'll come to where you are."

There are so many I can tell you but my time is limited. The Rock, with its tantalizing landscapes and cool ocean breezes, is breathtaking and invigorating, but it is the people who make this place so special.

We treat "come-from-aways" — that is, anyone who is not a Newfoundlander and Labradorian — with respect and always strive to make everyone feel welcome. There are no strangers in Newfoundland and Labrador; only friends that you have not met yet.

So, at times when we talk too fast or are difficult to understand, remember the words of Nelson Mandela and his reference to speaking from the heart.

I will close with: Best wishes for the future. Or, as we say in Newfoundland and Labrador, "Long may your big jib draw."

[*Translation*]

LINGUISTIC DUALITY

Hon. Claudette Tardif: Honourable senators, on Thursday, June 8, the Interim Commissioner of Official Languages, Ghislaine Saikaley, tabled her annual report. I commend her on tabling a very comprehensive account of the initiatives and challenges that marked 2016-17. Her opening remarks pay tribute to Graham Fraser, the former commissioner of official languages, who for 10 years was a tireless promoter and ardent defender of the Official Languages Act and its underlying values.

In her report, the commissioner states that in a survey conducted in 2016, 82 per cent of respondents supported the aims of the Official Languages Act. This level of endorsement exceeds 80 per cent in every region of Canada and shows unequivocal support for the aims of the Act.

Ms. Saikaley says that several measures taken by the federal government in 2016-17 bode well for new opportunities in official languages.

First, the Commissioner highlights two decisions made by the government in recent months: updating the Official Languages, Communications with and Services to the Public, Regulations, and improving the bilingual capacity of the superior court judiciary. She adds that the reinstatement of the Court Challenges Program announced in February 2017 is a concrete step that will have a positive impact on Canadian's ability to assert their language rights.

However, honourable senators, on reading this report, I seriously wonder about certain issues that deserve the government's immediate attention.

For example, only two out of nine recommendations have been implemented by Parks Canada since the Commissioner's audit in 2012. Field unit interpretation programs and operations are often offered only in the official language of the linguistic majority.

In October 2016, the Commissioner released a report entitled *Early Childhood: Fostering the Vitality of Francophone Minority Communities*, which included a recommendation to include a francophone component in the national framework on early learning and child care. The Commissioner also indicated that the federal government should look at how it can provide optimal early childhood development support to anglophone communities in Quebec.

The report also emphasized the importance of leadership in the public service. The number of admissible complaints filed under section 91 of the act has gone up considerably since 2015. A significant proportion of those complaints involve the linguistic profile required for a supervisory position in regions designated as bilingual for language-of-work purposes.

This report contains a single recommendation. As the 50th anniversary of the Official Languages Act approaches, the Interim Commissioner of Official Languages recommends that the government assess the relevance of updating the act.

Honourable senators, as the Commissioner said, the 150th anniversary of Canadian Confederation is an opportunity to showcase our country's linguistic duality.

Hon. Senators: Hear, hear!

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Margot Franssen, the founder of the Canadian Centre to End Human Trafficking, and the Centre's CEO Barbara Gosse. They are the guests of the Honourable Senator McPhedran.

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

Hon. Senators: Hear, hear!

CANADIAN CENTRE TO END HUMAN TRAFFICKING

Hon. Marilou McPhedran: Honourable senators, today I am delighted to have Dr. Margot Franssen, the co-founder the Canadian Centre to End Human Trafficking, and Barbara Gosse, Chief Executive Officer of the Centre, to be acknowledged by you and have them recognized by you.

The Canadian Centre to End Human Trafficking is national not-for-profit organization established to create a national strategy for change and to be a national and international voice on this issue.

The centre advocates to ensure that survivors of human trafficking have the support needed and the ability to report incidents. The centre works with stakeholders to develop a national strategy.

Dr. Franssen and Ms. Gosse are innovative pioneers for fighting against sexualized violence and human trafficking. They have spent their careers advancing women's rights and advocating on behalf of minority voices in Canada and internationally.

Monday will be the International Day for the Elimination of Sexual Violence and Conflict as proclaimed by the UN in order to raise awareness of the need to put an end to conflict-related sexual violence, to honour the victims and survivors of sexual violence around the world, and commemorate the individuals that courageously dedicate and have lost their lives in standing up for the eradication of these crimes.

This day, today, is an important time to begin the reflection human rights defenders in conflict zones, but also in the less obvious conflict zones in our own country, like Dr. Franssen and Ms. Gosse.

• (1420)

Margot founded the Body Shop Canada which raised awareness and funds and dedicated thousands of volunteer staff hours in their campaign Stop Violence Against Women, a groundbreaking, innovative campaign that was founded more than 20 years ago. Boldly declaring women's rights are human rights, Margot and her company's campaigning gained award recognition internationally. Since she sold her company in 2004, she has devoted herself to the advancement of women and girls. She is a founder of Women Moving Millions dedicated to mobilizing unprecedented resources by women for women.

She co-chaired and founded the National Task Force on Sex Trafficking of Women and Girls in Canada at a time when government did not initially start such a project.

She is also a past board member of the CIBC, and she currently sits on the board of Goldcorp Inc. She has received numerous accolades and worked closely with Barbara in founding the centre.

Thank you.

ROUTINE PROCEEDINGS

STUDY ON OPPORTUNITIES FOR STRENGTHENING COOPERATION WITH MEXICO SINCE THE TABLING OF THE COMMITTEE REPORT ENTITLED *NORTH AMERICAN NEIGHBOURS: MAXIMIZING OPPORTUNITIES AND STRENGTHENING COOPERATION FOR A MORE PROSPEROUS FUTURE*

FIFTEENTH REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the fifteenth report of the Standing Senate Committee on Foreign Affairs and International Trade entitled *North American Neighbours: Canada and Mexico Cooperation in Uncertain Times*.

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

NATIONAL STRATEGY FOR SAFE AND ENVIRONMENTALLY SOUND DISPOSAL OF LAMPS CONTAINING MERCURY BILL

NINTH REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE PRESENTED

Hon. Richard Neufeld, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Wednesday, June 14, 2017

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

NINTH REPORT

Your committee, to which was referred Bill C-238, An Act respecting the development of a national strategy for the safe and environmentally sound disposal of lamps containing mercury, has, in obedience to the order of reference of Tuesday, March 28, 2017, examined the said bill and now reports the same without amendment but with certain observations, which are appended to this report.

Respectfully submitted,

RICHARD NEUFELD

Chair

(*For text of observations, see today's* Journals of the Senate*, p. 2217*.)

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

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

STUDY ON MATTERS PERTAINING TO DELAYS IN CANADA'S CRIMINAL JUSTICE SYSTEM

NINETEENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE DEPOSITED WITH CLERK DURING ADJOURNMENT OF THE SENATE

Hon. Bob Runciman: Honourable senators, I have the honour to inform the Senate that pursuant to the order of reference adopted by the Senate on Thursday, January 28, 2016 and Thursday, March 2, 2017, and to the order adopted by the Senate on Thursday, June 1, 2017, the Standing Senate Committee on Legal and Constitutional Affairs deposited with the Clerk of the Senate, on June 14, 2017, its nineteenth report entitled *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*, and I move that the report be placed on the Orders of the Day for consideration at the next sitting.

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

THE SENATE

MOTION TO AUTHORIZE THE CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS, MR. CHARLES ROBERT, TO APPEAR BEFORE THE COMMONS' COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS RESPECTING HIS NOMINATION AS CLERK OF THE HOUSE OF COMMONS ADOPTED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, with leave of the Senate and notwithstanding rule 5(j), I move:

That, pursuant to rule 16-4(3), the Senate authorize the Clerk of the Senate and Clerk of the Parliaments, Mr. Charles Robert, to appear before the Standing Committee on Procedure and House Affairs of the House of Commons respecting his nomination as clerk of that house.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

(Motion agreed to.)

NOTICE OF MOTION TO PHOTOGRAPH AND VIDEOTAPE ROYAL ASSENT CEREMONY

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

That photographers and camera operators be authorized in the Senate Chamber to photograph and videotape the next Royal Assent ceremony, with the least possible disruption of the proceedings.

[*Translation*]

ADJOURNMENT

NOTICE OF MOTION

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

That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 19, 2017, at 4 p.m.;

That committees of the Senate scheduled to meet on that day be authorized to sit even though the Senate may then be sitting and that rule 12-18(1) be suspended in relation thereto; and

That rule 3-3(1) be suspended on that day.

[*English*]

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MISSION TO THE REPUBLIC OF ESTONIA AND SECOND PART OF THE 2017 SESSION OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, APRIL 19-28, 2017—REPORT TABLED

Hon. Percy E. Downe: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-Europe Parliamentary Association respecting its mission to the Republic of Estonia, the next country to hold the rotating Presidency of the Council of the European Union, and its participation at the Second Part of the 2017 Session of the Parliamentary Assembly of the Council of Europe, held in Tallinn, Estonia and Strasbourg, France, from April 19 to 28, 2017.

[*Translation*]

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF THE ACQUISITION OF FARMLAND IN CANADA AND ITS POTENTIAL IMPACT ON THE FARMING SECTOR

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

That, notwithstanding the order of the Senate adopted on Thursday, October 6, 2016, the date for the final report of the Standing Senate Committee on Agriculture and Forestry in relation to its study on the acquisition of farmland in Canada and its potential impact on the farming sector be extended from June 30, 2017 to December 21, 2017.

• (1430)

QUESTION PERIOD

FINANCE

ECONOMIC GROWTH—HOUSING MARKET

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. Just a few months ago, the Advisory Council on Economic Growth told the government that if it really wanted to stimulate economic growth then it should focus on innovation, improve infrastructure and make sure that workers are able to get the job training they need.

[*English*]

Since that time, we have witnessed a $186 billion infrastructure program with less than 10 per cent of projects targeting economic growth, a new innovation budget dedicating $1.4 billion to innovate a $2 trillion economy, a national economy running on fumes of an overheated housing market and a continuing debate over the possibility of an increase in interest rates.

Last Thursday the Bank of Canada released its semi-annual financial system review which outlined the continued rise of household debt in the housing prices in major markets. Yesterday former PBO Kevin Page told the Senate Finance Committee that the housing situation is not sustainable. The IMF and OECD are so worried about Canada's out-of-control level of consumer debt that they are both recommending the draconian measure of capping personal debt.

Can the Leader of the Government in the Senate explain to this chamber what the government intends to do when there is a correction in the housing market?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. He will know from previous answers to similar questions that the Government of Canada has taken a number of initiatives, both directly in coordination with other levels of government and through the CMHC, to tamp down the housing market, and that's had its desired effect in recent data.

I would also point to the Bank of Canada where the senior deputy governor pointed to very positive indicators of growth where the data shows that more than 70 per cent of industries have been expanding and the labour market continues to improve.

Canada continues to have the best fiscal position amongst the G7. Growth was 3.7 per cent in the first quarter of 2017. In the last year the Canadian economy created a quarter of a million new jobs, and since December 2015 Canada's unemployment rate has dropped from 7.1 to 6.5 per cent. The approach this government is taking to the economy is working.

Senator Smith: Thank you, leader, and those are the facts. However, one question that continues to plague Canadians is the amount of debt that each Canadian has versus income, and I think that figure stands at 170 per cent. The figure I had was about 167 per cent in terms of debt-to-income ratio, which is very serious.

The Americans are indicating that they will increase their interest rates in the next three to six months. In our country, what would happen with an impact of a 1 per cent hike in interest rates to consumers that are so heavily indebted?

I recognize the good economic news you read, but there are some underpinnings that still make us fragile. If you cannot provide us with that answer today, could you research that

answer? It's important for people who are heavily indebted to understand what it means to go from 2 to 4 per cent or 3 to 4 per cent in terms of your mortgage rate.

Senator Harder: I thank the honourable senator for his question. I will of course research, as he is asking, but I would also underscore his preface in which he said we are still living in fragile times. That is why the budget that is now before us is so urgent to be adopted, so its measures can bolster and strengthen the Canadian economy, and I hope all senators will take heart.

NATIONAL DEFENCE

DEFENCE POLICY REVIEW

Hon. Dennis Glen Patterson: My question is to the Government Representative in the Senate. Senator Harder, as a northerner, I welcome the focus of the defence policy recently released on issues such as enhancing the ranger and junior ranger program, Arctic search and rescue, and Arctic sovereignty. While I am heartened that this approach looks promising and seems to build on the previous government's Arctic strategy, the document tabled last week only contained very broad policy statements, such as "New Initiatives: Enhance and expand the training and effectiveness of the Canadian Rangers to improve their functional capabilities within the Canadian Armed Forces."

I did make a submission to the Defence Policy Review. I outlined several specific recommendations on specific topics drawing on discussions from a round table discussion I held in Nunavut and recommendations from several parliamentary committees in both houses.

Senator, what is the government's timeline for fleshing out this new policy, and what mechanisms will be used to ensure that northerners have proper input at every stage of the policy's next development?

Hon. Peter Harder (Government Representative in the Senate): Again I thank the honourable senator for his question and his ongoing interest in particular for issues of the North. In respect of the defence document that was recently tabled, he is absolutely correct in identifying the priority that the document gives to sovereignty issues, the northern dimension of our defence needs.

The Government of Canada has outlined an array of initiatives in the document. I believe there were over 120 recommendations all of which will have to be staged over various years, both with respect to funding and with respect to the other related rollout. The document alludes to a funding framework, and the minister will be making further announcements on the details, including the ones that he references.

With respect to ongoing consultations that are appropriate, I reiterate the government's commitment to ongoing consultations with the appropriate parties involved in any number of those initiatives, and those will take place in the coming months.

INTERNATIONAL TRADE

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

Hon. Percy E. Downe: Can Senator Harder tell us when CETA will be implemented?

Hon. Peter Harder (Government Representative in the Senate): Senator Downe, the precise date has not yet been determined.

Senator Downe: Could you advise us why there are now media reports on the stories I indicated were coming from Europe last week, that it is because of the lack of transparency of Canadian officials on what the rules and regulations will be, and it's the old line "the devil is in the detail."

This was noted by the Senate Foreign Affairs and International Trade Committee when they submitted their report to the Senate. Transparency and openness are themes throughout the report. We heard these concerns from Canadian businesspeople, various interest groups, that they were having trouble because the Canadian officials were not forthcoming enough in their preparations. Now apparently Europeans have the same problem. Who is working on behalf of the Canadian government to have the public service be more transparent and open?

Senator Harder: I want to assure the honourable senator that the minister responsible, the Minister of International Trade, is actively involved in these discussions, as well as his senior officials. I am informed they are proceeding.

Senator Downe: I remind Senator Harder and other colleagues that this is the second time within the last six months that the Senate has been advised of deadlines that turned out not to be real. We had the WTO with then International Trade Minister Freeland before the committee telling us there wasn't a week to get an answer to something we wanted because Canada would be left behind. It turned out that didn't happen until three months later.

On the subject of CETA, we heard from many people that July 1 was the date. We had to get it done as they needed four weeks to implement it. Canadian business was prepared for that. And now we find out that was not a realistic date. It's something for colleagues to keep in mind the next time we hear the government tell us we have to do something by a certain deadline that is their deadline, not the deadline.

Senator Harder: I appreciate the honourable senator's point of view on this. It is still the hope of the government that requested to have this measure implemented by the dates that are referenced.

• (1440)

With respect to the WTO, those were dates that were anticipated in working with other like-minded countries. There

are always challenges in international negotiations as to when coming into force will take place, because we are not the only actors. The view of the Government of Canada is and remains that we shouldn't be the last actor.

[*Translation*]

FAMILIES, CHILDREN AND SOCIAL DEVELOPMENT

MINORITY LANGUAGE CHILD CARE

Hon. Claudette Tardif: Honourable senators, my question is for the Leader of the Government in the Senate. Last Monday we learned that the Minister of Families, Children and Social Development plans to invest $7.5 billion over 11 years in child care. We are told that this involves a historic agreement that will lay the groundwork for a national child care network. However, during the announcement, there was absolutely no mention of the desperate need for French-language child care in Canada's francophone minority communities. Those gaps have already been highlighted in a report from the Commissioner of Official Languages in 2016 as well as the report of the Standing Senate Committee on Official Languages that was just adopted in this chamber.

Leader, is Minister Duclos planning any specific measures to ensure that official language minority communities are not overlooked in his national early learning and childcare framework?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the senator for the question. The minister responsible is very much preoccupied with appropriate funding for official language communities and minority communities. I will inquire with respect to this specific announcement. I don't have the details and would be happy to report back.

[*Translation*]

Senator Tardif: Thank you, leader. When you are inquiring with the minister, could you also make sure that, in its negotiations with the provinces, the federal government insist that language provisions be included to bring in targeted measures to guarantee progress for our communities?

[*English*]

INDIGENOUS AND NORTHERN AFFAIRS

GENDER EQUALITY

Hon. Marilou McPhedran: Senator Harder, yesterday you stated:

> That very much feminist policy that is particularly articulated on the development side within the umbrella provided by the Minister of Foreign Affairs is the very heart of the government's international agenda.

You went on to say:

> It is the position of the government that it is putting forward a feminist international assistance policy to promote greater gender equality and the empowerment of women and girls. For Canada, we view this as the best way to reduce poverty and create a world that is more inclusive, more peaceful and more prosperous. The decision to adopt this feminist policy is based on the needs of the poorest and most vulnerable . . . .

And you noted that feminist policy reflects Canadian values and expertise.

You also noted that:

> . . . women and girls are the poorest and also the most vulnerable to poverty, violence and even climate change.

And you noted:

> But when we give them the means to develop their potential, they become powerful agents of change, development and peace, and everyone benefits from their actions — their communities, men, boys and other vulnerable groups.

Senator Harder, when might we hear such support for the equality of Aboriginal women and girls in Canada instead of the stilted impediments in Bill S-3?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and for her extensive quotations of my response to the question several days earlier.

With regard to Bill S-3, the senator will know that these issues were not only debated here but are presently being debated in the other chamber. The commitment of and the dedication to gender equality is felt not only by the government writ large but by the minister responsible, the Honourable Carolyn Bennett, in the approach that she is taking with this response to the *Descheneaux* decision. It is not without its challenges, as the honourable senator will know; and as the debate in this chamber reflected, that challenge is one that I think the minister and the government are pursuing, of engaging with the Aboriginal community as is appropriate in the nation-to-nation consultations that are at the heart of the government's commitment, while moving forward and meeting and going beyond the requirements of the *Descheneaux* decision.

GOVERNOR GENERAL

MENTAL HEALTH AWARENESS EVENT

Hon. David Tkachuk: We learned this week that the Governor General is planning a masquerade party in the name of mental health, which I think is a weird juxtaposition, and I understand this will also mark his farewell to Rideau Hall.

We are all supporters of mental health initiatives. No money is being raised for mental health, we are told. Not a lot of time will be devoted to raising awareness. It's a 90-minute party, but there will be a lot of money spent on this little soiree, nearly a quarter million dollars. That's $2,500 a minute. Rideau Hall has described it as a coherent and entertaining package of entertainment. Rideau Hall also said the masquerade party will be a unique and memorable event to raise awareness and to change attitudes and behaviours surrounding mental health. They said it would promote a festive atmosphere that is diverse and relatable to young people. That's a lot of boxes to tick off.

Senator Harder, can you tell me exactly whose attitudes and behaviour this party is intended to change, the attendees or Canadians in general? And if it is the former, can you provide me with a list of attendees at this party whose attitudes need changing?

Hon. Peter Harder (Government Representative in the Senate): Senator, I'm unaware of the event. This is the Governor General's event, as I take it from your question.

I want to take the opportunity to congratulate the Governor General for his distinguished service beyond the normal term of service. Right from the very start, when he was in this chamber and being sworn in, he spoke of voluntarism and of having every Canadian participate in voluntary work. His own work on the foundation he established adds to that. The highlighting of various important social issues that require civic engagement such as mental health are not untypical, and it is entirely consistent with his dedication to this sort of service that his farewell events would not be about himself but about causes that are important to Canada. I take no discomfort in him going out in this fashion.

Senator Tkachuk: I don't take any discomfort in him going out in this fashion either, and I do wish him continued success. I think he has been a great Governor General. But no matter what the intent of the party, can you provide this chamber with the list of invitees to this event of the Governor General?

Senator Harder: If that list is available to the Government of Canada, I will inquire. This is an event of the Governor General.

[*Translation*]

TREASURY BOARD

ACCESS TO INFORMATION

Hon. Claude Carignan: Honourable senators, my question is for the Leader of the Government in the Senate and follows up on some questions I asked him last week specifically regarding access to information.

During the last election campaign, the Liberal Party of Canada made a number of promises on reforming access to information. Except for eliminating certain fees associated with requests for access to information, the government has not done much in this area since coming to power.

The President of the Treasury Board said that legislative changes would be announced at the beginning of the year and that a comprehensive review of the Access to Information Act would be undertaken. However, Minister Brison's office confirmed in March that these steps would be postponed yet again and did not provide a new deadline for implementing the review of the Access to Information Act.

Leader, can you confirm that the promise to make sweeping changes to the access to information system can simply be added to the long list of this government's broken promises?

• (1450)

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I want to assure the honourable senator that the government and the minister responsible, Minister Brison, as president of the Treasury Board, will be forthcoming with the proposed changes forthwith.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (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: Motion No. 108, followed by all remaining items in the order in which they appear on the Order Paper.

[*English*]

THE SENATE

MOTION TO EXTEND TODAY'S SITTING AND AUTHORIZE COMMITTEES TO MEET DURING SITTING OF THE SENATE ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 13, 2017, moved:

> That, notwithstanding the order adopted by the Senate on February 4, 2016, the Senate continue sitting on Wednesday, June 14, 2017, pursuant to the provisions of the Rules;
>
> That committees of the Senate scheduled to meet on that day be authorized to sit after 4 p.m. even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto; and

That the provisions of rule 3-3(1) be suspended on that day.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*Translation*]

CANADA LABOUR CODE

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION FOR NON-INSISTENCE UPON SENATE AMENDMENTS ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Harder, P.C., seconded by the Honourable Senator Bellemare:

That the Senate do not insist on its amendments to Bill C-4, An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act, to which the House of Commons has disagreed; and

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

Hon. Jean-Guy Dagenais: Honourable senators, I will not try to hide my disappointment at the government's forcing Bill C-4 on us by categorically rejecting our amendment to maintain secret balloting and protect Canadian workers when they vote on joining a union.

This is proof positive that the Liberal government owes union leaders a big debt for getting it elected, and I do mean the leaders, not the workers. Sending the bill back to us like this is an insult to the important work we did here, which led to a majority vote in favour of secret balloting.

Don't worry; I will not repeat all the same arguments I have already presented on this matter. I would, however, like to share a few more observations before we vote on the issue.

I find it really difficult to understand anyone who does not agree with the principle of secret ballot voting, which protects workers from any reprisals from either their employers or union leaders, some of whom have been known to use certain intimidation tactics over the years, as brought to light by several commissions of inquiry.

If I may, I would like to read from a text on the membership of committees in the other place. In fact, these points were part of Mr. Trudeau's election platform in 2015:

[*English*]

> To increase accountability, we will strengthen the role of Parliamentary committee chairs, including elections by secret ballot.

A new plan for a strong middle class. Mr. Trudeau.

[*Translation*]

These words, as surprising as they may seem, can be found in the Liberal Party of Canada's official platform for the 2015 election campaign. If you would like to confirm, that passage can be found on page 32.

The Liberal platform had promised secret ballot voting to elect parliamentary committee chairs. Imagine that! You are all sharp enough to understand that this promise did not relate to a vote involving an outcome that those I would call "tough guys" might want to influence. This is only for selecting the chair of a parliamentary committee. Let's face it; the risk of reprisals is pretty low in this case. The Liberal platform also indicates that this measure is meant to increase the government's credibility. For this simple vote, the Liberal government promised in writing in its election platform that members would be able to vote by secret ballot.

With its usual inconsistency, this same Liberal government refuses to this day to grant the same protection to the workers of this country who have to decide, sometimes in tense situations, whether to join a union. As I have been saying from the beginning, we have to look at the motivation behind this measure. It can only be payment for a huge political debt. That is what is so offensive.

I want to tell you about something else that I learned from rereading the Liberal Party's 2015 election platform. I have heard proponents of Bill C-4 say time and time again in this chamber that we had to accept the bill because it was a political promise made during the last election. I encourage those people to read the Liberal platform. There is no mention of secret ballot voting in the Liberals' campaign promises on labour relations. I did not find anything about that. I encourage you to read for yourselves what is written on page 16.

We need to stop making things up and see things clearly. We are senators. Our role is to review bills from the other place and make any necessary amendments, without putting a political spin on them. That is what we did with Bill C-4.

[*English*]

It's time to show our conviction and stand for the vote we took together a few months ago. At this time, we were convinced that it was the choice to make to protect our Canadian workers.

[*Translation*]

Respect is one of the fundamental values of the public position I hold. Before you ask someone else to respect you, you must have self-respect and not back away from confrontation. I do not want to name those who voted in favour of the amendment that sought to give workers the right to a secret ballot vote, but I know all of you and I remember all of you. Let me tell you that, if we want to gain and keep the respect of the other place, it is vital that we show some self-respect and that we remain true to the results of the initial vote we held here in this chamber.

Give me one good reason to change my mind today. I cannot think of any. If we respect our values, convictions, political decisions and previous votes, we need to vote against this government motion. If, today, we vote against the decision that we made calmly and freely, we will become the other place's lackeys. Personally, I'm incapable of lowering myself to that level, and I encourage you not to do so either.

Some Hon. Senators: Hear, hear!

Hon. Diane Bellemare: I rise today as sponsor of this bill to adjourn the debate — or so I hope — so that we may vote on the government's message regarding Bill C-4.

The debate was lengthy and emotionally charged. Bill C-4 repeals two private members' bills, Bill C-377 and Bill C-525. Neither parliamentarians nor labour market stakeholders ever managed to fully agree on the principle and scope of these two bills.

Both chambers voted in favour of repealing Bill C-377. However, Senator Tannas' amendments have kept the provisions of Bill C-525 in force. Obviously, the government cannot accept this amendment since it goes against the very principle of Bill C-4.

• (1500)

As such, if I were to give you one single reason to vote in favour of the message, it would be that we can no longer vote Bill C-4 down because we are not voting on the bill; we are voting on the message from the House of Commons.

Let me remind you that, if the Senate rejects the government's message, we will find ourselves playing ping-pong. The government will not agree to the Senate's insistence on Senator Tannas's amendments, and the Senate will do likewise, and Canadians will be upset that we are spending their money on a partisan game that could go on a long time.

I could end on that note, but since I have a few more minutes, I would like to give you four more good reasons to vote in favour of the government's message. I hope to convince even those senators who like Senator Tannas's amendments.

[*English*]

I will outline four good reasons for all of us to vote for the message. First, we should vote for the message because there is no objective reason to oppose it. On the contrary, there are reasons to vote in favour in order to accomplish our constitutional duty.

Second, we should vote for the message because we are all in favour of growth and the protection of the middle class.

Third, we should vote for the message because it is not legitimate for us to vote against an electoral promise that has been adopted in the other place by all the members of four political parties out of five.

Fourth, we should vote for the message because it is a good practice in a modern and more independent Senate. And let me explain those four reasons.

[*Translation*]

First, dear colleagues, we should vote in favour of the message because there is no objective reason to oppose it. Quite the contrary, in fact. Honourable senators, nobody is against secret balloting, and that is not what this is about. The government is asking us to amend the Canada Labour Code and related legislation to restore the card check certification system that had been around forever until 2015 and that provides for secret ballots. The system served us well, and it is managed by employers, unions, and a board representative.

This system is not unconstitutional. It does not violate rights and freedoms. It does have a negative impact on any region or minority. In fact, it actively promotes a fundamental right set out in the Canadian Charter of Rights and Freedoms, the right of association.

In short, there is no objective reason to oppose returning to this system, and I would like to give you some statistics to support my arguments.

Most experts maintain that mandatory secret ballot voting makes successful unionization more difficult in the private sector, particularly for vulnerable groups and women, whereas the old system can help reduce the barriers to unionization faced by these groups.

I will just give you a few statistics and I will move on to another argument. These numbers may surprise you, but they are accurate. In the public sector, the system of union certification has very little effect on the rate of unionization. The rate of unionization in the public sector is relatively high and on the rise. Between 1997 and 2016, it went from nearly 70 per cent to 73 per cent. Again in 2016, the rate of unionization in the public sector was 69.5 per cent for men and 75 per cent for women.

In contrast, the rate of unionization is lower in the private sector, and it is dropping. It fell from 19 per cent in 1997 to 14.6 per cent in 2016. It is 17.4 per cent for men and 11.2 per cent for women.

Of course, there are many reasons why the rate of unionization is dropping in the private sector. Technological changes, changes in the structure of the economy and globalization all play a role. However, it is clear that the way unions are certified and decertified also has a significant impact.

There is therefore no question that mandatory secret ballot voting will have very little impact on unionization in the public sector because it is very difficult for managers in the public service to threaten to dismiss an employee when they claim to be pro-union.

That is not the case in the private sector. The recently published study carried out under the Harper government indicates that, all other things being equal, if all the provinces had maintained the membership card certification system, the system that Bill C-4 is seeking to reinstate, the rate of unionization in Canada's private sector would have been 23.5 per cent in 2012 rather than 19 per cent.

Dear colleagues, let's acknowledge reality. Let's not insist on the Senate's amendments, because this is a way to reduce the barriers to unionization in the private sector and therefore of facilitating the unionization of the most vulnerable groups and women. This will help support the right of association that is clearly recognized in the Canadian Charter of Rights and Freedoms. Is it not one of our roles to protect the most vulnerable?

Second, and this is the economist in me talking, let's vote for the message of the House of Commons because we all share the objective of encouraging the growth and prosperity of the middle class.

Perhaps you are wondering what the connection is between unionization and the middle class. Reputable studies — and I spoke at length about them in my speech at third reading — conducted by the World Bank, the OECD and a number of recognized experts indicate that the global decline in unionization in the private sector contributes to reducing the size of the middle class on one hand, and increasing the incomes of senior executives on the other, two factors that are helping increase income inequality. Now, as the OECD points out, the growth in income inequality is curbing economic growth.

Third, let's vote for the message because it is not right for the Senate to oppose the will of the elected majority, especially when it comes to an election promise. As Senator Harder stated, the content of the message relates to an election promise. Why would we refuse the right of the government, a right obtained in the context of an election campaign, to fulfill a promise? Is it right for the Senate to oppose a promise when there is no objective reason to oppose it?

I am relying on the Westminster system to say that it is not right for the appointed house to oppose the fulfillment of an election promise by the government and the elected representatives of the House of Commons.

As you know, the House of Lords is a source of inspiration in the dialogue we must engage in as part of a modern, healthy and efficient bicameral system. What does the House of Lords do in circumstances similar to what we are seeing in the context of the government's message on Bill C-4? The House of Lords gives in.

In the aftermath of the Second World War, the lords agreed on practices they called the Salisbury Convention, which stipulates that the Upper Chamber does not oppose bills resulting from an election campaign. Today, the House of Lords goes even further than the Salisbury Convention and does not oppose bills from the Lower House when they receive majority support.

Here is the answer to a question asked by Senator Eggleton at the Senate Modernization Committee to a group of representatives from the House of Lords concerning the Salisbury Convention. Lord Norton answered the question by saying:

[*English*]

> On the Salisbury Convention you are quite right that it formally applies to manifesto commitments. Manifestos can be very vague. That's the sort of thing the opposition would tend to exploit but not necessarily oppose a bill.

He continued:

> If you like, it goes beyond the Salisbury Convention, largely for the reason that Lord Wakeham has given.

• (1510)

> If the Commons is agreed on the ends, we focus on the means. We think that's what's legitimate and what we can do effectively to complement the work of the Commons, which is under increasing pressure in terms of time and demands.

[*Translation*]

If we follow the logic of these lords, we must support the government's message. That is also the logical thing to do according to the decision rendered by the Supreme Court of Canada in 2014 stating that our role complements that of the other chamber.

Dear colleagues, on two separate occasions, the government garnered the support of MPs from four political parties — the Liberals, the New Democrats, the representative of the Green Party, and the members of the Bloc Québécois — with over 70 per cent of the votes. Only the Conservative members voted against Bill C-4 and against the message.

As a result, our constitutional duty to act a chamber of sober second thought requires us to accept the government's message, which insists that we pass a law that is in keeping with the Constitution and the Canadian Charter of Rights and Freedoms and that has the support of the public. We must therefore choose to support the message that has public support.

Fourth, let's be responsible and vote in favour of the message because it's the right thing to do. Voting in favour of the message from the House of Commons is the right thing for a modern, more independent and accountable Senate to do.

Dear colleagues, voting in favour of the message will allow us to live up to the expectations of Canadians who really want a less partisan Senate that is more independent from the political

parties, a Senate that complements the other chamber and will fulfill its constitutional duties as a chamber of sober second thought, as described in the 2014 Supreme Court reference.

As a modernized Senate, let's do the right thing in the conversation with the other chamber and vote in favour of the message. Thank you.

Some Hon. Senators: Hear, hear!

Senator Dagenais: Would Senator Bellemare agree to answer a question?

Senator Bellemare: Yes.

Senator Dagenais: Senator Bellemare, I would like to know where in the Constitution it is mentioned that a secret vote given to workers would be unconstitutional.

Senator Bellemare: That is not what I said, Senator Dagenais. I said that the two voting systems are constitutional.

However, one of them makes it difficult to unionize vulnerable groups and women — and the statistics show that — while the other encourages unionization. Therefore, there is a difference between the two.

Senator Dagenais: You stated in your presentation that the Senate was a chamber of sober second thought, and I agree. According to your remarks, as a chamber of sober second thought we must defer to the House of Commons. As I said in my speech, we are not lackeys to the House of Commons.

Senator Bellemare: Of course, our chamber is one of sober second thought, and the other place is where the elected members are. When the elected House passes a bill with the support of a vast majority — made up of four political parties — and the bill is not unconstitutional and complies with the Charter, and there are no objective reasons to oppose it, we must not impose our personal preferences for a system. The preferences of the other place prevail.

[*English*]

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

Some Hon. Senators: Question!

The Hon. the Speaker: My apologies. Senator Carignan, on debate.

[*Translation*]

Hon. Claude Carignan: I cannot help but rise to my feet when I hear Senator Bellemare trying to diminish the importance of the privileges of this chamber and limit our constitutional power. The principle is clear: for a bill to come into effect, it must be passed by both chambers. One chamber is not more important than the other. The status of each one is set out in the Constitution, and they each have a separate role, with one chamber being appointed and the other being elected.

Senator Bellemare, I would ask that in future you stop diminishing the authority of this chamber. For example, when you cite the House of Lords, it has changed. It is not what it used to be. Changes were made. The constitutional authority of the House of Lords has changed. Its members have a suspensive veto, which is completely different from what we do here. Parliament, Canadians and the provinces are entitled to change the Constitution or the powers of the Senate if they want to, but that would require changing the Constitution.

On December 10, 1968, the Special Committee on the Rules explained the changes made to the Senate pointing out the following in reference to revision of the rules, and I quote:

> This revision does not preclude reference to the great Parliamentary authorities such as Bourinot, May, or Beauchesne. The Senate is master of its own House, and with the Canadian experience of over 100 years, there is no usefulness in referring to the Lords House of the Imperial Parliament.

Therefore, it is only when the Rules provide that there are no other sources that we might draw inspiration from the House of Lords. When the Senate of Canada established procedures on aspects that work, and that apply based on precedent and according to the constitutional role of the Senate, then we need not bring in external rules to diminish the scope of our constitutional jurisdiction.

Some Hon. Senators: Hear, hear!

[*English*]

Hon. Percy E. Downe: I want to say a few words on this, because I, too, was moved by Senator Bellemare's speech. I understand she has a difficult job. Senators Harder and Mitchell have different jobs than the rest of us: It is their responsibility to get legislation through this chamber, and it's our responsibility to question that legislation with more detail than others.

I'm torn on Bill C-4. I voted for the secret ballot the first time. I'm inclined to vote that way again, but I have not decided. I know the vote is coming up shortly, but I take some offence at the tone of the remarks about the responsibility of the Senate. I look at what Sir John A. Macdonald said about the Senate:

> There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House.

In that spirit, I think about this legislation. I understand it's a government initiative, but the problem I have is that the Prime Minister made it very clear that he wants the Senate to return to what it was originally intended to be. It may very well be what Sir John A. Macdonald intended. We're evolving in that direction. But this bill was a whipped vote in the House of Commons; it was not a free vote. So is it the will of the House of Commons or the Prime Minister's Office?

I will give an example. Senator Cowan's Senate bill on genetic discrimination was a free vote in the House of Commons. The Prime Minister, to his everlasting credit, allowed a free vote, but

he publicly spoke against the bill. His Minister of Justice spoke against the bill. I understand there was detailed discussion in the national Liberal caucus, which I don't attend but I still have friends there. Liberal MPs in large numbers walked out and voted as they wanted to. In other words, that was the will of the House of Commons.

Is this the will of the House of Commons, or is this the result of a whipped vote?

• (1520)

I know some of the newer members have had outstanding careers in their fields, but may not have been involved in politics, so let me briefly explain to them what a whipped vote means: It means that members of Parliament cannot run if the Prime Minister, the leader of their party, does not sign their nomination papers. There is a sword hanging over their heads. It was changed, I believe, in the late 1970s or 1980s to give that power to the leader of every party. It means the whip in the House of Commons has tremendous authority. Many times, MPs will say, "I would like to be away; I can't really vote for this." And the whip will say, "No, you have to vote for it because if you are away then others will want to be away. It's a team effort." The member will say, "Well, I disagree." And the whip will say, "Sorry, you have to vote for it." We don't know. Was that the case in this bill or not? It's because it is a whipped vote.

I think Senator Cowan's bill was an indication of what I would like to see: more free votes coming here, which represent the true intentions of the members of the House of Commons. If we want to have an independent Senate, I go back to what Sir John A. Macdonald said originally and I disagree with much of what I heard from Senator Bellemare, but I understand her position. It's her job and that of others on the leadership team to set aside all excuses and, by whatever means necessary, get the bill through this chamber. We have to decide individually what we are going to do. Thank you.

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

[*Translation*]

It is moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that the Senate do not insist on its amendments to Bill C-4, An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act, to which the House of Commons has disagreed.

[*English*]

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

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed, please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I see two senators rising. Is there agreement on a bell?

Senator Plett: Thirty minutes.

The Hon. the Speaker: The vote will take place at 3:52. Call in the senators.

• (1550)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Baker	Hartling
Bellemare	Hubley
Bernard	Jaffer
Black	Kenny
Boniface	Lankin
Bovey	Marwah
Campbell	McCoy
Christmas	McPhedran
Cools	Mégie
Cordy	Mitchell
Dawson	Moncion
Day	Pate
Dean	Petitclerc
Dupuis	Pratte
Dyck	Ringuette
Eggleton	Saint-Germain
Forest	Tardif
Fraser	Wallin
Gagné	Watt
Galvez	Wetston
Gold	Woo—43
Harder	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Martin
Ataullahjan	Massicotte
Batters	McInnis

Beyak
Boisvenu
Carignan
Dagenais
Downe
Doyle
Duffy
Eaton
Enverga
Frum
Greene
Griffin
Housakos
Lang
MacDonald
Maltais
Manning
Marshall
McIntyre
Mercer
Neufeld
Ngo
Ogilvie
Oh
Patterson
Plett
Runciman
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Unger
Verner
Wells—41

ABSTENTIONS
THE HONOURABLE SENATORS

Joyal—1

• (1600)

CANADIAN HUMAN RIGHTS ACT
CRIMINAL CODE

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Mitchell, seconded by the Honourable Senator Gagné, for the third reading of Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code.

Hon. Linda Frum: Honourable senators, I rise to speak at third reading of Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code by adding the words "gender identity" and "gender expression" as prohibited grounds of discrimination.

Colleagues, as I said in an earlier speech in support of Senator Plett's amendment to Bill C-16, I support this legislation and its virtuous intent to provide protections to transgender persons.

However, I note, once again, for the record, that there are no explicit protections for transgender people in Bill C-16, nor does the word "transgender" appear anywhere in the legislation. Instead, Bill C-16 creates protections for "gender identity" and "gender expression," vague, loose concepts with no precise legal definitions.

While I do intend to vote in support of this legislation, I would like to register my sincere concerns about the potential negative impact that these imprecise and vague words will have on the rights of women and girls once they are enshrined in our Criminal Code and human rights code.

While it is unquestionable that transgender individuals should enjoy the same protections as every member of society, such protections must not come at the expense of the rights of others, particularly women and girls. Unfortunately, because of the way that Bill C-16 is drafted, there is cause to be concerned.

For example, during committee hearings, we received testimony from Hilla Kerner, Collective Member at the Vancouver Rape Relief and Women's Shelter, the oldest rape relief centre in Canada. She described her organization's 12-year legal battle over their policy to only allow female-born women to serve as volunteers.

The case of *Nixon v. Vancouver Rape Relief Society* was fought all the way to the Supreme Court. The court ultimately ruled in favour of the shelter and deemed that their right to freedom of association trumped other rights.

The case cost the shelter $200,000 to defend, but at stake was the issue of whether or not female-born women have the right to congregate in sex-segregated spaces reserved only for themselves.

The Supreme Court found that they did, even in the case of *Nixon*, which involved an individual who had undergone sex-reassignment surgery and who had fully transitioned from a man to a woman.

With that standard in mind, we now have Bill C-16, whose legal language protects the extremely vague category of "gender expression," which amounts to a statutory protection of an individual's choice of fashion, makeup and hairstyle. I'm not being flippant. There can be no other definition for "gender expression." Expression is your appearance, your look, your air, your manner and countenance.

By amending the Criminal Code and the Human Rights Act to include the words "gender expression" as protected grounds, as opposed to the word "transgender" as protected grounds, Bill C-16 redefines what it means to be a woman from something biological to something defined by external appearances.

This is a tremendous diminishment. Women have struggled for centuries to unshackle themselves from a value system that apportions a woman's worth based on her physical characteristics and her sexual allure.

What an astonishing setback for women's rights in Canada that we are changing, by statute, a woman's status from something chromosomal to something that is based on how one presents oneself in public.

Because of its loose, vague language, it is guaranteed that it will only be a short matter of time before Bill C-16 triggers litigation that will place a financial and legal burden on women who will need to prove they have a right to women's-only safe spaces and sex-segregated activities.

Be it prison cells or elder care facilities, abuse shelters or other residential situations where a woman may desire a female-born woman roommate, be it an athletic or a spa facility where women wish to be protected from the male gaze, or sports teams where women segregate themselves for the purpose of ensuring fair

competition. This was the basis of the testimony our committee heard from Diane Guilbault of the Québec Women's Rights Association.

Like Hilla Kerner and another witness, feminist writer Meghan Murphy, Guilbault referenced the need for a gender-based analysis of the impact this legislation will have on women.

In the words of Ms. Guilbault:

> The issue of women's rights is intrinsically linked to gender identity. The fact that there are three to four times as many men as women who claim a gender identity contrary to their birth sex shows that this is a gendered phenomenon. For these reasons, it is critical that a gender-based analysis (GBA) is completed and made public before putting such legislation into effect.

Colleagues, for years our friend and former colleague, the feminist icon, Senator Nancy Ruth, insisted that every piece of legislation passed by government should be subject to a gender-based analysis.

Her call was taken up by the Trudeau government which pledged that no piece of legislation it proposed would ever pass without a full and proper gender-based analysis. Yet here we have a bill that effectively redefines the meaning of "gender" itself, and there is no government GBA for us, as legislators, to analyze or assess. The government has been clear on their position regarding gender-based analysis for legislation.

Prime Minister Trudeau said:

> We recognize that public policies affect men and women in different ways, and it is important that government understands these impacts. Liberals are committed to ensuring meaningful gender-based impact analysis in Cabinet decision making. A new Liberal government will also ensure that federal departments are actually conducting the gender-based analysis that has been required of them for the past 20 years.

Very nice words, but let me ask: How many of my colleagues have studied or even seen the government's GBA on Bill C-16? I know the answer. The answer is none. Because the government's GBA is not available to the likes of you or me.

No, the GBA on Bill C-16 is too confidential and too private to share with the public who will be affected by Bill C-16, and it's too classified to share with you, the parliamentarians who are expected to consider gender-based analysis before casting your judgment on any bill.

It is disappointing, to say the least, that this government, elected on a promise of conducting "meaningful gender-based impact analysis," refuses to release that very same meaningful gender-based impact analysis for us to consider and weigh. And why is that? In the case of Bill C-16, a bill on gender, we can only wonder.

However, honourable senators, as much as I fear the potential negative consequences of Bill C-16 have not be taken into account by the Minister of Justice when her department drafted this bill, I recognize that the bill has taken on a symbolic significance far beyond pragmatic concerns.

I recognize the history of violence and prejudice that this bill seeks to redress. And I understand that Parliament seeks to denounce that history with this bill. I will stand in favour of Bill C-16 out of respect for the historical pain and suffering of the transgender community. However, I would like to take this opportunity to call on the Leader of the Government in the Senate and the sponsor of this legislation, Senator Mitchell, to demand that the Minister of Justice make the gender-based analysis of Bill C-16 public and to reassure us that when the rights of gender expression and the rights of women and girls come into conflict in the future, as they will, it will not be women and girls negatively impacted, as they so often are.

Some Hon. Senators: Hear, hear.

• (1610)

BUDGET IMPLEMENTATION BILL, 2017, NO. 1

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Woo, seconded by the Honourable Senator Hartling, for the second reading of Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures.

Hon. Sarabjit S. Marwah: Honourable senators, I am pleased to speak today on Budget 2017's provision for the creation of the Canada infrastructure bank. Over the past few months, there has been considerable attention given to this nascent public institution and just what role it would play in our country's development of key infrastructure projects.

Today, I wish not to review the extensive testimony given by the pre-study's expert witnesses but rather provide you with an overview of why, having worked in the field of banking and investment for some 35 years, I believe that the establishment of the Canada infrastructure bank is an enterprise that will benefit Canada and merits the support of this chamber.

Honourable senators, it was about 10 years ago that we started to hear about the country's massive infrastructure deficit. Having experienced the rollout of massive infrastructure projects during the post-war period, especially from the 1950s to the 1970s, the public sector laid out the foundation for unprecedented growth and prosperity for Canada. All across the country, roads, bridges, highways were built to develop and modernize Canada. By the 1990s, both federal and provincial governments were seized with reining in public spending, and the furthest thing from their minds was upgrading and modernizing public infrastructure. In the ensuing years, the great deficit would emerge, with crumbling roads and highways, and, now, we are playing catch up.

The Canadian Chamber of Commerce estimates the overall national gap in infrastructure spending to be $570 billion, a staggering amount. Furthermore, the 2016 Canadian

Infrastructure Report Card graded one third of existing municipal infrastructure as in fair, poor or very poor condition.

The bottom line is that we need to invest once more in infrastructure. The good news is that the government recently committed $180 billion over 12 years, in its Investing in Canada Plan, to work with provincial and municipal partners in addressing Canada's gaping infrastructure deficit. But that $180 billion is not enough; we need to invest much more.

Another piece of positive news is that, within the $180 billion of public funding, $15 billion will be provided for the establishment of the Canada infrastructure bank. This includes concessionary funding for the bank to support certain projects of its provincial and municipal partners. Another 20 billion would be made available separately for the bank to make its own investments that would result in the bank holding assets in the form of equity or debt. So, in total, the bank is receiving support of $35 billion over 11 years.

But with this $35 billion, the bank intends to attract outside capital from investors in the capital markets, which, if you lever it three or four times, means new capital of some $140 billion. With $180 billion, we could have close to $320 billion invested in infrastructure. Now, we are making a real dent. As a well-regarded former Governor of the Bank of Canada, David Dodge, noted in a November letter to the minister:

> Congratulations on your focus on "revenue generating" projects . . . And, congratulations for emphasizing multi-year integrated plans . . . .

Mr. Dodge goes on in support of the bank.

Why would we want a public institution to share with the private sector in the building of public infrastructure projects, or why would the private sector want to get involved with a public institution in the building of public infrastructure projects? Colleagues, there are ample reasons for such a partnership to function well in the public interest and, yes, even in the mutual interests of private investment. Canada has been a leader in the deployment of public-private partnerships, or P3s, for several decades.

At the provincial level, governments have contracted the private sector to conceive, plan, build and manage hundreds of beneficial infrastructure projects all over the country. According to the Conference Board of Canada, the vast majority of these projects, about 83 per cent, were all delivered on time and on budget, in many cases beating deadlines.

Private sector partners have, naturally, also benefited from these large public contracts, as well as the employment of thousands of Canadians, many of whom comprise a highly skilled talent pool in the area of P3s.

As one of the recommendations of the Minister of Finance's Economic Advisory Council, the creation of a Canada infrastructure bank represents the evolution of the P3 model into a more standardized and formalized structure that fuses public and private money into distinctive projects that serve the public interest.

The Canada infrastructure bank would fund projects that are too costly for the governments alone to undertake but also too risky for private sector investors to assume on their own. Projects that would otherwise not be built, due to prohibitive cost to the public sector or lack of return to the private sector, are now feasible. Private sector investors — in particular, institutional investors and large pension plans that have been engaged in successful infrastructure investments all over the world —have indicated their willingness to invest in Canada due to our stable institutions, dynamic workforce and, most importantly, the rule of law.

Moreover, Canadian pension plans, such as Teachers, CPPIB and OMERS, have also indicated their interest in investing in projects here at home.

Besides new capital being invested in infrastructure, there are two other advantages: First, expertise. The bank would also serve as a national centre of expertise for the collection and dissemination of infrastructure needs across the country. The core staff of the bank will have infrastructure and financial expertise and will work with the private sector to both structure and deliver projects in the most cost-efficient way possible. Another major difference is risk sharing. As opposed to the traditional infrastructure projects where we, the taxpayers, would be fully liable in terms of both costs and risks, these are now to be shared with the private sector. On a project-by-project basis, the CIB would negotiate with potential investors on the risk-reward ratio of successfully completed projects. Likewise, the degree of risk allocation is also up for negotiation.

The greater the risk the private sector takes over from the public sector, the greater their share of the profit. This would take a considerable share of the burden of risk off of the public treasury and allocate it to projects that are likely to be conducted with greater discipline and efficiency of the private sector.

The bottom line is that the CIB makes sense. It brings in badly needed capital, reduces risk and brings in expertise.

Let me briefly address the major concerns that have been raised: First, that this is not even a bank. That is not true. It may not be a commercial bank that we all know, that takes deposits and issues ATM cards, but it is very much a merchant bank that structures, takes equity positions and makes investments. Second, that the infrastructure bank is included in an omnibus bill. However, by its very nature, every budget bill is an omnibus bill because they touch on so many different aspects of legislation and sectors. The key issue, as Senator Woo so eloquently noted in his comments yesterday, is whether there is an abusive provision in the bill. By "abusive" I mean legislation that has no bearing on or relationship to the budget. An example would be the inclusion of changes to the Criminal Code within a budget. But the infrastructure bank is a key component of the government's overall economic plans and priorities and must be looked at in the context of the broader economic agenda.

The third criticism is that there has not been enough time to study it. However, thanks to Senator Woo and the Senate's thorough pre-study, there has been heightened scrutiny and review of this part of the bill, within both the Senate Banking and Finance Committees. Indeed, the Senate Banking Committee had

a total of six meetings, some of which occurred during chamber proceedings, and senators heard from a total of almost 30 expert witnesses. I think that would qualify as solid review.

Another criticism, made by my good friend Senator Forest in his comments yesterday, was that there weren't enough operational details available on the projects that would be eligible for funding. My response to that is that, in the establishment of a major new initiative such as the CIB, I have seldom found that all of the exact details of the institution's undertakings and projects are laid out before they are enacted into law. Projects will be done on a case-by-case basis, after careful review by the bank's experiments of which proposals make sense and which do not.

Lastly, concerns have been raised by senators regarding the proposed government's model, as outlined in this act. The CEO and the board of the bank serve at the pleasure of the Governor-in-Council. However, the minister responsible must first consult with the board on any terminations, removals or suspensions of either the CEO or board members. This is a higher standard than the governance at EDC and BDC, institutions that we have been happy with for many years. So why be unhappy with something that has a higher standard?

CPPIB has often been held out as the model for good governance. In that context, Michel Leduc, the Managing Director of CPPIB recently stated:

> Crown corporations are not homogenous; the optimal balance between public accountability and commercial autonomy must differ as a matter of public policy from one to the other.

• (1620)

And that is exactly what the legislation has accomplished. Senators, this bank will be a steward of taxpayer funds and, therefore, the government has a responsibility to ensure they are properly managed and in the public interest. As Senator Woo outlined yesterday, we cannot risk regulatory capture by private interests of a public institution. That is why I believe this governance structure strikes the right balance between federal oversight in the interest of taxpayers and institutional autonomy in the interest of optimal performance. I heard the word "balance" many times in speeches on Bill C-44 yesterday, and I believe we have the right balance.

In closing, the infrastructure bank is a creative, risk-mitigating and cost-effective way to deliver some of our public infrastructure projects that would otherwise not be built. This is in the best interests of taxpayers, the overall economy in Canada. We should approve the establishment of the bank without further delay.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable colleagues, I'd like to join in the debate at second reading of Bill C-44. First, let me congratulate my colleague, the previous speaker, Senator Marwah, for a fine speech on one aspect of this particular bill. I'd also like to join with Senator Smith in congratulating Senator Mockler, as the new chair of the Finance Committee, for the work that they have done and the work that I know will be done in Finance in relation to this and other finance bills as we wind down this particular period of work in the Senate.

Finally, as a preliminary comment, let me thank the sponsor of the bill, Senator Woo. I have been following his work during the pre-study and watching him learn all about sponsoring bills.

You picked a formidable task with respect to this one, Senator Woo, but I congratulate you on the work that you have done and thank you for the work that you will be doing to help us perform the good work that the Senate is known for.

Honourable senators, we are dealing with Bill C-44, the Budget Implementation Bill, 2017, No. 1, and as I pointed out in the past when I spoke, this is a huge piece of legislation. Look at the title: An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures. So that's an admission by the government that there are other measures in here that are not part of implementing certain provisions of the budget. The other point to keep in mind is that we in the Senate do not vote on the budget. We vote on the implementation of certain portions of the budget and other matters, and that usually appears in two budget implementation bills each year.

This is the first one and we did a pre-study of this particular bill. There are five different committees that worked on this pre-study. I encourage you to take a look at the report of each of those committees. This is a new process that has developed over the past five, six or ten years where we divide the bill up when it comes here and we do a pre-study.

I think that pre-studies generally fly in the face of the Senate's role as a chamber of sober second thought. And too often, a pre-study is used by the government of the day to justify pressure on us to rush through our real job of examining the bill when it does arrive here. Well, the bill has arrived here now. We do have some good work that was done by five different committees. Finance is now ready to consider those items in the bill and to consider the overall bill from the point of view of the Senate and the Senate's role. But we must not let a pre-study lead us towards being just another House of Commons. That is something I've always tried to guard against. Now we are looking at the actual legislation. It is a little bit different.

With budget implementation bills, I have been more inclined to agree to pre-studies in order to allow honourable senators the opportunity to thoroughly understand the rather complex subject matter, as was noted yesterday in debate by Senator Lankin. And I agree with her that the bill just arrived here yesterday, but we feel that by virtue of having done the pre-study, we have knowledge and a comfort that we wouldn't otherwise have.

On May 8, which is when I spoke previously on the pre-study, I also expressed my disappointment that this government has evidently abandoned its election promise to end the practice of omnibus bills. There are four stand-alone bills inside this particular piece of legislation. Any or all of these could easily have been separate pieces of legislation by lifting them out and putting a title on them, but here they are.

Colleagues, there is no question that a 300-page bill to be dealt with at one time is an omnibus bill, and this is a finance omnibus bill that has significant ramifications. Omnibus bills generally are not objectionable if they are within the umbrella of one area of subject matter, but you will see from looking at the various items here that the subject matter varies significantly.

The analogy that occurred to me as I read the bill is that Bill C-44 is like one of those Ukrainian dolls. You open up the first doll and there is another doll inside it, and you open up the second doll and there is another doll, and you keep going and peeling off the onion skins. But while that may be fun in a doll, it is absolutely no way to present legislation for proper study.

Let me quote something said by our government leader here in the Senate recently, albeit in a different context. In replying to a question in this chamber from Senator Maltais about the softwood lumber negotiations and how they are going, he told this chamber that "we should have a good deal, not a fast deal." That was on June 6. Wise words, and they apply with equal force to how we should approach this legislation. We should make sure it's a good deal, and not just a fast deal.

Let me begin with the positive. Colleagues will recall that I and others have expressed concerns about a number of the provisions in Bill C-44 as originally tabled relating to the Parliamentary Budget Officer. I'm happy to see that the issues raised here about the Parliamentary Budget Officer appear to have been addressed by the government. This is a positive outcome of the pre-study, which is the Senate performing a non-traditional role but with a good outcome.

However, those are the only amendments that were made to this bill in the other place. Colleagues, I am afraid many problems still remain with respect to Bill C-44, some of which do not seem even to have been raised in the debate in the other place.

• (1630)

Again, this is understandable given the length and especially breadth of this particular bill. There has been significant concern expressed about Division 18 of Part 4 of the bill, which would enact the proposed new law to be called the "Canada Infrastructure Bank Act." You've heard a number of comments in relation to that.

We have a notice of motion from Senator Pratte, which is on the order paper, to split Bill C-44 so that proper consideration can be given to that particular initiative. We also heard from Senator Tkachuk and Senator Massicotte regarding their concerns with the proposed infrastructure bank.

Accordingly, I do not propose, with the time I have available to me, to focus now on that division of the bill, except to say that our Banking, Trade and Commerce Committee's report on its pre-study of this division laid out a number of serious issues that need to be addressed. I dare say there are more in that particular division, as there are in other parts of this bill, that require serious consideration.

The same Banking Committee report also raised concerns about another new law that would be enacted from this omnibus bill, namely, the "Invest in Canada Act." There are a number of provisions in that proposed statute that I find surprising and worrying. I believe they could potentially cause problems later on. That's what we are always looking for when we review this legislation — the unintended consequences and potential problems down the line.

But in my remarks today at second reading, I want to focus on only three aspects of this bill. We are at the principle stage, at second reading — what are the principles of the bill? Let me talk about three different areas that maybe haven't been given the airing that they should have received before they go to committee. I'm hoping the National Finance Committee will look into those as they study this bill.

There is a common thread joining these various aspects and, honourable senators, it's not a pretty one: It is the quiet — one might say stealthy — removal of parliamentary oversight of government that keeps recurring in different ways in this legislation. That's what I want to focus on for the balance of my remarks, because I believe we've got to be vigilant of that at all times to protect the role of the Senate and the role of parliamentarians. If they in the other place are not prepared to stand up for that, then we owe it to them to bring these points to their attention.

The first is found in Part 3 of the bill: the proposed new excise taxes being imposed on beer, wine and spirits. Bill C-44 proposes to increase the excise duty rates on these products by 2 per cent. But while the industry and others aren't happy with that increase, that is not what most of them are upset about, nor is that the truly serious problem with this proposal.

The real issue of concern, colleagues, is the quiet addition in the bill of a so-called "escalator clause." Under this clause, the excise tax rates will be raised each year automatically — every year — tied to the Consumer Price Index, beginning on April 1, 2018: April Fool's Day. It is appropriate that this would take place on April Fool's Day, because if we agree to this, we will have been hoodwinked into agreeing to give up one of our fundamental obligations as parliamentarians; namely, our duty to assess and review taxes before they are imposed. Under the new escalator clause, there would no longer be any need for the government of the day to come before Parliament to justify each new tax increase. Taxes would increase automatically each year.

When our committee asked the government officials to provide the rationale for the new escalator clause, the written response was that alcohol excise duty rates have not been adjusted for several decades and their "effectiveness has eroded over time."

I would suspect the "effectiveness" of the taxes is how much is raised. Those are the words of the government official, not mine.

Colleagues, that is certainly a rationale for the government coming forward in a budget bill and asking to increase the applicable excise tax rate, but I fail to see how it is a rationale for allowing future rate hikes without parliamentary scrutiny or approval.

When the officials were asked for precedents for such an extraordinary provision, they pointed to the tax brackets for personal income taxes, which rise automatically with inflation.

But, colleagues, that indexation works to taxpayers' advantage. If a tax bracket goes up because of inflation, we pay less tax. That is nothing like the automatic excise tax increase.

That is a cautionary tale, colleagues. If we agree to this new scheme, I'm concerned that it will in turn be used as a precedent for other escalator clauses in the future. Where will this end?

Witnesses before our Standing Senate Committee on National Finance described the serious impact that this proposal will have on their industry. It will seriously damage their ability to create jobs and spur economic growth. No one in the industry was consulted about the proposal, and they were shocked to hear government officials testify that no economic modelling or forecasting had been done to evaluate these proposals, because in the words of the government officials, "the effect was considered too small to have an impact."

We heard from the beer industry, in particular, talking about sales having gone down, but there has been an increase in the Consumer Price Index. So if this bill is passed, the price of beer will be going up — the price of their product goes up — even though their sales are on the decline, because there is no opportunity for parliamentarians to look at this and say, "This would be inappropriate."

Jan Westcott, the President and CEO of Spirits Canada, told our committee:

> This omission [of economic modelling or forecasting] demonstrates, in our view, either incompetence or negligence and provides ample reason on its own to reject the automatic escalator measure.

That's an industry representative.

No consultation. No economic modelling or forecasting. Whatever happened to the promise of evidence-based decision making?

The fact is that an escalator clause represents an abdication of our responsibility to insist that the government of the day, of whatever political stripe, comes before Parliament to justify any and every tax increase it wishes to impose on Canadians.

And that is not the only escalator clause buried deep within this bill. Let me refer you to another part of the bill that concerns me. At the very end of Bill C-44, beginning at page 277 is an innocuous-sounding proposed new law. Yes, it is another one of the standalone laws that would be enacted by one vote for this omnibus bill, and it's called the proposed Modernization of Service Fees Act.

• (1640)

Now, you may ask, who could take issue with a law that is going to modernize service fees? Well, colleagues, my fear is that instead of modernizing service fees, this proposed law would actually represent a giant step backwards. There is a history here that several of us in this chamber will be aware of. Let me explain.

Roy Cullen was a Liberal member of the other place from 1996 to 2008. In 2002, he introduced a private member's bill called the User Fees Act, and on March 31, 2004 it finally became law. The intent of the bill, in Mr. Cullen's words, was:

> . . . to bring greater transparency and accountability and parliamentary oversight to federal government departments and agencies when they attempt to recover costs through user fees.

His bill contained provisions carefully designed to ensure that user fees would not be imposed or expanded without meaningful consultation with affected stakeholders and client groups. And it provided clear provisions to ensure true, effective parliamentary oversight of any proposed user fees.

When the bill passed the other place and came here for consideration, I was involved in its study as a member of the Finance Committee, and I well remember the challenges it faced. Senator Ringuette was the sponsor of the bill in this chamber, and I am sure she remembers the challenges we went through. When our former colleague Senator Lowell Murray spoke in this chamber on March 11, 2004, in relation to this legislation, he said:

> . . . although senior officials sometimes talk about user fees as if they were an executive prerogative, the imposition of these fees is an authority delegated by Parliament. They bring in some $4 billion annually, and they are of sufficient scope and impact that Mr. Cullen's heroic effort to bring them within the ambit of parliamentary oversight and control is understandable and commendable.

The final version of Roy Cullen's bill on user fees was not what many of us would have wanted. The original bill gave Parliament a veto power over user fees. This was changed at the urging of the government to a parliamentary resolution approving, rejecting or amending the proposed fee increase. Unlike the original veto, this resolution would be of no legal effect; as the Treasury Board officials stated at the time, a parliamentary resolution is just an expression of parliament's opinion. The government is not obliged to act upon it. Senator Murray spoke at the time of his temptation to stand tough on the veto for that reason, but then decided that it was better to have the watered-down oversight than to lose the bill altogether. That's often a compromise we make in this place, and that is what happened in that particular piece of legislation.

So we passed the bill. It was called the User Fees Act, and it became law. Until now. Buried at page 287, literally the last page of this omnibus bill before the schedules, is a short clause, 456, which reads as follows:

> The User Fees Act, chapter 6 of the Statutes of Canada, 2004, is repealed.

And meanwhile the law that would replace it, while touted as "shifting the burden off middle-class taxpayers," in fact appears primarily aimed at weakening the transparency and consultations that had been carefully crafted in that bill of 2004.

Our National Finance Committee received a submission from a former senior federal government official Andrew Griffin. He said that the proposed new Service Fees Act, replacing the User Fees Act of 2004, now:

> . . . allows departments and agencies to increase fees with minimal transparency and consultation.

He wrote that:

> . . . while the User Fees Act consultation process and justification requirements may have been too onerous, the Service Fees Act goes too far by removing all meaningful transparency and consultations.

I will not go into detail here, colleagues, but the 2004 law set out detailed provisions designed to provide stakeholders with information about proposed new user fees, user fee increases or extensions. Government officials had to clearly explain how user fees were being calculated; they had to identify the cost and revenue elements of the user fee and also establish standards that would be comparable to those established in other countries that have appropriate comparisons so that we could look at those other countries to determine whether this a reasonable user fee.

That's all gone, honourable senators.

And the already watered-down parliamentary resolution concerning user fees, the parliamentary resolution that replaced the veto? It is totally gone, now.

Colleagues, I understand that the government may have felt constrained by the requirements of the 2004 Act. Michael Welsh, another former senior federal government official, was quoted in the media recently, saying:

> Treasury Board was against the User Fees Act when it was proposed. . .

It's the long memory of the civil servant. Now the government appears to have taken advantage of this omnibus bill to repeal a law that officials never wanted in the first place. Perhaps they hoped we wouldn't notice.

And colleagues, that is not all. The new proposed Service Fees Act would — you guessed it — include an escalator clause on user fees, each year.

The Shipping Federation of Canada recently wrote to our National Finance Committee about these provisions. They said this new escalator clause could have a

> . . . potentially detrimental impact on the competitive position of users in the medium to long term.

They also pointed out the particular problems for user groups, such as their industry, that are subject to fees from multiple government departments. Now, all of those are going to have escalator clauses. You can imagine the difficulty this is going to cause. These groups will be faced with, in their words:

> . . . the compounding effect of multiple fees that increase on an annual basis over a significant period of time.

Before I leave this section on user fees, I want to remind everyone that the government is asking us to authorize the establishment of the Canada infrastructure bank. I mentioned that earlier, and we've had other speeches on that. That would be tasked with the funding of large infrastructure projects, with costs to be recouped in part through — yes, you guessed it — user fees. I don't know whether any of those user fees would have fallen within the 2004 Act, but, if so, this is surely not the time to reduce transparency and consultations about user fees.

• (1650)

If we want Canadians to support this new approach to infrastructure projects, then surely we need to be more open, not less.

Colleagues, I am very troubled to see that the transparency, consultations and parliamentary oversight that were hard-won 13 years ago in a private member's bill would now be quietly and quickly set aside, as if they had never existed.

This leads me directly to the last element of the bill that I want to address today. But I have saved what I believe is the most serious and, frankly, the most disturbing issue, for the last.

One of the foundational powers of Parliament — and it's a fundamental power of Parliament, colleagues — is the power of the purse, the absolute requirement that there is no taxation without representation; that is, without Parliament's consent.

This principle was enshrined in the Magna Carta, signed by King John at Runnymede on June 15, 1215. And since at least the Glorious Revolution of 1688 of which Senator Cools is very familiar, it has been established that this consent by Parliament also applies to all borrowing of money by the executive.

In Canada, this meant that the government would come to Parliament when it wanted to borrow money and ask for that authority. For a long time, this was done as part of the supply and estimates process. That made sense at the time, as the purpose of the borrowing was debated at the same time as the authority was being sought to spend the money.

However, parliamentarians felt they needed more time to debate the borrowing itself, so in 1975 the borrowing authority was broken out of the supply process and set out in its own dedicated statute.

In fact, in 1975 the Speaker in the other place ordered a borrowing clause struck from a supply bill related to Supplementary Estimates on the grounds that, under the House of Commons rules, then established, its inclusion in a supply bill virtually precluded discussion of the borrowing provisions.

After that, every year the government would have to come to Parliament and request, in a borrowing authority bill, the authority to borrow a stated amount of money for that year.

In 2001, this process was enshrined in the Financial Administration Act, which stated:

> **43 (1)** Notwithstanding any statement in any other Act of Parliament to the effect that this Act or any portion or provision of it does not apply, no money shall be borrowed by or on behalf of Her Majesty in right of Canada except as provided by or under
>
> **(a)** this Act;
>
> **(b)** Any other Act of Parliament that expressly authorizes the borrowing of money; or . . . .

Or under other legislation.

In other words, colleagues, if the government wanted to borrow money, it needed to pass a bill in Parliament, and Parliament had to debate and consider it.

Now, of course, there is no need to borrow money unless there is a deficit. If you are in surplus, then you have money to spend.

Colleagues will recall that the government's finances were in surplus beginning in and around 1997, but this changed in 2007-08. And in 2007, buried in an omnibus budget bill was an amendment to the Financial Administration Act that added a short clause. The heading was "Power to borrow," and the clause read as follows:

> **43.1** The Governor in Council may authorize the Minister to borrow money on behalf of Her Majesty in right of Canada.

And that's the end of it.

The Governor in Council — cabinet — may authorize the minister who wants money to spend, to borrow money on behalf of Her Majesty in Right of Canada. No coming to Parliament. It just wiped out all the tradition since the Battle of Runnymede.

This was revolutionary, colleagues. It was like a blank cheque. Cabinet would authorize government borrowing with no need for Parliament to consent. Parliamentarians should have been in an uproar, but no one even noticed this short clause because it had been buried in a large omnibus budget bill.

If that weren't enough, that omnibus bill included highly controversial provisions concerning the Atlantic Accord and the equalization program that took a lot of our attention.

The attention of parliamentarians in both the House of Commons and the Senate were on those sections and no one noticed this little two-line clause. But by failing to notice this clause, and letting it pass into law, Parliament gave up its responsibility of oversight over government borrowing. This clause allowed the government to simply decide, in Cabinet, whether and how much money to borrow, and there was no longer any need to bring that decision to Parliament for approval.

That happened in June 2007. As colleagues know, in fact, as are witnessing now, there can be a lot of pressure to get bills passed quickly and expeditiously in June. It wasn't until after the passage of this omnibus budget bill that several of us noticed this provision and started asking questions.

There were four of us who did this: Senator Tommy Banks, Senator Wilfred Moore, Senator Lowell Murray and myself. We quickly realized what had happened and the enormous implications of this provision.

Senator Murray introduced a private member's bill to repeal section 43.1 and restore Parliament's oversight over government borrowing. He reintroduced his bill several times, and then upon his retirement from the Senate, Senator Moore took up the cause. These bills all died on the Order Paper. We never got that rectified.

Happily, the Liberal Party heard our voices, and their platform for the last election included the following promise: We will ". . . require the government to receive Parliament's approval on borrowing plans."

As you can imagine, we were very pleased to see that. To be safe, Senator Moore re-tabled his private member's bill to remove 43.1; that was Bill S-204. And then we saw last year's Budget Implementation Act, 2016, No. 1, which included the critical amendment to the Financial Administration Act by providing, in clause 182, the following welcome words:

> Section 43.1 of the *Financial Administration Act* is repealed.

How quickly it came in and how quickly it can go out, with just one line.

On May 3, 2016, while that budget bill was still being studied in the other place, the Minister of Finance, Bill Morneau, came to the Senate for Question Period. Senator Moore asked him to confirm that the government's bill did what his private member's bill sought to do, namely to repeal section 43.1 and restore the requirement of the government to obtain the approval of Parliament to borrow money.

Minister Morneau began by thanking Senator Moore and saying that the inclusion of the provision in his government's budget to repeal section 43.1 was because of the efforts of the four of us here in the Senate, and he named each of us. He confirmed that the clause did what Senator Moore's private member's bill was trying to do.

• (1700)

The budget bill passed and received Royal Assent, and we were all very pleased.

On September 27, 2016, Senator Moore stood in this chamber and removed his bill from the Order Paper because of what happened.

But the story doesn't end there, colleagues. We only just learned that, since 2016, the government has never declared that provision in force. After taking all of the credit, they have never declared the provision in force. So the provision that we passed last year, repealing 43.1 of the Financial Administration Act, which was the expression of Parliament, was never brought into force.

Section 43.1, the blank cheque that the cabinet could borrow money without any parliamentary approval continues as the law of the land. That is the law today.

So, despite the election promise, despite the clause in last year's budget bill and despite all of the congratulations that were given, the blank cheque clause is the law of the land. Former parliamentarians have told me that, in their view, what is being done is contemptuous of Parliament and the laws that we pass, if not in the technical, parliamentary sense, then certainly in the ordinary sense that Canadians would understand the term.

To make matters worse, as I read it, Bill C-44 reinforces that cabinet, not Parliament, has full discretion over borrowing. Let me explain.

Bill C-44 would enact a new general borrowing authority act, another stand-alone piece of legislation, called the "Borrowing Authority Act." That should be good. It should be the government returning to Parliament for authority to borrow money. That's what we've been looking for, but there are many problems with this proposed Borrowing Authority Act contained in this budget bill, Bill C-44.

First, let me draw to your attention to section 3 of the new law. This is at page 67 of Bill C-44. The wording is complicated, but please bear with me, colleagues, because it is extremely important to know what we're dealing with. Section 3:

> The Minister, with the authorization of the Governor in Council under subsection 44(1) of the Financial Administration Act and in accordance with that Act, may borrow money on behalf of Her Majesty in right of Canada, by way of the issue and sale of securities, as defined in section 2 of that Act, or otherwise.

"Or otherwise." They can borrow money any way they want.

Colleagues, I look forward to asking about this when the Finance Committee has the minister before us. But, as I read this section — and others I have consulted came to the same conclusion — it is the dreaded and objectionable section 43.1 blank cheque wrapped up in other words. Instead of "the Governor-in-Council may authorize the Minister to borrow money," which was straightforward, undesirable but understandable, and which is what section 43.1 now says, this new section, if it should become law, says:

> The Minister, with the authorization of the Governor in Council under subsection 44(1) of the Financial Administration Act and in accordance with that Act, may borrow money . . . .

I, of course, quickly looked up section 44(1) to see if there is some protection for the parliamentary oversight. Section 44(1) of the Financial Administration Act says:

> When by this Act or any other Act of Parliament authority is given to raise money by Her Majesty, the Governor in Council may, subject to the Act authorizing the raising of the money, authorize the Minister to borrow the money by any means that the Minister considers appropriate.

That simply says that, when an act of Parliament — and the proposed Borrowing Authority Act that's tucked away in Bill C-44, would, of course, be an act of Parliament — gives authority to raise money, the Governor-in-Council may, subject to that act, authorize the minister to borrow the money by any means that the minister considers appropriate. In other words, colleagues, it is a tight circle, giving cabinet and the minister all of the authority they need to borrow money, in any amount and any way they consider appropriate and, most notably, without any need for any parliamentary approval. If this passes, don't expect us to see any future borrowing bills, no matter how much the government needs to borrow. They'll just go out and do it. Colleagues, if we pass this bill as currently worded, we would be guilty of abdicating our most fundamental responsibility as parliamentarians, namely, to exercise oversight over government finances.

By the way, it's not surprising that this wasn't noticed in the other place. Let me read to you the description of this part of the bill from the legislative summary proposed by the government and circulated to all senators. Presumably, a similar document was prepared and circulated to all members of the House of Commons. On page 4 of this summary that was sent to all of us, telling us what was in Bill C-44, it described this part as follows. "Public Debt" is the heading:

> Bill C-44 proposes to amend the Borrowing Authority Act to provide parliamentary —

The Hon. the Speaker: I am sorry, Senator Day, but your time has expired. Are you asking for more time?

Senator Day: I wonder if I might have five minutes to conclude this.

The Hon. the Speaker: Five minutes?

Hon. Senators: Agreed.

Senator Day: I'll start under "Public Debt." This is the document circulated to all of us, the government explaining to us what they felt was in this particular part of Bill C-44:

> Bill C-44 proposes to amend the Borrowing Authority Act to provide Parliamentary approval of Government borrowing to enhance transparency and accountability to Parliament for the Government's borrowing activities, to effectively fund the Government's fiscal policies set out in

the Budget. The new borrowing approval would provide Parliamentary oversight regarding the Government's borrowing plans.

First, it is a simple fact that there is no existing "Borrowing Authority Act." It was in the Financial Administration Act. So to suggest this proposes to amend is incorrect in the first line. You can't modify or amend something that does not exist. The proposed Borrowing Authority Act is a completely new, stand-alone statute that is in this Bill C-44.

But, more important, as I have explained, far from providing parliamentary approval of government borrowing, it ensures that cabinet has the power to borrow money without any need to come to Parliament. There is no parliamentary oversight.

And, colleagues, there is more.

Under the 2007 budget bill of the previous government, the bill that took away the need for parliamentary approval for government borrowing, there was at least a provision requiring the government to table in Parliament, every year, a report on the minister's borrowing activities and management of the debt, and a report on the plans for borrowing. We, on the Finance Committee, used to ask to look at that, and members would ask to look at that, as Senator Marshall knows. Bill C-44 changes this. In the proposed new Borrowing Authority Act, the minister is required to report to Parliament not every year, but only once every three years on the amounts the government has borrowed.

So, colleagues, if we pass this bill in its current form, we would be agreeing that cabinet alone has the power to authorize borrowing by the government and, furthermore, that Parliament need not have any information about the government's borrowing for three years after it took place.

• (1710)

This borrowing authority act does set out the maximum amount for the government's borrowing of $1.168 trillion before they have to come back and get it changed.

Colleagues, I have never in my years in the Senate seen a borrowing limit over $1 trillion dollars. By the way, that is separate from the money the government may need to address extraordinary circumstances like natural disasters or financial crises. The government may borrow beyond $1.168 trillion, if needed, for such emergencies. That's a separate section in the Financial Administration Act.

Colleagues, I will conclude my remarks there. Clearly, there is much that needs to be studied in this bill, now that we have finally received the bill. I've just talked about three different areas that I want us in the Finance Committee and in this chamber to consider at third reading.

There are many more, colleagues. These ones just had that golden thread woven through them that all related to taking away parliamentary oversight, which I think is so critical.

The more I examine in this omnibus bill, the more questions I have. As I said earlier, the bill contains provisions that quietly — one might say stealthily — remove Parliament's oversight of government finances and increase the power of the executive — of the cabinet. But of course, now that we know —

The Hon. the Speaker: I am sorry to interrupt, but I must advise that the honourable senator's time has expired.

Are you asking for more time?

Senator Day: Two more minutes.

An Hon. Senator: Five.

Senator Day: Thank you, Senator Mockler. I said some nice things about you earlier on; I appreciate you returning the favour.

As I said earlier, this bill contains provisions that quietly, stealthily remove Parliament's oversight of government finances and increase the power of cabinet. Of course, now that we know, we can no longer blame the drafters of the bill and the government. If we pass Bill C-44 in its current form, we are the ones who are knowingly removing parliamentary oversight. Parliamentarians certainly have the procedural and legal authority to abdicate even more of their oversight responsibilities if they want. But I, for one, am profoundly disappointed that this government has decided to ask that we do that here. This is not what I was expecting of this government.

Hon. Yuen Pau Woo: Would the senator accept a question?

Senator Day: I have two minutes.

Senator Woo: I have a lot of questions, but let me start with the last subject you discussed on the borrowing authority of the government.

I'm glad you indicated towards the end of your speech that there is, in fact, a borrowing limit that has been established over the three-year period, and you said that it was $1.16 trillion. You also said — I am not quoting verbatim — that the government has the power to borrow up to that amount over the three-year period.

Senator Day, would you please tell us what is the current stock of debt that the government already has in place and what is the incremental borrowing that they're seeking authority for?

Senator Day: Thank you, Senator Woo. I bow to you in terms of those numbers. I did not say that that was over a three-year period. The three-year period is the reporting of what the status is at the end of the three-year period.

Senator Woo: In fact, the stock of debt that's already in place from previous governments is $967 billion. So the borrowing authority that we're actually providing to the government is a small fraction of the $1.1 trillion. It is correct for the government to give us the total debt stock and the debt limit because that is the measure of the country's indebtedness rather than the flow of debt that we're taking on.

Senator, I will follow on a different question on the escalator tax. I share your concern for the industry and the impacts that will be felt because of a continuing escalator, and I agree this is an

issue that we need to watch closely each year as the escalator is announced three, four, five months before it is implemented. But I want to ask you if you can explain to us the difference between an excise tax and an *ad valorem* tax. An excise tax, as I'm sure you know, is applied on a fixed quantity — a bottle or a bushel or a barrel — whereas an *ad valorem* tax is applied on the price of that good. We have a GST, which is an *ad valorem* tax, and it's applied to the price of the good. When the price of the good goes up, the amount of GST collected goes up as well. Is the GST not an automatic escalator tax?

Senator Day: No, it is a different type of tax. I like the *ad valorem* GST tax and I wish all of our taxes were like that. The difficulty with the excise tax — we were trying to get rid of all of those manufacturing-type taxes and then you need to have exceptions — is that it puts our industry in a very difficult position to have to work into the cost of the product, at the time of manufacturing it, a manufacturer's tax — a tax on the manufacturer as well.

I am concerned about the excise tax. As I mentioned in the few words I just gave, we heard from the brewing industry that their sales, probably because of all the other competition, have gone down but still their costs in terms of excise taxes are going to go up automatically. If Parliament had an opportunity to look at this, they would say, "Maybe this year we should not be looking for more revenue from this golden goose." That's really the problem.

I'd like to comment on your comment about three years.

The Hon. the Speaker: Your time has again expired. There appear to be other senators who want to ask more questions, but it's entirely up to you if you want to ask for more time.

Are you asking for more time?

An Hon. Senator: Give him time.

Senator Day: I would be pleased to try and answer the questions.

The Hon. the Speaker: Just this one or are you asking for more time or other senators as well?

Senator Day: I'm in your hands; one question.

The Hon. the Speaker: One question.

Senator Day: By somebody else.

Hon. Michael Duffy: I wonder the Senator Day would agree with me that the major point here is one of accountability and transparency.

There was a time, some of us are old enough to remember, when cabinet ministers actually came to this place and the other place, appeared in Committee of the Whole and answered for their budget or their departmental estimates. I can remember times when ministers were not in favour and there was a motion put to reduce the ministerial salary to a dollar as a sign on the part of the chamber that they weren't happy with the way the minister was behaving or the answers he or she was providing.

On the *ad valorem* matter, the first time I ever heard the term was in relation to 18-cents a gallon. Mr. Clark had one idea and he was replaced by Mr. Trudeau, who brought in an *ad valorem* tax. So it has its own place in our electoral history.

But on accountability, isn't that really what this exercise is all about?

Senator Day: Thank you, Senator Duffy. I could have spent a lot of time talking about the different issues I see in this 300-page document. I know if you pick up the document and start going through it, you will find a number of issues that have not been mentioned.

• (1720)

I've run out of time just talking about three, and I thought it was important for you to have the background on those. But with those three, in terms of borrowing, the excise taxes and the user fees, there is a thread that goes through all of them, and it does deal with promises made and promises not kept, in my view. It's critically important we understand that. Whether the minister is aware of all these things or these are imposed documents, I don't know, but we've got to look into this, because these are serious.

Senator Woo was happy with three years and a report every three years. I was happy when they had to come to Parliament every time they wanted to borrow, but the fallback position was that we got a report every year. What was wrong with a report every year? Now what we're getting is a report every three years. Three years is a long time out for something you borrowed — "Oh yeah, I borrowed this money three years ago to do something."

[*Translation*]

Hon. Larry W. Smith (Leader of the Opposition): Honourable colleagues, I will be brief. It is important to understand that the bill before us proposes significant changes that are not consistent with the usual way of creating government programs.

[*English*]

The purpose of the short speech I will give today is more on the idea of framing thought processes that could assist us in our evaluation of the budget.

It's not that doing things in a new way should be considered negative. Change can be good. There are historical examples why what Bill C-44 proposes should be given sober, second thought. There are a few sections that are worth taking some time to review more closely. I reject the idea that just because it's close to the summer break, we must pass this legislation hastily. We have an important job to do on behalf of Canadians to get our laws and methods of running the country right, right now. Having to come back in the fall to review legislation that is redrafted more carefully can mean the decisions are more beneficial to Canadians.

I reject the notion that amending a bill will effectively kill it. We know as senators we have the power to enact legislation, should we feel it important for Canadians. Equally, regarding acts that require royal recommendation, the government is not limited in what it may propose.

The portions of concern are: Division 7, regarding the Parliamentary Budget Officer. Although improved, it requires further review to ensure the utmost independence. And I think the past Parliamentary Budget Officer has expressed that.

Division 18: Establishment of the infrastructure bank, which has several missing details critical to accepting the concepts such as governance structure, the obligation of the public, the oversight and due diligence. As I review in my own mind, when Michael Sabia was before our Finance Committee, he was very direct, indicating: "We are interested in making money for our pensioners in Quebec. We will not get involved with projects that do not make the returns that are important for us to have in our business."

So if we look at some of the proposed ideas the government has submitted, we have high-return projects, which sound great for the bank. But what about the projects of social housing, affordability-type projects, projects that may not have that return? Is that going to be the role of the infrastructure bank? No, but I think there has to be clarification in some of these areas to make sure that if a project doesn't qualify — and, of course, we'll go back to the governance, and hopefully the answers will be, "Well, we won't get involved in that," but at the same time, is there a great deal of opportunity? It will be interesting to find out, but it is part of the due diligence that needs to take place.

I'd like to remind you, colleagues, that the House of Commons Standing Committee on Transport, Infrastructure and Communities spent a mere two hours of deliberation on this division — two hours. It's great to say that we have had six different meetings and X number of witnesses, but the Commons Transport and Infrastructure Committee spent two hours looking at this particular issue. Clearly, a more thorough review is required.

Division 20, invest in Canada. This one really gets me, personally, as a business individual. Investment in Canada — a division that also creates a new bureaucracy that does not fall under the typical reporting mechanisms of the public service and duplicates the roles of government's Department of Foreign Affairs, Trade and Development, Industry Canada and our regional economic development agencies. We have people who are supposed to be developing business for Canada, and we have private enterprise that is the vehicle also that tries to get foreign investment into our country. We have the private sector that already does what the invest-in-Canada concept is all about, so are we just building more bureaucracy, more red tape and are we building performance?

Also, the excise tax escalator on alcoholic beverage industries — we have concerns regarding the impact this will have on the industry. Of course, people said 2 per cent gives you six cents. Then it went up to 12 cents, and Senator Mockler said that in his province it would be a 12-cent-per-bottle increase. But what about the multiplier effects through the provinces and how it affects going through the whole chain from the producer to the end consumer? There could be a demand for more evaluation.

The last time we saw this type of tax, we lost 12 distilleries. We have already heard that Bacardi will be leaving Canada shortly. Can we afford to lose more producers? This is a sector of the economy that employs Canadians from farming inputs to production, distribution and consumption in the hospitality industry, not to mention tourism through wine-tasting areas such as Niagara.

Colleagues, we have asked to learn more on this sector.

Finance has confirmed that no study — and I have the testimony and the name of the individual — I won't repeat the person's name, because I don't want to jeopardize anybody's employment — but no study of the impact on the excise tax escalator has been made. How can we — sober second thought — decide on a new tax without knowing the expected impact on the entire sector of the economy?

As I listened to Senator Day, a thought came to my mind — a thought that says, "Trust us. We're going to do the job." One of the things I learned through the mentorship of working with Senator Day was that finance — and I think Senator Woo has a brilliant mind in that particular area — but it reemphasizes the importance of us as parliamentarians to ask the questions. We may not be necessarily financial experts, but it's to learn as much as we can so that what is done by the executive is done properly. The result is going to affect hard-working Canadians in the most positive way.

I believe that when we take time to review the legislation and consider the opinions of experts, we arrive at the solution that is best for all Canadians.

The Finance Committee's work over the time that I have been blessed to be with it — we always had one objective: to get the best results for Canadians. My concern is that when you see repeated issues of — I'm not going to say the abuse of power — but the manipulation or management of power, and people looking at you and saying, "Trust us; we're going to do that job," whether it's subliminal or direct, I'm afraid, as members of the Finance Committee, it's our obligation to make sure we say, "Check, check, check." We'll do the work, make the recommendations — let the chips fall where they may once it's done.

That is something to think about. I'll be back for third reading.

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

Hon. Senators: Question.

The Hon. the Speaker: It was moved by the Honourable Senator Woo, seconded by the Honourable Senator Hartling, that this bill be read the second time.

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

(Motion agreed to and bill read second time, on division.)

REFERRED TO COMMITTEE

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

(On motion of Senator Woo, bill referred to the Standing Senate Committee on National Finance.)

• (1730)

MOTION TO INSTRUCT NATIONAL FINANCE COMMITTEE TO DIVIDE BILL INTO TWO BILLS—POINT OF ORDER— SPEAKER'S RULING RESERVED

Leave having been given to proceed to Motion No. 225:

Hon. André Pratte, pursuant to notice of June 13, 2017, moved:

> That it be an instruction to the Standing Senate Committee on National Finance that it divide Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, into two bills, in order that it may deal separately with the provisions relating to the Canada Infrastructure Bank contained in Division 18 of Part 4 in one bill and with the other provisions of Bill C-44 in the other bill.

Hon. Peter Harder (Government Representative in the Senate): Your Honour, I rise on a point of order.

Honourable senators, I rise on a point of order in relation to Senator Pratte's Motion of Instruction to divide Bill C-44 into two new bills. As you know, this motion would instruct the Standing Senate Committee on National Finance to report to this chamber recommending the division of Bill C-44 such that Part 4, Division 18 of Bill C-44, that is the Canadian infrastructure bank, will become one bill and the remainder of Bill C-44 will become another.

As I will explain in detail, I respectfully submit that the motion is out of order. The reason is that a money bill may not commence in the Senate, yet this bill would produce two new money bills accompanied by Royal Recommendations with the new bills originating in the Senate. This motion would, I therefore submit, be out of order.

In the alternative and notwithstanding the foregoing argument, I would ask the Speaker for clarification on whether and when the Senate requires the consent of the other place before it can divide a money bill, and when and under what circumstances a divided bill may receive Royal Assent. In this context, I would submit that if the Speaker concludes that the Senate can divide a money bill to create two new money bills, the Senate requires the prior consent of the House of Commons to do so, even for its own procedural purposes.

To conclude otherwise would be to establish a practice in direct conflict with the privileges of the House of Commons, which reflects its special legislative authority over money bills as reflected in the Constitution Act, 1867. Further, the other place's dominion over money bills obliges this chamber to defer to the other place with respect to the principle of money bills, forestalling division absent prior consent.

Finally, and notwithstanding the above submissions, I would ask the Speaker to clarify and confirm that the house must concur in the division of Bill C-44, such that neither ostensibly derivative bills C-44A or Bill C-44B, or whatever numbering would be appropriate, could receive Royal Assent without such concurrence.

I will now provide details as to why the Senate cannot divide a bill to create a new bill with a Royal Recommendation, commencing with the nature of a Royal Recommendation. I would quote from page 153 of the *Senate Procedure in Practice*:

> The Constitution requires that all bills appropriating any public money be accompanied by a Royal Recommendation; a requirement that is also reflected in the *Rules of the Senate*. A Royal Recommendation is a message from the Governor General to the House of Commons that can only be obtained by a minister. The message is required for any vote, resolution, address or bill that authorizes the expenditure of public revenue.

Senate Procedure in Practice then continues to quote *House of Commons Procedure and Practice* at page 831:

> Under the Canadian system of government, the Crown alone initiates all public expenditure and Parliament may only authorize spending which has been recommended by the Governor General. This prerogative, referred to as the "financial initiative of the Crown", is the basis essential to the system of responsible government and is signified by way of the "royal recommendation." With this prerogative, the government is assigned the responsibility for preparing a comprehensive budget, proposing how funds shall be spent, and actually handling the use of funds.
>
> The Constitution Act, 1867 established in our fundamental national law the exclusive role of the House of Commons in originating federal bills containing financial initiatives as authorized by the Crown through Royal Recommendations. The limitations of the Senate in this respect were recently summarized by Professor Adam Dodek in a paper entitled, *Omnibus Bills: Constitutional Constraints and Legislative Liberations*, which was published this year. The professor states:
>
> As a strict formal matter of constitutional law, the Senate is the co-equal to the House of Commons. The only restriction on the powers of the Senate contained in the *Constitution Act, 1867* is that money bills — any bills appropriating public revenue or imposing a tax or a duty — must first be introduced in the House of Commons and cannot originate in the Senate. Any other bill can be introduced in either the House of Commons or Senate.

Specifically, section 53 of the Constitution Act, 1867 states:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

For emphasis, I would repeat: shall originate in the House of Commons.

In our bicameral system, comprised of two of legislative chambers, one elected, the other unelected, the elected chamber has sole rights with respect to the initiation of financial legislation. Were the present motion accepted as an order and subsequently adopted, this chamber would, as a result, overstep its constitutional authority by creating a bill appropriating part of the public revenue. The two bills created by this motion would be new bills alien to the other place. Specifically, these pieces of legislation could constitute two new budget implementation bills originating not in the confidence chamber, which has constitutional domain over money bills, but in the Senate.

Section 54 of the Constitution Act, 1867 strengthens this conclusion. Section 54 reads:

> It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Again, were this motion in order and subsequently adopted, this chamber would also seek to undermine the other place's constitutional authority. This is because it is not lawful for the House of Commons to adopt a bill for the appropriation of public revenue that has not first been recommended to that house by a Royal Recommendation. A new bill generated by the Senate would not meet this test.

These constitutional limits on the Senate's legislative authority are reflected in the practice of the Senate. In the Speaker's Ruling regarding a proposed amendment to Bill C-2, delivered on November 29 last year, the Speaker noted:

> As senators know, the *Constitution Act, 1867* provides that any bills to appropriate public monies or to impose taxes must originate in the Commons. This is a basic principle of Canadian parliamentary democracy.

Honourable senators, in considering the Senate's limits with respect to financial legislation, the Speaker also referred to the central elements of the *Ross Report* of May 15, 1918, adopted by the Senate on May 22. The Speaker said:

> The conclusions and principles set out in the report dealing with money bills received from the House of Commons express and govern our practices, to the extent these matters are not specifically addressed in our Rules.

Honourable senators, the Ross Report notes:

> The British North America Act imposes one extremely important limitation on the powers of the Senate.

The report then continues to directly quote sections 53 and 54 of what is now the Constitution Act, 1867. The effect of this is that sections 53 and 54 express and govern the Senate's practices to the extent these matters are not specifically addressed in the *Rules of the Senate*.

Additionally, the Ross Report explicitly explains the effect of these constitutional limits on the Senate's legislative authority.

• (1740)

> The Senate therefore cannot directly or indirectly originate one cent of expenditure of public funds or impose a cent of taxation on the people. This is involved in sections 53 and 54, the clauses of the act defining the executive power. This is, however, the only limitation of the powers of the Senate in regards to "Money Bills" in the British North America Act. In all other respects, the act leaves with it coordinate powers with the House of Commons to amend or reject such bills. (198)

Honourable senators, through the Ross report, it is established in the Senate's practice that this chamber cannot originate the expenditure of public funds. This entails that the Senate cannot create a bill expending public funds regardless of whether that newly created bill would attempt to appropriate the Royal Recommendation of a part of a bill that originated in the other place. The origin of the bill is directly at issue, and the motion before us would originate a bill in the Senate without an expenditure of funds, making it out of order.

In this specific case, were the chamber to divide Bill C-44 into Bill C-44A and Bill C-44B, both new bills would attempt to appropriate Royal Recommendations from Bill C-44. For example, Part 4, Division 18 of Bill C-44 — that is, the infrastructure bank — contains provisions necessitating a Royal Recommendation. For example, the Chief Executive Officer, the chairman and other director positions would receive remuneration for their services, and the rate of remuneration would be fixed by Governor-in-Council. The Minister of Finance may pay to the bank, through the Consolidated Revenue Fund, capital payments, and the bank would have a capital of $100, divided into shares at a par value of $10 each, and the shares are to be issued to the designated minister to be held on behalf of Her Majesty in right of Canada.

In response to my foregoing argument, I would anticipate and answer the counterargument that in dividing money bills, the Senate is not originating the expenditure of public funds. Rather, it might be claimed, the Royal Recommendation runs with parts of the bill, and dividing the bill preserves intact those Royal Recommendations.

In response, I would quote to this chamber section 53 of the Constitution Act, 1867, where it says:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

The plain meaning of this text is that the bill appropriating the revenue must originate in the House of Commons. I submit that ostensibly derivative bills created through division in the Senate are in fact new bills originating in the Senate.

So we arrive, honourable senators, at the metaphysical question of identity: if a thing from one place is divided into two things in another place, are the two things new things, and where did they originate? To put it more succinctly for our purposes, if a House of Commons bill is divided into two bills in the Senate, are the two bills new bills, and in which place did they originate?

I submit that Bill C-44A and Bill C-44B, or whatever numbering would be appropriate, would be new bills originating in the Senate. If this chamber were to adopt a practice based on the opposite metaphysical view that bills such as Bill C-44A and Bill C-44B originated in the House of Commons, I think that would come as a surprise to the other place and not a very welcome one. I suspect the House of Commons would deny originating Bill C-44A and Bill C-44B, having rather originated a single bill intended to deliver a comprehensive budget proposing how funds shall be spent and actually handling the use of those funds. This is because the economic measures in this budget do not exist in isolation from each other. In accordance with the government's mandate from Canadians, the measures are meant to come together to meet the objective of investing in a more inclusive, productive and fair Canada.

In contemplating the practical effects of a motion before us, Canadians might well imagine the effects of implementing some provisions of their carefully planned household budget and being informed by a third party that the rebuilding of their deck is a matter that ought to be considered in isolation and subjected to further study according to an infinite timetable. To say nothing of the financial implications, I would note such a person would also be left without the benefit of the new deck.

My argument that this motion is out of order is supported by precedent in this chamber as well. Speaker Charbonneau's 1988 ruling on Bill C-103, a money bill, supports the view that dividing Bill C-44 is out of order because it initiates two money bills in the Senate. I quote that ruling from this august chamber's longest-serving Speaker, where he says:

> If it is divided, Bill C-103 will no longer be on the Senate Order Paper but will be superseded by two separate bills. The Chair notes there could be a technical problem with the numbering of such bills but feels such practical difficulties could be worked out.
>
> The Chair has a problem in accepting that these two separate bills are still government bills. Senator Graham's instruction does not deal with amending a government bill, but with dividing a government bill into two bills. These two bills would therefore have found their way before Parliament, not in the House of Commons, but in the Senate. Since they would both be bills appropriating public money, it would appear to the Chair that such action would be in contravention of Section 53 on the Constitution Act, 1867 which states, "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."
>
> For this very important reason, I must conclude that the motion of the Honourable Senator Graham is not in order.

In the case of Bill C-103, Speaker Charbonneau's ruling was appealed to the Senate and overturned by a majority vote. I submit that in overturning the Speaker, the Senate asserted a procedural power that exceeded its constitutional authority as well as contradicting its practice in adhering to the Ross Report. Indeed, a decision to overrule the Speaker is generally a product of political calculus, not procedural and constitutional probity. Speaker Charbonneau got it right from a procedural point of view, yet the Senate chose to act notwithstanding the rule as so aptly defined and outlined by the Speaker.

Although not engaging constitutional issues, this situation was otherwise similar to that of 2015, when the Senate overruled Speaker Housakos to allow the government to impose time allocation on a private member's bill, Bill C-377, through a government disposition motion. It was Speaker Housakos who got it right from a procedural point of view, yet the Senate chose to act notwithstanding the rule.

I leave it open that in exceptional circumstances, the Senate may again in the future act notwithstanding established procedure. However, the rule remains the rule.

As it happens, in 1988, Bill C-103 was then studied by the Senate Finance Committee, which split the bill in two, in accordance with the Senate's instructions. The committee reported Part I of the bill to the Senate, and the Senate sent this part back to the House of Commons.

In the other place, upon receipt of the Senate's message, Speaker Fraser doubted that the Senate even possessed such prior absent concurrence of the Commons, ruling that the Senate had breached the privilege of the House of Commons. I quote Speaker Fraser:

> If it is admitted that the Senate can consolidate two bills, why then can it not divide one Bill into two or more legislative measures? The answer is at least in part in the message. In the 1941 case just alluded to the Senate specifically sought the concurrence of the house for its action. Apparently it was the disposition of this place to accept it. In the message received last Friday relating to Bill C-103, the Senate does not seek the Commons' concurrence in the division of the bill, it simply informs this house that it has done so, and returns half of a bill.

Speaker Fraser continues:

> The Speaker of the House of Commons by tradition does not rule on Constitutional matters. It is not for me to decide whether the Senate has the Constitutional power to do what it has done with Bill C-103
>
> There is not any doubt that the Senate can amend a bill or it can reject it in whole or in part. There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft bills originating in the Commons potentially so as to change their principle as adopted in

> the House of Commons without first seeking the agreement of the house. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, he went on to say:

> It is my opinion, and with great respect, of course, that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103, and in reporting only part of the bill back as a *fait accompli* has infringed the privilege of this place.

He went on to say:

> I have ruled that the privileges of the House have been infringed. However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the Message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them, if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

• (1750)

In the end, the house debated the motion to acquaint the upper house with the fact that the house disagreed with the message received from the Senate because in dividing the bill "the Senate has altered the ends, purposes, considerations, conditions, limitations and qualifications of the grants of aid and supplies set out in the bill, contrary to Standing Order 87, as recommended by Her Excellency the Governor General to this House and has therefore infringed the privileges of this House, and asks that the Senate return Bill C-103 in an undivided form." Following debate the motion was carried by a vote of 112 in favour and 10 opposed. The Senate subsequently agreed to study the bill as a whole.

Currently, the House of Commons Standing Order 80(1) affirms that the other place maintains this view that money bills must originate there. It states:

> All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

Now before moving on to the question of whether and when the consent of other place is required for the Senate to a bill originating in the House of Commons for its own purposes or for Royal Assent, I would close with a few comments on the underlying purpose of why this chamber cannot originate money bills.

On May 30, just a little while ago in the relation to the fifth report of the Rules Committee, Senator Pratte said:

> . . . to accept this idea that any budget bill, because it has the Royal Recommendation, cannot be divided would be a very dangerous precedent for the Senate, because that would mean any budget omnibus bills could not be divided.

With respect, I take a different view on the precedent at stake. In the practices and procedures we develop in our complementary and unelected chamber, we need to be careful to respect the constitutional powers attributed to the House of Commons, which have their basis in the hard won principle of responsible government. As Canada's one hundredth and fiftieth anniversary approaches, let us remember that the responsibility of the government to the people was not won quickly or easily by those who came before us, so let us not deal too sharply with the elected chamber, whose constitutional powers reflect the fundamental role of democracy in our bicameral Parliament.

I would further submit that if it is held that this chamber cannot divide bills such as, such an outcome hardly leaves the Senate would without any remedy. As Professor Heard notes in his 2014 volume entitled *Canadian Constitutional Conventions*:

> . . . [a]s a matter of strict law the Senate enjoys freedom to amend, delay, or reject outright any bill or motion, including money bills.

The Ross report is clear that this chamber can amend money bills — including rejecting parts of money bills — or defeat them outright. Indeed another passage of the Ross report does, I think, add some nuance to the remedies available to this chamber in dealing with abusive bills accompanied by a Royal Recommendation. It says:

> A Supply Bill should be passed as a matter of course by the Senate in almost any conceivable circumstances if it contains nothing but Supply. If other matters are inserted in the Bill or "tacked to it" these should be struck out and be made into a separate Bill or Bills.

Given the totality of the foregoing, that section 53 of the Constitution does not admit the originating of money bills in the Senate and that the Ross report establishes as practice that the Senate may only amend or defeat money bills, I submit that four remedies are available to this chamber for potential abuses of omnibus legislation with a Royal Recommendation.

One, it could defeat the bill; two, it could amend the bill; three, amend the bill and, where the part of the bill struck out does not contain a Royal Recommendation, originate the portion struck out as a new bill in the Senate; four, amend the bill, and where the part of the bill struck out does contain a Royal Recommendation, the house may originate that portion again.

Honourable senators, I submit that these four remedies are sufficient to alleviate any potential abuse of omnibus bills, and division of a bill carrying a Royal Recommendation is out of order. However, in the context of legislation such as Bill C-44, which is complex but far from abusive, there is another way to move forward: scrutiny, which this chamber has brought to bear on all elements of this bill through a comprehensive pre-study that the government followed with close interest and careful consideration. Notwithstanding the foregoing, I move now to

seek clarification as to when the House of Commons must consent to the Senate splitting a money bill originating in that place.

As I noted earlier, the Senate's practices regarding the division of bills and the practices as between the chambers are not well developed due to the rarity of attempts. However, the recent fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament adopted by the Senate concluded that the division should occur only following the Senate's empowerment of the committee to divide the bill, and upon the Senate's adoption of a report to divide the bill along specified lines. The fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament further stated that if one bill created by the division of a bill is adopted at third reading "a message is sent to the House of Commons requesting that it agree to the division of the bill and pass the bill to which the Senate has agreed"; and "If the House of Commons agrees to the division, then both houses are in agreement about the separate existence of the bills."

In this way, the Rules Committee report adopted in this chamber provides that "there are, from the Senate's perspective, more than one bill where there was previously one."

However, I would note that application of this general approach to money bills directly conflicts with the privileges of the House of Commons. This view is supported by Speaker Fraser's above-cited ruling on Bill C-103, whereby the house would consider it violation of house privileges for the Senate to divide a bill originating in the house without first seeking the consent of the house. I quote that ruling:

> There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft Bills originating in the Commons, potentially so as to change their principle as adopted by the House without again first seeking agreement of the House.

Speaker Fraser's words are particularly relevant to money bills. Can the Senate, without the prior consent of the house, alter the principle of a money bill as adopted in the other place through division of the bill?

Honourable senators, I submit that the other place has unique constitutional and legislative authority over the origination and adoption of money bills per sections 53 and 54 of the Constitution Act, 1867, and as recognized in Senate practice through the Ross report. While the Senate's authority to defeat or amend money bills is not in question, I submit that the Senate cannot alter through division the principle of a money bill without the prior consent of House of Commons.

A ruling on December 9, 2009, cited by the Speaker in his recent ruling in relation to Bill C-6 noted:

> It may generally be helpful to view the principle as the intention underlying a bill. The scope of the bill would then be related to the parameters the bill sets in reaching any goals or objectives that it contains, or the general mechanisms it envisions to fulfil its intentions. Finally, relevancy takes into account how an amendment relates to the scope or principle of the bill under examination.

Honourable senators, the House of Commons has the unique authority in Parliament to originate money bills. As a matter of Senate practice, and flowing from the Constitution Act, deference is owed to that chamber in relation to the principle of money bills that it does originate. I therefore submit that it is out of order for the Senate to divide Bill C-44 without the prior consent of House of Commons as such a division would violate the privileges of the other place and be destructive to the principle of this comprehensive and integrated budget implementation legislation.

Again, this is because the economic measures in this budget do not exist in isolation from each other. In accordance with the government's mandate from Canadians, the measures are meant to come together to meet the objective of investing in a more inclusive, productive and fair Canada, which is the intention underlying Bill C-44. In short, the principle of Bill C-44 is to implement the government's 2017 Budget, and this motion seeks to destroy Bill C-44's original goals through division and without the consent of the elected chamber.

• (1800)

I respectfully submit that this is out of order.

Notwithstanding this submission, and should the Speaker not accept this submission, I would further state and seek to clarify that the consent of the other place is most certainly required before any ostensibly derivative bill — Bill C-44A or Bill C-44B — could receive Royal Assent.

With respect to the Senate's division of Bill C-10 in 2002 and following the adoption of Bill C-10A, Senator Kinsella rose on a point of order as to whether the text of the message itself was debatable prior to being sent to the House of Commons. This led to a ruling by Speaker Hays on December 4, 2002, which outlines the necessity to receive concurrence from the House of Commons as it applied to the 1988 case of Bill C-103, when he said:

> Despite the lack of a clearly established formula, one thing is clear. A proper message must seek the concurrence of the House of Commons to any changes made by the Senate to a Commons bill. This is the only element of the message in 1988 that was deleted. The original message informed the House of Commons that it divided the Bill into two Bills, both of which were attached as appendices. Further, the message informed the House of Commons that the Senate had passed one part of the bill and was continuing its examination of the second part.

Another ruling by Speaker Hays on December 9, 2002, further illustrates the procedural implications of dividing a bill in the context of Bill C-10:

> In due course, the Senate will be advised of the Commons decision by a return message. If the House of Commons agrees to the division and accepts Bill C-10A without amendment, Bill C-10 will cease to exist and Bill C-10A will proceed to Royal Assent. If the Senate completes its review of Bill C-10B without amendment, a message will be sent to the Commons informing them that we have passed Bill C-10B and it too will be placed on the list for Royal

> Assent. If the Senate amends this bill, it will have to be returned to the House of Commons, but as Bill C-10B this time, for the concurrence to any amendment.
>
> If the House of Commons does not agree to the division of Bill C-10, the Senate will have to decide whether it will insist on the division or whether it will accept the position of the Commons to keep Bill C-10 whole. If the Senate accepts the position of the House of Commons, Bill C-10A will be rejoined to Bill C-10B. One obvious way to do this would be to return Bill C-10A to Committee with an instruction to combine it to Bill C-10B thus restoring Bill C-10.

The fifth report of the Standing Committee on Rules, Procedures and Rights of Parliament is consistent with Speaker Hays' rulings that at some point we must seek the House of Commons' consent to a division to allow a derivative bill to become eligible for Royal Assent. If the Senate passes Bill C-44A and the house passes Bill C-44, that does not mean that Bill C-44A can receive Royal Assent. Specifically, the report states:

> Once the Senate and Commons are in agreement on one of the bills, it can go to Royal Assent.

In his ruling, I would ask the Speaker to confirm this point and offer any additional commentary that may benefit or inform our deliberations, including with respect to proceedings in the other place and as between chambers.

I thank Your Honour and all senators for their consideration.

Hon. Elaine McCoy: Thank you for the opportunity to respond to this point of order. I would first like to say that any limitation on the Senate's capacity to review and study legislation, particularly important legislation, by artificial rules is to be discouraged.

Let me start by speaking to the point about advance agreement. What has not been said is the fundamental rule, which is that each house is its own master, and each house has the privileges, immunities and powers that are granted to it through section 18 of the Constitution Act, 1867.

I won't dwell on this point because it's such a common practice. Whenever we amend a bill or send a change to a House of Commons bill by message back to the House of Commons, we always add the phrase: "We seek your concurrence." The one and only time that I know of when that phrase was not sent in the message was, in fact, the bill that Senator Harder spoke to at great length, which was Bill C-103 in 1988. I will return to that.

We must recognize, too, that when the House of Commons amends or otherwise deals with changes to a Senate bill, an S- bill, they also send a message back to us asking for our concurrence with what they are choosing to do. The whole point is to get one bill. You don't go ask the Governor General to give Royal Assent to a house bill and a Senate bill. You ask the Governor General, representing the Queen, to give Royal Assent to one bill, so the house and the Senate concur with one another.

But the House of Commons doesn't dictate to the Senate. The Senate doesn't dictate to the House of Commons. We ask for one another's concurrence. That, therefore, gives the respect that is due to one another's privileges, immunities and powers.

Let me now turn to the point about Royal Recommendation and whether you can split a bill with a Royal Recommendation. Let me again say that we have three clear precedents in the Senate of Canada; it is very rare, but we have three clear precedents. One of them is Bill C-10, which split in 2002. It had a Royal Recommendation. It split the "Criminal Code (firearms)" away from the "Criminal Code (cruelty to animals)."

Its Royal Recommendation was very clear. The instruction to sever Bill C-10 was adopted in the Senate. The committee did split the bill. Bill C-10A was returned to the House of Commons, with a request for concurrence in the change. The House of Commons agreed; they did concur. They sent Bill C-10A back with that concurrence, and Bill C-10A received Royal Assent. It was one bill.

Bill C-10B was held back. I didn't track the full history of that one because it was enough to prove the point that very definitely the House of Commons will concur in splitting a bill with Royal Recommendation.

On older example happened in 1941, and this one is actually in reverse. In this case, the Senate recommended that two bills be consolidated. We didn't have the designations of C- and S- in those days, but we recommended that Bill No. 88 be consolidated with Bill No. 101. The recommendation was that the two bills, a special war revenue bill and a special taxation bill, be amalgamated. The House of Commons said yes, so they wrapped 88 into 101 and made one bill out of it, which was the House of Commons bill. So in reverse, we have the precedent that taxation bills that originated in the House of Commons came to the Senate and were sent back wrapped in one bill, asking for the concurrence of the house to wrap them in one. That was accepted. It was now one bill that went to the Governor General and was given Royal Assent.

• (1810)

Finally, we come to Bill C-103. This was a very interesting point in the history of the Senate of Canada because it pitted Senator Lowell Murray from Cape Breton against Senator A. J. MacEachen from Cape Breton, two giants amongst us, both of whom were outstanding senators, still very good friends, living in Cape Breton.

The point of contention between them was whether to split this bill that proposed to deal with both ACOA — Atlantic Canada Opportunities Agency — and the Enterprise Cape Breton Corporation. In fact, the bill was split in the Senate, and as Senator Harder said, it was ruled out of order by Speaker Charbonneau. This is the infamous Speaker Charbonneau, the only Speaker we know of that ever locked senators out of this chamber by locking the door. They were standing out in the anteroom, banging on the door to be let in for a vote, and he refused. He was, of course, a Conservative in a Conservative government.

Some Hon. Senators: Oh, oh.

Senator McCoy: At the end of his career.

Having said that, the Senate did overrule him. That is not unconstitutional. It is in our Rules. Rule 2-5(3), and again being master of our own processes and having mastery of our own powers, we can indeed do that.

Let me go on to speak about this business of money bills. Just because you have a Royal Recommendation does not make it a money bill. Senator MacEachen addressed this very well, but we also have the benefit of looking at the language in what we used to call the BNA Act and we now call the Constitution Act, 1867.

Section 54 says that a bill for the appropriation of any part of the public revenue, or of any tax or impost, must only originate in the House of Commons.

Those are two very distinct activities. One is appropriation from the Consolidated Revenue Fund, and the other is to impose a tax. Let's look at what language is used for an appropriation.

Let's look at Bill C-3 from 2015, which was indeed an appropriation bill. Section 2, for example, says:

> From and out of the Consolidated Revenue Fund, there may be paid and applied a sum not exceeding in the whole eight hundred and ten million, one hundred and four thousand, eight hundred and thirteen dollars towards defraying the several charges and expenses of the federal public administration . . . .

And it goes on. It's an actual appropriation.

In a taxation bill, Bill C-2 from 2016, you will remember this language from subsection 1(2): the tax payable under this part by an individual is 15 per cent of the amount taxable. Immediately, you're talking about language that taxes someone, imposes a levy on someone or something that has to be paid.

What is happening in Division 18? This is not a money bill. There is no language in this bill that says that anyone is authorized to impose a tax.

There is no language in Division 18 of Bill C-44 that says that this amount of money shall be appropriated from the Consolidated Revenue Fund.

What is said is that there are some authorities given that if you go and appropriate money from the Consolidated Revenue Fund, then you may give it to the CEO or to other employees or you may give it to them to use for the various purposes for which the infrastructure bank is being appointed. But first you have to appropriate the money, and that will come through the estimates process and the appropriation bill.

In 1988, Senator MacEachen went through this very carefully, and he said that just having a Royal Recommendation does not make it a money bill. What you have to do is look at the substance of the bill. A Royal Recommendation may be given for any number of reasons that he said were mysterious in the extreme. He wondered about whoever made up their minds as to what and where they would attach these Royal Recommendations. But, in fact, you have to look at the substance of the bill. If it appropriates money from the Consolidated Revenue Fund or if it imposes a tax by saying, "You shall pay," then it's a money bill.

He goes on at some considerable length from pages 4114 to 4117 in an elegant explanation of a money bill. Bill C-44, Division 18, is not a money bill.

Turning to whether splitting this bill in the Senate would create two Senate bills instead of two House of Commons bills, if concurred in by our sister down the hall, we again have the precedent of 1941 when two bills were consolidated into one. They were still regarded as one House of Commons bill. I might add that the same happened with Bill C-10A in 2002. They are still considered House of Commons bills.

There is no doubt that they were initiated in that house, but it doesn't really matter in this case because Division 18 of its own is not a money bill, so that prohibition of section 54 of the Constitution Act, 1867, does not apply.

I want to turn now to the question of when motion instructions can be made. It was brought to our attention yesterday that *Senate Procedure in Practice* laid out the procedure for bringing this motion, when it should be made. In the first full paragraph on page 192, it said it needed to be brought after the bill went to committee.

We have no argument with that. It's not the only time it can go, but in this case it's a moot point because today, standing here, the bill is in the possession of the National Finance Committee.

• (1820)

But the last sentence in that paragraph did worry us because it says:

> If the bill has been partly considered in committee, it is not competent to propose an instruction . . . .

This was difficult for us because it's unanimous in the chamber, I believe, that we move Bill C-44, the bulk of Bill C-44, along expeditiously, and what we have been looking for is a means to move Bill C-44 through the committee stage, at the same time as we allow time for senators to debate Senator Pratte's Motion No. 225 and allow this point of order to be thoroughly canvassed and allow Your Honour some time for a ruling.

So how can you have the two things happening at once if you're saying, "Send it to committee, but don't do anything"? That would defeat the purpose and the agreement that the leaders had that we could run these things together on a parallel track.

We started researching that point and looked for the authorities behind the statement in the SPIP. It refers to Beauchesne, citation 684, at page 204. Sure enough, Beauchesne did say exactly that, but that was confusing because, in fact, Speaker Fraser made a ruling in 1988 on the House of Commons side.

Speaker Fraser, on Bill C-130, which was the Canada-USA Free Trade Agreement, ruled that you can make a motion in instruction at any time during the committee's proceedings. In

fact, the committee that was studying the free trade agreement had already commenced its deliberations. He held the motion to be in order. He did that at page 17,505 of Hansard, on the date which I will give you in a moment.

So why did Beauchesne say no and Speaker Fraser say yes? We looked at the dates. It turned out that this Speaker Fraser was speaking on July 13, 1988. It also turned out that the sixth edition of Beauchesne, which has a copyright date of 1989, had a preface by its editors that was dated April 1988.

So it's clear that the sixth edition of Beauchesne was sent for publication in April 1988, which was three months before Speaker Fraser ruled on Bill C-130, in July of the same year, so it was impossible for Beauchesne to reflect that ruling.

In fact, though, we know from *House of Commons Procedure and Practice*, this one being the second edition, 2009, by O'Brien and Bosc, that, at page 753, they state:

> A motion of instruction may be moved in the House even after a committee has begun its deliberations on the bill.

And they referenced Speaker Fraser's ruling in debates on July 13, 1988. They have picked up the practice and renewed that statement, and, when we discovered that, we were content to move forward to ensure that this bill was processed in a timely way but also gave all of us the time to debate this important point, which is whether we can give instructions to split a bill, particularly one piece of a bill that is not a money bill.

I want to add one footnote to that. The Senate of Canada, of course, in our Rules does not have a specific rule that deals with motions in instructions. What we do have, of course, is Rule 1-1(2) that says:

> In any case not provided for in these rules, the practices of the Senate, its committees and the House of Commons shall be followed, with such modifications as may be allowed.

In this case, we should be following, I think, the modern practice that has been established in the House of Commons, and we should also give credit to our own precedent, which was the government organization bill in 1992, which actually was an instruction to a committee after the committee started deliberating on the bill itself.

On May 6, 1993, Senator Frith made the motion. It was not adopted, and the instructions were not sent to committee. The bill was later defeated at third reading. This isn't the only instance, but it's one when you know that we have indeed considered a motion to instruct a committee, even before the committee has received the bill.

There is one thing that would frustrate this equilibrium, if I can say that, to allow both adequate debate on the motion to split and continued processing of the many good parts of Bill C-44, so, as senators have raised the other debatable questions in the bill, the agreement has been made that the committee will not report out before, or in any way frustrate, our attempt to run these two processes in parallel, without prejudicing either one of the processes that we have going.

So to honour that, I want to put that on the record. I think it's a collaborative approach. I think it's a responsible approach. I think we all want to make sure that the business of this house proceeds expeditiously and, certainly, none of us wants to obstruct the business of the Government of Canada. With that, Your Honour, I would ask for your early attention to this important matter, and I would urge you to find the motion in order.

Hon. Joan Fraser: Your Honour, colleagues, the question before us is whether the Senate has the right to divide this bill, and my answer to that question is yes, we do. In fact, although Senator Harder did a noble job of trying to assert the opposite, in fact, I find very few authorities that would argue that we do not have that authority.

Reference has been made to the Ross report in 1918, which said, ringingly:

> The Senate of Canada has and always had since it was created the power to amend bills originating in the Commons appropriating any part of revenue. . . ..

And we not only have had that power, we have exercised it repeatedly.

I would suggest, colleagues, that the division of a bill is a form of amendment, a relatively extreme form of amendment but not as extreme as defeating the bill or defeating the element that would otherwise be divided from the main bill.

• (1830)

Senator Harder quoted one of the standing orders of the House of Commons, Standing Order 80(1), which says, essentially, that "bills for granting such aids and supplies . . . are not alterable by the Senate." They would, wouldn't they? The House of Commons, understandably and for good historical reasons, has always been very jealous over its power over money bills, but we in this chamber have never accepted the view that we do not have the power to amend money bills or even to defeat them, for that matter.

As Dawson and Ward wrote in 1987:

> It is a fair statement that almost the only attention the Senate has given to this grand assertion is to ignore it.

And, frequently, when we have ignored it, and amended bills and sent them back to the House of Commons, our changes have been accepted, quite often with a little protest reminder that they don't think this is a precedent, no matter how often it happens.

The argument is made that Speaker Charbonneau in 1988 ruled that we could not do this. As Senator Harder rightly acknowledged, his ruling was overturned by the Senate. Therefore, it stands in limbo. No subsequent Speaker's ruling has confirmed Speaker Charbonneau's position. His position was, in significant measure, constitutionally based and our Speakers do not rule on constitutional matters, as I have had the occasion to be reminded by Speakers more than once. But the fact is that

whether or not his ruling was sound, it is not part of the precedents with which we work. It was overturned. It has never been reinstated.

The argument is made that the Senate owes deference — respect, if you will — to the House of Commons in these matters. Yes and no. We don't originate money bills. We do pay significant attention to the will of the elected representatives of the people, particularly when it consists of carrying out campaign promises, but it's not blind deference and it's frequently one-way. Already 100 years ago, Bourinot was complaining that many measures have, in past years, been brought to the Senate from the Commons at a very late period when it was clearly impossible to give full and patient consideration to which legislation should be submitted before adoption.

Senator Pratte's motion proposes to give at least one portion of the bill before us that kind of full and patient consideration that is not available to us with the bill as a whole. It strikes me that if Your Honour rules it procedurally acceptable, it is in other ways a rather elegant approach to the difficulties we face.

Certainly I believe it is more respectful to propose division of the bill — respectful of the House of Commons and the government — than to propose defeat of that bill or a significant portion of it.

Procedurally, Your Honour, I submit that Senator Pratte's motion is indeed acceptable. As Senator McCoy noted, a motion to instruct the committee to divide a bill is in order. SPIP says in the portion she quoted on page 192 that motions of instruction in the Senate "have most often been used in relation to dividing a bill." That paragraph goes on to say that "such a motion should be moved 'immediately after the committal of the bill, or, subsequently, as an independent motion."

Senator Pratte tried to move his motion immediately after the bill was referred to committee, and it is only because we are engaged in a debate on a point of order that he was not able do that. I assume the clock is considered to have stopped on that while we debate the point of order.

The Rules Committee's fifth report also noted that the first step in dividing a bill is that the committee to which a bill will be or has been referred must be empowered by the Senate to divide it. I repeat, that's what Senator Pratte is trying to get the Senate to do.

One of the criteria for dividing a bill is that the portion that is proposed to be divided from the rest of the bill must be naturally separable; it must be a coherent piece that can stand alone as a piece of legislation, once divided. Beauchesne's says in the sixth edition in citation 686(2) on page 204 that:

> . . . an Instruction [to divide a bill] is in order only if the bill is drafted into two or more distinct parts . . . which [lend themselves] to such division . . . .

Erskine May has a comparable instruction at page 560 of the twenty-fourth edition.

The portion of this bill that Senator Pratte proposes to instruct the committee to divide is eminently severable from the main body of the bill.

Division 18 of Part 4 of the bill begins:

> The *Canada Infrastructure Bank Act* is enacted as follows:

And then we go all the way from the short title down to the transitional provisions and the consequential amendments. It is eminently severable.

If we sever it, are we engaging in the creation of a new money bill? That is probably the core of the argument. I would suggest that we are not. We are, as I previously suggested, creating one form of an amendment of a money bill that has been sent to us from the House of Commons.

I'm so sure of that that I was particularly struck when Senator Harder quoted one of Speaker Hays' rulings going back to Bill C-10, where if Bill C-10A had been accepted by the other place and then we turned our attention here to Bill C-10B and amended it, the House of Commons would have had to accept that amendment. Rather than just accepting the whole of Bill C-10B as a Senate bill, it would treat Bill C-10B as a Commons bill.

We would not be initiating money bills if we divided this bill. With Bill C-44, we would not be creating two new bills. We would be sending back to the Commons the bill they sent to us, but in a different form and possibly amended beyond the division of it, I don't know. That will depend upon the will of the Senate.

This issue goes straight to the matter of the Royal Recommendation; it is intricately bound up with the matter of the Royal Recommendation. The Senate can neither create nor remove a Royal Recommendation. Only a minister of the Crown can do that. Since we don't have any ministers of the Crown here anymore, it follows that it can only be done in the House of Commons.

I would submit that the Royal Recommendation in Bill C-44 applies to the whole of that bill, whether or not the bill is divided. Because as it stands now, the Royal Recommendation attached to Bill C-44 applies to the proposed infrastructure bank act. And it is not within our power to remove it from that portion of the bill.

• (1840)

Let me then turn to the matter of whether advance consent from the House of Commons is needed before the Senate is in a position to divide a bill. I submit not. In fact, I think it would be an infringement on our duty to maintain our independence as a separate chamber of Parliament to seek prior consent of the House of Commons for anything we do.

It is well established, and Speaker Hays confirmed this in 2002 — and this was quoted by Senator Harder — that a proper message to the House of Commons must seek the concurrence of the House of Commons to any changes — any changes.

Well, as Senator McCoy pointed out, that's what we do: When we amend a bill, we send a message back to the house saying, "We're sending back this bill with amendments to which we desire

the concurrence of the House of Commons." Any change at all. And the same procedures should be followed when we divide a bill. And that's approximately what Senator Hays said.

That is where the Senate ran aground in 1988. For reasons that escape me, the Senate deleted the request in its message to the House of Commons about dividing a bill and deleted the bit saying that we desire their concurrence.

I don't know what strange reasoning led to that, but they were wrong, and everybody here admitted that they were wrong to delete that phrase. I am not aware of any cogent arguments that have been made here. There have been arguments made in the House of Commons, but here I am not aware of any persuasive arguments, despite Senator Harder's laudable attempts that prior consent of the House of Commons is needed to divide a bill or to do anything else with a bill.

Senator Harder quoted the report from the Rules Committee, with which I was involved in the creation, and that's very clear. Once the report on dividing a bill is agreed to — if it is agreed to — the part of the bill reported by the committee after division goes to third reading here, and if that portion of the bill is adopted at third reading, a message is sent to the House of Commons requesting that it agree; that it concur.

Now, we cannot seek concurrence before third reading because we can't seek concurrence unless third reading has occurred. It seems to me quite simple. And I would remind honourable colleagues that scant weeks ago, on May 30, this chamber adopted that report. That report is now part of the Senate's understanding of how we proceed about our affairs.

Therefore, I acknowledge the pre-eminence of the House of Commons in the initiation of money bills, but that's not what Senator Pratte is proposing. He is not proposing the initiation of a money bill; he is proposing the continuation of a money bill under a different form. There is a vast difference, and what he is proposing, in my view, is within our power, procedurally acceptable and not without precedent.

Therefore, Your Honour, I urge you to reject the point of order.

The Hon. the Speaker: Honourable senators, I have a list of senators. I will add the three more that I just saw standing, but the order so far, lest anyone think I am ignoring them, is Senator Carignan, Senator Cools and Senator Pratte, who will be followed by Senator Wells, Senator Bellemare, Senator Mitchell and Senator Joyal.

[*Translation*]

Hon. Claude Carignan: Honourable senators, I will try not to repeat anything that has already been said, but I will say right away that I agree with what Senator McCoy and Senator Fraser had to say on the points they raised.

Senator Harder was rather creative in his argument in the sense that, according to him, when we divide the bill, it can no longer be considered to have originated in the House of Commons and is therefore no longer a Commons bill. Let's draw a parallel: following the senator's logic, if I take an apple and cut it in half, I no longer have an apple, but rather two oranges. Plus, the apple no longer comes from an apple tree, because I cut it in two.

That is rather odd, and I believe that the most important argument is Senator Fraser's argument. In the past, when bills were amended and then returned to the House of Commons, that place did not have to repeat the three-stage process to pass them; it simply replied to the message from the Senate.

Some senators have talked about specific examples in the past. One example that summarizes the situation involves the report from the Standing Committee on Rules, Procedures and the Rights of Parliament. The fifth report of the committee, which was tabled in April and adopted in late May, outlines the process associated with the previous Bill C-10 and clearly states the following:

> In light of the availability of a procedure for dividing any type of bill, as well as the other mechanisms available to facilitate the study of complex bills, your committee recommends that the *Rules of the Senate* not be amended . . .

That report was adopted by the Senate, so once again, the Senate reaffirmed its position that it had the authority to divide bills. This has been done a number of times. It was done here in the Senate in 1988 during a debate on a bill called the Government Organization Act, Atlantic Canada, 1987. That was Bill C-103, and it was the subject of the debate that Senator McCoy referred to, notably with Senator MacEachen, during which Speaker Charbonneau made a ruling that was overturned by the House, and the Senate clearly indicated that it had the power to divide a bill.

Many authors were quoted in the ruling, and that is something we should look at. They included May, who, at page 546 of *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, clearly states the following:

[*English*]

> The object of a permissive instruction is to confer on the committee authority to do something which, without the instruction, they would have no power to do, for example, to divide a bill into two bills or to consolidate two bills into one.

[*Translation*]

Then, on page 597, he writes:

• (1850)

[*English*]

> An instruction is required to enable a committee to divide a bill into two or more bills, but such instruction is in order only if the bill is drafted in two or more distinct parts, or otherwise lends itself to such division into parts.

[*Translation*]

May reaffirms the power that derives from the rule of common law. On page 525 of the fourth edition, another author, Bourinot, clearly states the following:

[*English*]

> When a bill is to be divided into one or more bills, it is usual to postpone both those which are to form a separate bill and when they are afterwards considered to annex to them a preamble enacting words and title the separate bills are then separately reported.

[*Translation*]

Obviously, this power exists. It has been recognized by Senate decisions on three occasions, including for the first time in 1998, in a vote, and the second time in a decision on Bill C-93 relating to the division of the bill. The House of Commons decided not to divide the bill but deemed the motion to divide the text of the bill to be in order. This precedent is also very important. Lastly, in 2002, Bill C-10 was divided in two: C-10A and C-10B. The House of Commons recognized and approved this division, and we can add to that the important Senate decision of less than two weeks ago. The senators and government representatives unanimously adopted the fifth report of the Rules Committee, which recognizes the power to divide bills.

Mr. Speaker, I do not want to repeat what has already been said. The Senate clearly has the power to divide a bill.

With respect to Royal Recommendation, Bill C-44 has Royal Recommendation attached to it. Division 18 of Part 4, which creates the Canada infrastructure bank act, is in Bill C-44. As Senator Fraser mentioned, the bill is easily divisible. The question is whether the bill can be divided. Division 18 enacts a new bill, which establishes the infrastructure bank. There is no better opening to a division. Legislation is being created in Division 18, which can easily be extracted from the bill to divide it. In that sense, there is no problem.

Regarding Royal Recommendation, the consent of the House is required, but when? I believe it is when the text of the bill is returned in response to a message from the House of Commons. That is how it has been done up to now the two times this happened.

Mr. Speaker, it is clear that the Senate has the authority to do this.

Getting back to Senator McCoy's comments, a bill that requires Royal Recommendation is not necessarily a money bill. Division 18 creates a bank, an infrastructure, an organization, but does not involve spending. The act itself involves spending, but nothing in Division 18 would require Parliament to spend money if the bill were adopted tomorrow morning.

On the one hand, therefore, Royal Recommendation is not needed in this case, and on the other, if it were to become necessary, it is already attached to the whole bill.

It is also important to consider the ruling with respect to supply bills. The Senate cannot raise taxes. It can call for tax cuts. By splitting the bill, the Senate is not raising taxes, it is not broadening the tax base. Everything is already laid out in Bill C-44. As such, dividing the bill does not require another Royal Recommendation even though you thought so at first.

That sums up my point of view.

[*English*]

Hon. Anne C. Cools: Honourable senators, I wish to join this debate on Senator Harder's point of order on dividing Bill C-44. I would like to say to His Honour, Speaker Furey, that the matter before us is much easier and more simple than we think.

Colleagues, I wish to say that there are three extremely clear precedents on the Senate record. However, Your Honour, I say this situation is different, because in this instance of those three precedents which have been mentioned, being Bill C-10, in 2002; Bill C-29, a budget implementation bill, in 1993; and then the ACOA, Bill C-103, in 1988.

In this case, there is nothing on the face of Bill C-44, which screams, demands or calls for division. No reason whatsoever has been put before this Senate as to why Bill C-44's division is needed or required or would be possible. In contrast to Bill C-10, in 2002 — and I was a party to all three of these divisions — when the bills themselves were screaming for division because for Bill C-10, one part was clearly on the Firearms Act and the other part was clearly on animal cruelty.

At that time, senators, the Senate was running out of time to process Bill C-10. The government leader, Senator Carstairs, took the leadership and moved to put things in motion to divide the bill into Bill C-10A and Bill C-10B. But Bill C-10 was so clearly and so easily divided into two bills that it was not even a challenge. Further, there was good and very fast agreement in the Senate.

Colleagues, on Bill C-44, this Senate has not yet received a reason as to the imperfections in the drafting of Bill C-44 that would require relief, that would demand that it be divided into how many bills.

I repeat, absolutely no reason has been put before us respecting dividing Bill C-44, unlike the three precedents where it was crystal clear that division had to take place if the bills were going to be properly navigated through this Senate.

Your Honour, I would like to invite you to set the term "money bill" aside and out of our lexicon. The term "money bill" is no part of Canadian practice, neither is it any part of Canadian custom.

The term "money bill" is found in the Parliament Act of 1911 within which the House of Commons of the United Kingdom reduced and limited the powers of the House of Lords.

• (1900)

In 1911, the British created this term "money bill." It is found in the clause that says the Speaker of the House of Commons would have the power to certify that particular bills were money bills.

There is no Canadian definition of a "money bill" and this word really has little application in Canada. In Canada, the term frequently used is "financial legislation." I put that to Your Honour to know that we are not bound by language that is not part of our custom or precedence.

Your Honour, there has to be a sound reason why Bill C-44 should be divided. I have not heard any such reason this bill, as I look at it, does not immediately demand or need for this treatment of division to make it viable for adoption in the Senate.

It is clear that this Senate has the power to divide a bill. That has been established by long and hard precedents. The real question has not yet been answered: Is there a need or a reason for it? And in some way, perhaps the arguments as to the reasons Bill C-44 should come first.

At this point in time, there is no evident or pressing reason at all why this Senate should rush to determine the precedents and to divide it because no need for division has been put before this Senate. That, in summary, represents what I want to say.

I want to add that we should have some confidence in ourselves. This Senate is old enough that it should have lots of self-confidence. We have had excellent leadership in this place, and I refer in particular to those instances, in 1988, under Senator MacEachen and, in 2007, under Senator Carstairs. Senator Carstairs moved like an antelope, fast and quick, to resolve those problems to get those bills adopted separately because there were two distinct bills stuck together with Bill C-10.

Until a case has been made here that this bill is so flawed or so in need of division that its study has been impaired or its study is being impaired, there is absolutely no reason to divide it. I have studied this bill and I have not seen any imperfections that render it a candidate for division by the Senate.

Colleagues, the critical thing to know is that both the government and the House of Commons must consent to the bill's division.

Senator Pratte: Thank you, Your Honour. I must say I feel a little bit like an imposter, debating rules and precedents amongst such experienced and wise senators.

[*Translation*]

The motion I moved seeks to instruct the Standing Senate Committee on National Finance to divide Bill C-44 into two separate bills. The first bill would contain only Division 18 of Part 4 of the current bill concerning the Canada infrastructure bank.

The second bill would include the rest of the 2017 budget implementation bill. The purpose of splitting the bill in this way is to give the Senate more time to study the part of the bill that creates the infrastructure bank.

There are essentially two arguments being made to suggest that the Senate does not have the authority to divide Bill C-44. First, it has been argued that this is a money bill that has Royal Recommendation and such bills cannot be divided by the Senate. Second, some claim that before a bill originating in the House of Commons can by divided, the Senate must obtain prior consent from the other place.

It is true that Bill C-44 involves expenditures of monies and that is why it has Royal Recommendation. In arguing that such a bill cannot be divided by the Senate, the government points to a 1998 Speaker's ruling by the Honourable Guy Charbonneau when the Senate divided Bill C-103. Speaker Charbonneau ruled, and I quote:

> If it is divided, Bill C-103 will no longer be on the Senate Order Paper but will be superseded by two separate bills. . .The Chair has a problem in accepting that these two separate bills are still government bills. . .These two bills would therefore have found their way before Parliament, not in the House of Commons, but in the Senate. Since they would both be bills appropriating public money, it would appear to the Chair that such action would be in contravention of Section 53 on the Constitution Act, 1867 which states . . .

The Speaker then quoted as follows:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.
>
> For this very important reason, I must conclude that the motion of the Honourable Senator Graham is not in order.

[*English*]

Your Honour, if your ruling was to be based solely on the ruling of your predecessor, Senator Charbonneau, the outcome would be clear. However, meaning no disrespect, there is any number of reasons why you should not give Speaker Charbonneau's 1988 ruling much weight. First, as has already been said, this ruling was overturned by a Senate vote. When I arrived here, I was quite surprised to learn that that is possible for a Senate to reverse its Speaker's ruling. This rarely happens, but when it happens, it is very significant.

Here is what can be found in the Library of Parliament's publication entitled *Speakers of the Senate of Canada*:

> In keeping with the egalitarian nature of the Senate, all rulings of the Speaker are subject to an appeal to the full Senate for confirmation or rejection. The Senate reserves for itself the final authority over the interpretation of its Rules and practices.

What are we to think, then, of the successful appeal of Speaker Charbonneau's ruling on the division of Bill C-103 in 1988? Put simply, the Senate as a wholly independent institution decided that, opposite to what the Speaker thought, it had the power to divide Commons money bills. Therefore, as in law, the decision on appeal, not the Speaker's ruling, stands as the precedent.

More importantly, 14 years later, in 2002, a different situation turned out to be a game changer. That year, a House of Commons bill, which came with a Royal Recommendation, was

divided by the Senate. Bill C-10 made amendments to the Criminal Code and the Firearms Act. It presumably needed a Royal Recommendation because, amongst other measures, it created the function of Commissioner of Firearms and provided for his or her remuneration, therefore eventually carrying expenses.

After instructions were given by the Senate to a standing committee, exactly as is being proposed in our case for Bill C-44, the committee divided the bill into two parts — Bill C-10A and Bill C-10B. The bills were then passed by the Senate and returned to the other place, which accepted the division. And both bills resulting from that division maintained the original Royal Recommendation. That set a precedent. A bill accompanied a Royal Recommendation could be divided by the Senate.

In a ruling made on December 9, 2002, after Bill C-10 was divided, Speaker Hays explained that his take on dividing bills was significantly different from the view expressed in 1988 by Speaker Charbonneau.

Once the committee had divided Bill C-10, he said:

> As of that date, therefore, for all intents and purposes within the Senate, and I must stress this point, from within the Senate, Bill C-10 existed as two bills.

Until the bill went back to the House of Commons, the division of Bill C-10 produced no effect outside the Senate. Therefore, the privileges of the House of Commons were not violated, which is why the division within the Senate did not infringe on section 53 of the Constitution Act, 1867.

However, what about the Royal Recommendation? Well, as I said, Bill C-10A and Bill C-10B were joined with the Royal Recommendation contained in Bill C-10. No other Royal Recommendation was required from the Governor General.

Indeed, Bill C-10A and Bill C-10B were joined with the same Royal Recommendation as the original bill because they did not alter the circumstances, manner and purposes of the appropriation of public revenue. This is the generic wording of all Royal Recommendations, as you know, that was set out in Bill C-10.

As I said, Bill C-10A, creating the function of Commissioner of Firearms touched on the appropriation of public revenue. It did so in the exact same manner provided for in the pre-split bill. Therefore, to move the portion of the original bill dealing with the Commissioner of Firearms to a separate legislative vehicle had no impact on the approved appropriation of public funds that was allowed by the Governor General.

• (1910)

Honourable senators, this is the case for Bill C-44. The separation of the Canada infrastructure bank act from the wider contents of Bill C-44 will not alter the circumstances, manner and purposes of the appropriation of public revenue that was set out in the original bill. It will remain the same but simply be contained in a separate legislative vehicle in order to allow for increased scrutiny.

The other objection raised about dividing Bill C-44 was that before proceeding, the Senate must obtain consent from the other place. However, as we all well know, this objection does not hold water. Though both institutions are collaborative, it is a fundamental tenet of parliamentary sovereignty that both chambers are inherently independent of one another. The procedure of bill division is one that is entirely within the rights and powers of the Senate. To require the consent of the House of Commons at any stage prior to the message inviting concurrence with the division would be an affront to the long-established view that the Senate and House of Commons are independent of one another.

As Speaker Nolin said in 2015:

> The idea of complementarity does not imply that one house is inferior to the other.

Where the Senate has agreed and passed the division of a given bill, it is for the Commons to consider the division after reception of the Senate's message. In no way should a step in the process of Senate bill division require the interfering consent of the House of Commons. This would not only infringe on a recognized power to divide; it would also communicate that the Senate cannot fully exercise its power to split a bill when the bill sits within the Senate without the rubber stamp of the House of Commons.

Neither should we constrain our power to divide a bill in anticipation of the other place's reaction to our message. For the Senate to hinder its own exercise of the power to divide a bill on the grounds that division may not be agreed to by the House of Commons presents at least two problems. First, the Senate gives up part of its independence by rendering its own decision conditional to the one that the other place could make. Second, the Senate should not focus on the Commons' views on the division. Rather, it is tasked with evaluating on its own the merits of dividing the bill. The Senate's power to divide is unequivocal. The question is whether or not to exercise the power to divide in consideration of the facts and concerns at hand.

Of course, for the division of the bill to stand, it must be agreed to once it has been sent back to the Commons. But as Speaker Hays explained in 2002 regarding Bill C-10, this is no different than for any other amendment:

> Of particular importance, the message —

— the message in 2002 —

> — requested the concurrence of the House of Commons in the division of Bill C- 10. . . . In reality, this is no different than when we as the Senate amend a Commons bill. The agreement of the Commons is required in order to properly perfect the amendment.
>
> In due course, the Senate will be advised of the Commons decision by a return message. If the House of Commons agrees to the division and accepts Bill C-10A without amendment, Bill C-10 will cease to exist and Bill C-10A will proceed to Royal Assent. . . . If the House of Commons does not agree to the division of Bill C-10, the Senate will

have to decide whether it will insist on the division or whether it will accept the position of the Commons to keep Bill C-10 whole.

This will also be the case for Bill C-44, honourable senators. One of the lessons from the 1988 and 2002 episodes is that the message sent by the Senate to the House of Commons after third reading should ask for the other place's concurrence to the division in order to respect the House of Commons' privileges. We will, of course, make sure that is the case.

Honourable senators, the precedent established in 2002 when Bill C-10, a bill carrying expenses and adjoined with a Royal Recommendation, was divided clearly showed that the Senate has the power to divide such a bill. It can do so without having obtained the prior consent of the other place, and by doing so, it is not contravening section 53 of the Constitution Act, 1867.

The validity of the process is confirmed by the Rules of this chamber, by the fifth report of the Rules Committee, by Speaker Dan Hays' ruling of December 9, 2002, and by the acceptance of the division of Bill C-10 by the other place.

That is why I respectfully ask Your Honour to rule that the motion I introduced instructing the National Finance Committee to divide Bill C-44 is consistent with the Senate Rules.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, there is a growing list of senators who wish to speak to this. It is a very important argument, and I want to hear from all senators. However, I will caution senators that repeating arguments that have already been made does not add any weight to the argument.

Hon. David M. Wells: Thank you, Your Honour, for that warning. Perhaps I should sit down now.

Colleagues, I do wish to say a few words regarding the point of order on Senator Pratte's motion. As you know, I presented the second report of the Modernization Committee on October 24, 2016, which dealt with recommendations related to omnibus bills. The Senate has in the past sent various elements of legislation to committees for study; therefore, a process was already established with the rights and allowances in place.

In April 2017, the Standing Committee on Rules, Procedures and Rights of Parliament, under the expert stewardship of Senator Fraser, presented its fifth report based on two recent cases. The committee concluded that there already existed processes allowing the Senate to initiate the division of bills. The fifth report outlined this process.

Colleagues, there is no doubt that Bill C-44 is an omnibus bill. Among its 300 pages and its far-reaching scope, it deals with the Immigration and Refugee Protection Act, the Canada Labour Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Parliament of Canada Act. You will recall that the Liberal Party promised they would end the practice of introducing omnibus bills, so I won't comment on that aspect.

Colleagues, as you know, Bill C-44 also enacts three entirely new pieces of legislation that could each have been introduced as separate bills. They are the Canada infrastructure bank act, the invest in Canada act and the service fees act.

The Legislative Deputy to the Government Representative, our colleague Senator Bellemare, seemed to acknowledge the complexity of Bill C-44 by moving a study motion that recognized the various sections of Bill C-44 by dividing it up into several significant subject matters to be dealt with by a number of standing committees in the Senate. This has been the normal practice and convention of the Senate when dealing with omnibus bills.

The separation of a non-budgetary provision, such as the division of Bill C-44 that deals with the infrastructure bank, would allow the Senate to consider at length sections that warrant a closer look while proceeding to consider only those parts of the bill that are budgetary in nature and in need of timely passage.

As I mentioned, the fifth report of the Standing Committee on Rules, Procedures and the Rights of Parliament recently reported to the Senate and the Senate adopted the report that outlined the process for such a procedure. Senator Fraser spoke on that briefly.

The motion to authorize a committee to divide a bill can be made before a bill has been referred to committee and after. Therefore, this motion to authorize the committee to divide Bill C-44 is squarely within the process as outlined in the report adopted by the Senate. This motion to divide Bill C-44 is just the type of motion that the fifth report intended to support.

Colleagues, of course this severing action is permitted and the convention of the Senate not introducing money bills has not been breached under this motion. Further, this component of Bill C-44, which is the creation of an entity, is not the filling of that entity with money, and I think that's an important consideration to make.

• (1920)

Hon. Serge Joyal: If you will allow me, honourable colleagues, I will come to the defence of a former Speaker, Senator Charbonneau. I happened to have succeeded Senator Charbonneau in the Kennebec district in Quebec. Before being appointed in Senator Charbonneau's district, I knew Senator Charbonneau personally, and I may confess today that Senator Charbonneau offered to shepherd me for an appointment in the Senate.

Of course, in those days, it was Prime Minister Mulroney who was the head of the government, and I asked Senator Charbonneau, "Where will I have to sit in the chamber, on the government side — which was, of course, the Progressive Conservative Party — or, on the opposition side, as a Liberal?" Of course, as I look at my friend Senator Plett, I am a noted Liberal. At that time, I was even policy chair of the Liberal Party.

He said to me, "Well, it's going to be difficult for the Prime Minister to appoint a Liberal, so you might sit as an independent." Maybe he had a premature kind of idea or

intuition in his head, but I said, "Senator Charbonneau, I cannot sit as an independent. Nobody will believe me if I sit as an independent. Nobody will believe I am independent."

When I heard some comments about Senator Charbonneau's decision as a Speaker, I felt uncomfortable, honourable senators, because he was a gentleman. He was a fine man. He did his utmost in a very difficult period of time of the Senate. Of course, I want to share those personal sentiments because I think it's fair for the memory of somebody who devoted the best of his talents and energy to serve this institution.

That being said, honourable senators, I would like to offer to you, Your Honour, a certain number of points that have not yet been covered, but I want to be very clear. I want to advise you to take very close consideration of your role as a Speaker on issues that might pertain to constitutional matters. If I can quote *Senate Procedure in Practice*, at page 219:

> Furthermore, in keeping with parliamentary tradition and custom, the Speaker does not rule on points of order about constitutional matters, points of law or hypothetical questions of procedure.

We find exactly the same point in Beauchesne, quotation 323. The Speaker:

> . . . will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

Then, in House of Commons Procedure and Practice, at page 636:

> Though raised on a point of order, hypothetical queries on procedure cannot be addressed to the Speaker, nor may constitutional questions or questions of law.

Honourable Speaker, when I heard the Honourable Government Leader, I humbly submit to you that part of his argument treads on a constitutional issue, which is: What are the powers of the Senate in relation to its capacity to decide how the Senate wants to deal with a bill that has been received from the House of Commons?

It is for the privilege of this chamber to decide how the chamber wants to deal with a bill that has been received from the other place with a Royal Recommendation. It is up to this chamber to exercise its privilege of organizing its study, the way it's going to divide a bill, the way it's going to send part of a bill to a committee and, finally, how the Senate, at the end, will send the bill back to the other place.

When there is a Royal Recommendation to the bill, this is not for the Senate — and it's my second point — to be bound, to be handcuffed to look into what is in the bill. As a matter of fact, I was a part of the government whereby the Prime Minister of the day, the Right Honourable Prime Minister Jean Chrétien, decided — and he announced it in the caucus — that each and every government bill would contain a Royal Recommendation, even though there was no appropriation, no taxes, no financial matter in the bill, just in case, to limit the capacity of the house to intervene and to expand the scope of a bill.

I thought, and I'm still of the conviction, that, when we have a Royal Recommendation of a bill, that Royal Recommendation pertains to the section of the bill that deals with taxes and appropriation. That's the essence of the Royal Recommendation. You will understand, Your Honour, that, put in the other extreme, it would mean that, with any bill with Royal Recommendation, we would be handcuffed as a chamber to look into it, and it is for our privilege to decide how we are going to deal with a bill. As the Government Leader mentioned, we can amend a bill. So we can decide to add to a bill, or, as the Government Leader has said, we can delete a bill. In the context of Bill C-44, the Government Leader has contended that, in fact, we could delete the whole Division 18 of the bill, Part 4, and return the bill with no infrastructure bank at all.

But if we divide the bill and study the infrastructure bank and return it amended, then, of course, we would have improved the bill, but the subject and priority of the government would have been addressed. The fact that the government would have asked for our advice and consent on that section of the bill would have been filled, according to section 91 of the Constitution. So there is an illogical element of reasoning to contend that we can amend a bill, we can add to a bill, we can delete a bill, but we cannot divide a bill to return it, amended, to the other place. There is something that shocks the rationale of how this house has the privilege to organize its work and its study in relation to a bill and return the bill to the other place.

When we return the bill to the other place, what do we do? We inform the other place that we have studied the bill, that we have done with the bill what we think is proper in relation to our constitutional duty in relation to regions and sectional interests. If we decide to abandon our power to divide a bill, honourable senators, reflect seriously about the constitutional power that you are abandoning.

I think that I can understand the logic of the government to refuse the division of the bill. What is the logic of the government in relation to the Senate, now that the Senate is "independent"? It is, essentially, to reflect on how the uncertain or questionable procedure could not be redefined in a way that would limit the margin of manoeuvre of the Senate. I think, Your Honour, that this is a very political question, and it's bound to the very nature of the power of this chamber, and it is a constitutional issue that I submit to you very politely and respectfully to think very seriously about before you move on that ground. If there is a political power game with the other place, it is for this chamber to determine how that power will be exercised. And not through an adjudication, through a court process, whereby we address a question to the Supreme Court, as in a reference, and ask the court to determine how far the power goes and how far it should be restricted.

• (1930)

This is, in my opinion, on the basis of three precedents that this institution has lived through. I remember very well Bill C-10. That's why I'm smiling when I look at you. You were part of that debate in those days. You will remember that former Senator Bryden from New Brunswick was an adamant proponent of dividing the bill on the basis that one part of the bill we had no problem with — it is the same with Bill C-44 — and the other part of the bill needed further study, explanation and witnesses

because it was touching on the power of the indigenous people with the right to bear arms and the rights of farmers at that time. We were exercising our responsibility to protect the interests of minorities and the interests of the regions.

As with the infrastructure bank, we have to be sure that those powers will be exercised in an objective way to protect the interests of the smaller regions and municipalities, and how that will function in relation to our priorities when we address the study of a bill.

So in my humble opinion, I contend that the motion put forward by Senator Pratte is totally in sync with the procedure we have followed. It is up to the other place to decide if the message that we will return to them will be acceptable or not.

I want to close by submitting an article written by the Honourable Allan McEachern and published in the *Canadian Parliamentary Review* in the spring of 1988, entitled "Dividing Bills: A View Point from the Senate." And I want to quote Speaker Fraser from the Commons in 1988 because it has been quoted. What did Speaker Fraser say about the constitutional implication of the decision you are called to take today? I quote Speaker Fraser's ruling:

> The Speaker of the House of Commons by tradition does not rule on Constitutional matters. It is not for me to decide whether the Senate has the Constitutional power to do what it has done with Bill C-103

I think there is food for thought there because if the Speaker of the House of Commons came to the conclusion that it's not up to the Speaker to decide about the extent and the scope of a constitutional power of this place, I think that we are bound by the rule of the law, which is the power that we have under section 91. We are called to exercise that power of giving our advice and consent on bills that we receive from the other place.

The same with the Ross report that has been quoted by the government leader. There is in the Ross report also a section, Your Honour that I would submit to you. I quote the Ross report:

> That Rule 78 [now #87] of the House of Commons of Canada claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of the British North America Act.

And he goes on to say:

> The House of Commons cannot by passing Rules add to its powers or diminish those of the Senate. Rule 78 of the House of Commons is quite outside of the powers of that House.

In other words, Your Honour, we assert our power in studying a bill the way we want to study it. We return it to the other place the way we have seen fit to study it. Then it's for the house to determine what it wants to do with it. On the basis of exchange of views from the two houses, we express our views, they express theirs and we decide accordingly. That's the constitutional convention that we have followed. If we go beyond that, we are entering uncharted territory and that could be very encompassing for future decisions and initiatives in this chamber.

Thank you.

Some Hon. Senators: Hear, hear.

[*Translation*]

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, as I have not prepared a written speech, I will be very brief.

Contrary to what I heard from some of my colleagues, I submit, Mr. Speaker, that if we were to remove Division 18 from Bill C-44, we would be left with a money bill, not because the bank requires the payment of salaries, but because Division 18 calls for the appropriation of funds from the Government of Canada's Consolidated Revenue Fund.

Mr. Speaker, if I may, I would like to quote clause 23 of Division 18. I will read it in both English and French, because I think there is a subtle difference. Personally, I understand the clause better in French, but I will read it in both languages. Clause 23 is found under the chapter dedicated to the powers of the Department of Finance, while Division 18, for its part, creates an appropriation of funds for the Minister of Finance. It essentially gives him a blank cheque.

[*English*]

> The Minister of Finance may pay to the Bank, out of the Consolidated Revenue Fund, amounts of not more than $35 billion in the aggregate, or any greater aggregate amount that may be authorized from time to time under an appropriation Act.

[*Translation*]

That was the English version. In the French version, clause 23 is entitled "Versement sur le Trésor":

> Le ministre des Finances peut verser à la Banque, sur le Trésor, des sommes ne dépassant pas globalement trente-cinq milliards de dollars, ce total pouvant toutefois être augmenté par une loi de crédits.

Honourable senators, I submit to you that Division 18 could never have been a Senate bill under the provisions of our Constitution.

It is therefore up to you to decide. That is all I wanted to say.

[*English*]

Hon. Joseph A. Day (Leader of the Senate Liberals): I as well can be brief because the points that I think are important for you to hear have already been made. I believe this can be dealt with

rather quickly by looking at the fifth report of the Rules Committee that was dealt with in this chamber and adopted unanimously on the method of splitting bills that come from the House of Commons. That was May 30, 2017.

We on the Finance Committee, over many years, have been asking and threatening that at times we would like to divide a bill or send it back because of its omnibus nature or because there were so many peripheral items in it that we would like to take out, but we were not entirely clear as to whether we could get into a process like this.

This fifth report of the Rules Committee was prompted by the Modernization Committee. Once this came about, we had the debate here. I believe we have a process that's clear to all of us. The suggestion that we shouldn't be dividing a bill now is a challenge to this report that was adopted unanimously.

I would like to have had a debate two weeks ago on this report, and that would have been helpful. If you feel like you have to the report, there is no mention of the Royal Recommendation.

• (1940)

Others have mentioned this, but in 2002 — we were here at that time, and Senator Bryden sat up there close to Senator Watt — the bill dealt with cruelty to animals and gun control, and we divided the bill. It had a Royal Recommendation. So the Royal Recommendation is not an issue.

Three Canadian precedents have been referred to you: Bill C-103; Bill C-93, in 1993; and Bill C-10, in 2002. Bill C-10 was the animal cruelty, gun control bill, with a Royal Recommendation. The other was a budget implementation bill, obviously with a Royal Recommendation. That was dealt with in the normal course; it was not objected to by the government side.

Your Honour, what we have here is a clear, straightforward request to split the bill. Supporting the right to split the bill should not be taken as an endorsement of splitting the bill. We are dealing with a right at this stage in this challenge. Why not get into the merits of the case by saying, "Yes, it could be split if the right factors are there"?

Hon. Grant Mitchell: I have a couple of points to add to what has been a very fulsome debate.

The first point I'd like to make is in disagreement with those who would say that Bill C-10 is a precedent for the kind of decision you are being asked to make — a precedent for the decision about the question that is raised in Senator Pratte's motion and asked of you to rule upon in Senator Harder's point of order.

I believe that Bill C-10 does not apply as a precedent in your deliberations, or should not, because it never addressed the question. It was never required of a Speaker to address the question that is raised in the point of order. Bill C-10, to be sure, was split, but it was split through a process of communication between the houses and ultimately through a passing of complementary, if you will, motions in each house.

The House of Commons was clear in accepting the decision of the Senate to split this bill and that this did not set a precedent. I will read their motion to emphasize this point. This is the house, in concurrence to the Senate's message to divide the bill:

> That, in relation to the amendments made by the Senate to Bill C-10 . . . this House concurs with the Senate's division of the bill into two parts, namely, Bill C-10A . . . and Bill C-10B . . . but

—and I emphasize this —

> — that the House, while disapproving any infringement of its rights and privileges by the other House —

— the Senate —

> — waives its rights and privileges in this case, with the understanding that this waiver cannot be construed as a precedent; and
>
> that a Message be sent to the Senate to acquaint Their Honours therewith.

They were very clear that it was not a precedent, and no Speaker ever had to rule on it; it was done through this somewhat iterative process of communication between the two houses.

The second point I want to make is that there is no question, I think, amongst us that Bill C-44 is, to use Senator Cools' language, a financial bill or a budget bill; and clearly there is no question that Bill C-44, in and of itself, would not be a bill that we could initiate in the Senate. That is established by constitutional rules and precedent.

The question therefore arises as to if we take section 18, the infrastructure part, out of the bill, does Bill C-44 change significantly? Is its integrity changed significantly enough that it in fact becomes a new bill? Bill C-44 is not just any kind of money bill or financial bill. It is the ultimate financial bill; it is a budget bill. Budget bills, by their very nature, embody, embrace, facilitate and implement, among other things, a government's economic plan and policy.

The fact of the matter is that this government has a robust, rigorous and sophisticated infrastructure economic development plan, and part of that is an infrastructure bank. I would argue that if you take the infrastructure bank out of this budget bill, you fundamentally change the government's ability to implement its overall plan with respect to developing infrastructure, which in turn promotes economic development, which in turn creates jobs. If this government, or any government, will be held accountable for anything, it is those three types of economic initiatives.

I argue that if you take the infrastructure bank out, which amounts to $35 billion worth of investment in the economy, in jobs and in growth, you fundamentally change this bill; and in doing that, we are in fact creating a new Bill C-44, when we could not have created the old Bill C-44.

If I could make a quick analogy, it is that if I have a car and I take out the steering wheel, is it still a car? It is a fundamentally different car. It can go straight, but it cannot turn left or right. That, in and of itself, is a fundamental difference. This bill, without the infrastructure, may be able to go straight, but it won't be able to turn left or right.

Hon. Pierrette Ringuette: Honourable senators, it was not my intention to intervene, but so many issues have been raised that I feel I have to also voice my opinion.

When Senator McCoy says that this was not a money bill because Division 18 did not start with the wording of a bill, she only further emphasized that this was a budget bill, as a whole, and that the language of this bill with regard to a taxation and spending act — and therefore is a money bill — was at the start of the bill as a whole. This further emphasizes the intention of taxation and spending. Of course, we all know — and as Senator Bellemare has indicated — that within the infrastructure bank section of Bill C-44, there is a direct spending measure that is within the authority of the House of Commons. There is no doubt in my mind.

I would also like to add that most of the senators who rose this afternoon with regard to this issue spoke about the Fifth Report of the Rules Committee. I am a member of the Rules Committee, and I can tell you that when we were discussing this, I recognized that we had a somewhat volatile process. However, the most important thing that the Senate of Canada did not have with regard to recognizing whether or not a bill was omnibus was a clear set of criteria. Up until now, at least since I have been here, every time we have what we call an omnibus budget bill, we argue that, "Well, this is an omnibus budget bill." When I was in the Liberal caucus — and Tory senators would acknowledge this — most of the time we argued that it was an omnibus bill. I have to say that a lot of the time we were right.

However, we do not have in this institution a clear set of criteria. We may have a convention with regard to the pre-study of a budget bill, but that does not constitute a clear set of criteria to decide whether a bill is an omnibus bill and that we have the authority to separate such a bill.

• (1950)

So this is to set the record straight. I hope that when we, in any other committee, discuss this issue again we will have established a clear set of rules in order to know, in advance, how we are going to do proceed, with a clear set of criteria. I think that in this chamber, the process is not really a clear demonstration of what this chamber should abide by.

We don't have these rules, we don't have these criteria. We are always taking a point of order and going all over the place asking you, Your Honour, because I find that we don't really take the time. We want to criticize the process of an omnibus bill, but we don't want to take the time to really deal with the issue and establish a proper ruling like we do with a point of privilege. On a point of privilege, we have to meet certain criteria in order for the point of privilege to proceed. Well, we don't have that right now in this instance.

In other words, I understand the purpose of the motion. I also understand the purpose of the point of order. I agree with the point of order. As part of the Banking Committee, the infrastructure bank is clearly an expense for the government and they have that authority. This is not part of an omnibus bill, so Your Honour, I thank you for listening to my arguments and hopefully other senators will realize that it is time that this chamber, if we want to seriously deal with omnibus bills, establishes a clear set of criteria for the future.

Thank you.

Hon. Yuen Pau Woo: Thank you, Your Honour and thank you, colleagues, for making my rookie experience as the sponsor of a budget bill such an interesting one. I'm very glad to be the last speaker and that Senator Ringuette was able to go before me, because I think I'm able to accurately and definitively summarize the debate, and to say that while I have heard a lot about the precedents and the rules around splitting the bill and I have heard a lot about the need to assert our power, I don't necessarily disagree with any of those and I certainly am no expert in judging the correctness of those statements.

I have not heard a single argument about why we should split this bill and why we should take the Canada infrastructure bank, division 18, in particular, out of this bill.

Now, Senator Pratte has made the argument that we need to, in his words, treat each omnibus bill on its merits and to make that decision, but he did not go on to tell us why, on its merits, Bill C-44 requires division 18 to be removed.

I also heard Senator Wells say that there are a number of aspects in this omnibus bill that may or may not fit the omnibus definition that we like or dislike, and yet I did not hear him articulate why the Canada infrastructure bank deserves to be split, and not any other division.

Now colleagues, this may seem too practical a matter for those of you who are more learned than I and more focused on procedures, rules and precedents, but just think about it: if our honoured Speaker were to make a ruling that we can split this bill; that we do have the power to take this particular division out of Bill C-44; and that he did this without a single argument about why the CIB does not belong in Bill C-44, what is it about that division that does not belong? How does it differ from other divisions in Bill C-44 that may or may not deserve to be split? How do you think the public would respond to the fact that we excised an element of the bill without any rationale provided for it?

Now, even if one does not care much about public opinion — and perhaps that will not factor into your decision, Your Honour — I think there are real consequences of a ruling to allow the splitting of the Canada infrastructure bank from Bill C-44 without any argument explaining why it should be done. And those consequences are as follows: There will be omnibus bills in the future; I guarantee that. Are we going to set a precedent where, essentially, without any justification, we can split something off from an omnibus bill? Is that really the sort of situation we want to create in this chamber?

So Your Honour, I do hope that in the midst of all the learned arguments and the need to respect the traditions, precedents and practices of this chamber within the context of our relationship with the other place, I hope you will also consider the practical matter of why this division should be split, what the rationale might be for making that split and how that rationale might or might not apply to any other element of Bill C-44.

Thank you.

The Hon. the Speaker: Honourable senators, I have heard the arguments tonight. We have spent over two hours listening to the debate and I do not think we should degenerate into debating now about whether this particular point is right or that particular point is wrong. I have heard the arguments. If an honourable senator has something new to add to the arguments, I am happy to listen to it.

Senator Gold, we have not heard from you yet.

Hon. Marc Gold: Thank you. I simply want to make sure that I understand correctly that the issue we're debating today is our power to divide a bill, and not the merits of whether we should or should not split the bill.

Were Your Honour to rule that we could so divide, and I express no opinion on that, we would then have the opportunity to debate whether or not, under the circumstances, it would be appropriate to divide the bill. If that is the correct understanding of the point of order, I'm reassured.

Thank you.

The Hon. the Speaker: Honourable senators, I believe I have heard enough.

I thank all of you for your input into this debate. This is obviously a very important issue. With that in mind, I will attempt and endeavour to get back to you as quickly as possible with a decision. Obviously, given the sensitivity of time in this matter, a decision will depend on where we go from here.

Thank you all, honourable senators, for your input into this interesting and important debate.

[*Translation*]

NATIONAL MATERNITY ASSISTANCE PROGRAM STRATEGY BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-243, An Act respecting the development of a national maternity assistance program strategy.

(Bill read first time.)

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

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

(The Senate adjourned until Thursday, June 15, 2017, at 1:30 p.m.)

CONTENTS

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