SENATE  SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 161

OFFICIAL REPORT
(HANSARD)

Thursday, November 23, 2017

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
Publications Centre: Kim Laughren, National Press Building, Room 926, Tel. 613-947-0609

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

THE SENATE

Thursday, November 23, 2017

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

NATIONAL CHILD DAY

Hon. Jim Munson: Honourable senators, November 20 was Universal Children's Day, National Child Day in Canada, a recognition of the 1989 unanimous adoption by the United Nations of the Convention on the Rights of the Child.

The UN Convention on the Rights of the Child provides an invaluable framework for enabling children to live and grow and flourish. Eliminating social inequities and respecting children's rights begins with making the choice to do so. While Canada made this choice when it ratified the convention in December 1991, we are not meeting our obligations to all children of this country.

National Child Day reminds us not only of what has been accomplished with respect to children's rights but also of the work that needs to be done, particularly when it comes to those who are more vulnerable, like indigenous children or those with physical or intellectual disabilities.

According to UNICEF Canada, Canada ranked twenty-fifth out of 41 rich countries on children's well-being. Imagine, twenty-fifth. Shame on Canada. Canada needs to do more to live up to its commitment to children. Article 6 of the convention says children have the right to live. Governments should ensure that children survive and develop healthily.

There are inconsistencies in health and mental health services, access to healthy food and clean water, and education services across this country. For this reason, I and many others in this chamber continue to encourage the position of a national commissioner for children and youth in Canada. This would level the playing field for children across the country so that no matter what economic or social situation they are born into, they have the chance to succeed and achieve their greatest potential.

The UN Committee on the Rights of the Child recommends that countries should have a children's commissioner. The Canadian Council of Child and Youth Advocates has given the same recommendation. Two former members of Parliament have private members' bills for a youth commissioner. Our own Senate Human Rights Committee, under the chairmanship of Senator Raynell Andreychuk, gave this same recommendation in its 2007 report entitled *Children: The Silenced Citizens*. We must honour our commitments to young people in this country, and a national commissioner would be a good place to start.

Today I'm thinking of the tens of thousands of children who woke up in this country and didn't have breakfast. Imagine in a country like Canada children living in poverty and families not having the basic necessities of life. Shame on Canada.

Over the last two days, the Senate has opened its doors and we've had celebrations in here for National Child Day. There were 300 students in these seats, senators. They sat and shared experiences and talked about learning from each other, their rights as youth. It was inspiring to see the optimism and motivation in these young people.

Watching this, I was reminded of how fortunate they are, but we can't allow other children to be left behind. In the shadows of this Parliament, you can go to places where people aren't having breakfast in the morning or proper nutrition. Go around the corner and you'll find it here. You don't have to go across the country. It upsets me.

This is one of the most important and greatest commitments a society can make to its children. Honourable senators, there is a saying: You can seek the wisdom of the ages, but always look at the world through the eyes of a child.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a group of 150th anniversary medal recipients. They are the guests of the Honourable Senator Moncion.

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

Hon. Senators: Hear, hear!

SENATE COMMEMORATIVE MEDAL

Hon. Lucie Moncion: Mr. Speaker, honourable colleagues, as part of the celebration of the Senate's 150th anniversary, we have each been invited to honour 12 people who have made important contributions to the lives of Canadians. I chose to award the medals to 12 exceptional Franco-Ontarian men and women whose passion and hard work have helped improve the lives of their fellow citizens and really put their communities on the map.

Each recipient has achieved extraordinary things in the world of arts, culture, literature, health, education, business, or social development.

Paul-François Sylvestre is a writer and literary critic from southwestern Ontario, a great Franco-Ontarian with over fifty publications to his credit.

Élizabeth Allard was the first woman to serve as the Director of Official Languages for National Defence and the Canadian Armed Forces. She has chosen to devote her time to advocating for the rights and well-being of seniors and retirees in Ontario and across Canada.

Léo Therrien, a true humanist, is a social worker who has devoted over 20 years of his life to taking care of others. His focus has been on improving quality of life for people receiving palliative care.

Lucie Hotte, a smart and caring woman, is a full professor in the French department at the University of Ottawa. She is helping legitimize the study of francophone culture and literature in minority communities in Canada and around the world.

Philippe Boissonneault is a prominent educator and a well-known and engaged leader. Through his community involvement and leadership, for over 35 years now, he has been actively contributing to the vitality of Northern Ontario communities.

Guy Mignault is the artistic director of the Théâtre français de Toronto. As a bridge builder, he has been contributing to the development and vitality of the Franco-Ontarian arts community for over 25 years.

Clermont Duval is a painter, writer and illustrator. This internationally renowned resident of Mattawa has over 3,000 paintings and nearly 7,000 drawings in his portfolio.

Pierre Bélanger is a businessman and activist. He is a great visionary who for many years has been working to protect the environment and to foster the creation and development of businesses in northern Ontario.

Mathilde Gravelle-Bazinet, a member of the Ontario Bar Association, is a renowned teacher and nurse. This amazing woman is working tirelessly to complete a project to build a palliative care facility for the greater North Bay and Parry Sound regions.

Caroline Arcand is an eminent public speaker, coach and leader. This remarkable social entrepreneur manages and ensures the success of a large number of social enterprises that employ people who would otherwise have a hard time finding employment.

Francine Garon is an engaged citizen and a wonderfully talented artist. For over 30 years now, this incredible woman has been devoting her energy to enhancing the artistic and community spirit of the city of Kapuskasing.

Yaovi Hoyi, or Yao, is a young singer-songwriter and a multidisciplinary artist-entrepreneur. He devotes much of his energy to writing and performing, and acts as a mentor to aspiring artists from De La Salle high school. He told me today that he does this sort of work all across Canada.

Like you, I am proud to have had the privilege of recognizing and honouring people who, each in their own way, make Canada a great place to live.

Thank you, Mr. Speaker, for agreeing to award these medals, and thank you everyone for your attention.

Hon. Senators: Hear, hear!

• (1340)

[*English*]

UKRAINIAN FAMINE AND GENOCIDE (“HOLODOMOR”) MEMORIAL DAY

Hon. A. Raynell Andreychuk: Honourable senators, I rise today to pay tribute to the victims of the Ukrainian Holodomor Famine Genocide of 1932-33. Each year, we gather on the fourth Saturday of November to mark Holodomor Memorial Day, an opportunity to reflect and remember the millions who perished under Soviet control in a man-made famine.

Guided by the goals of an ambitious industrialization program, Joseph Stalin implemented a brutal process of agricultural collectivization in 1932. Millions died of starvation, unable to fill the escalating grain quotas. Those who resisted were arrested or shot. As I have previously stated in this chamber, at the height of the famine, peasants in Ukraine died at the staggering rate of 17 persons per minute, 1,000 persons per hour and 25,000 persons per day.

Simultaneously fuelled by a desire to destroy a burgeoning Ukrainian nationalistic movement, Ukrainian political elites and intellectuals were arrested and sent to Soviet prisons. The outcome of these policies is succinctly described by historian Anne Applebaum in her recent book *Red Famine: Stalin's War on Ukraine*. She states:

> Taken together, these two policies — the Holodomor in the winter and spring of 1933 and the repression of the Ukrainian intellectual and political class in the months that followed — brought about the Sovietization of Ukraine, the destruction of the Ukrainian national idea, and the neutering of any Ukrainian challenge to Soviet unity.

I proudly note that in 2003, in this chamber, unanimously, we called on the Government of Canada to recognize the Holodomor as an act of genocide. Following the adoption of that motion unanimously, the Canadian Parliament passed the Ukrainian Famine and Genocide (“Holodomor”) Memorial Day Act in 2008.

Honourable senators, in that same spirit, let us take this opportunity to remember those victims of Holodomor and reaffirm our commitment to the prevention of similar tragedies in the future.

NATIONAL CHILD DAY

Hon. Sarabjit S. Marwah: Honourable senators, I rise today to recognize National Child Day, which we first celebrated in 1993. I think all Canadians would agree that protecting the most vulnerable in our society — our children — is clearly the right thing to do.

Studies by the World Bank have found that every dollar invested in children has a threefold return in future health savings. According to the WHO, "safeguarding health during childhood is more important than at any other age because poor health during children's early years is likely to permanently impair them over the course of their life." The facts are clear. The more we invest in the health of our children, the more it will save us in the long run.

But when it comes to the health of Canada's children, some of the reports are alarming. Here are some facts. Poverty is a major determinant of one's health. According to the Conference Board of Canada, we scored a disappointing "C" for child poverty, ranking fifteenth out of 17 peer countries.

UNICEF's 2016 Report Card, which measures the well-being of children, puts Canada in the bottom third of industrialized nations. The measurement of infant mortality rates is universally accepted as an important indicator of the well-being of a country. According to the UNICEF report, Canada ranks twenty-second out of 29 countries in infant mortality, and the rates in indigenous communities are substantially higher.

Mental illness is also an issue. Seventy per cent of mental health problems have their onset during childhood or adolescence. Obesity is on the rise in Canada and it has a major impact on the health of a child. We ranked 27 out of 29 in the UNICEF report. Children who are obese are at a higher risk of developing health problems, which invariably persist into adulthood.

Honourable senators, these numbers are shocking and should serve as a wake-up call. As we contemplate the complexity of improving the health of children, we need to develop a "moonshot" concept that all policy-makers, governments and agencies can rally around.

I have the privilege of serving as Chair of the Hospital for Sick Children in Toronto, and I hear the same from doctors, scientists and health care professionals. These people working on the front lines are seeing first-hand how we are not providing for our future generations.

So let us use the rallying cry of National Child Day to reinforce our resolve and take action to make a real, positive impact on the lives of our children.

As Nelson Mandela once said, "The true character of society [or a nation] is revealed in how it treats its children."

I believe that Canada is one of the greatest countries in the world. So let's come together, honourable senators, to live up to our true character for our future and for the children.

[*Translation*]

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Hon. Pierre-Hugues Boisvenu: Honourable senators, November 25 is the International Day for the Elimination of Violence against Women.

I would like to remind you of the heartbreaking struggle that the families of missing persons go through. They often wait months or sometimes even years for news of their wife, sister or daughter. I know you are very much aware of these tragedies, particularly those happening in Indigenous communities. Every time the news reports that human remains have been discovered, their hearts sink at the thought that it might be their loved one. Each time, hope gives way to despair, and the pain never goes away.

Under the previous government, I recommended that the public safety minister, the Honourable Steven Blaney, amend the DNA Identification Act to improve the efficiency of missing persons investigations by making it easier to identify human remains when they are found. Minister Blaney accepted my recommendation. On December 16, 2014, the government passed "Lindsey's Law," which was named for Lindsey Nicholls, a young woman who disappeared in Alberta in 1993 and sadly was never found.

The act provides for the creation of three new humanitarian indices based on DNA from missing persons, their relatives and human remains. These indices should provide investigators with the additional tools they need to advance investigations into missing persons and unidentified human remains and offer closure to the families of missing persons, who tend to be women and children.

Honourable senators, Lindsey's Law was passed almost three years ago, but the current government is dragging its heels on the implementation of the three new DNA-based indices. The current government's plans to accept DNA profiles were postponed to the spring of 2017. Since then, nothing more has been heard. This just prolongs the suffering of families who are left without answers. For those families who wait in great pain for their loved one to be found dead or alive, this inaction is unacceptable.

Honourable senators, join your voices to mine so that Canada's Minister of Public Safety might hear us and these families and implement Lindsey's Law as soon as possible, because violence against women is a scourge in Canada that persists to this day. It is time for us to think about the suffering of the victims who are defenceless and have no recourse. Let us think about the suffering of those victims' families and call for action. Thank you.

[*English*]

ROUTINE PROCEEDINGS

PRIVY COUNCIL OFFICE

JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS—REGULATIONS TABLED

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table, in both official languages, the *Justice for Victims of Corrupt Foreign*

Officials Regulations, pursuant to the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, S.C. 2017, c. 21, s. 5.

• (1350)

SENATE MODERNIZATION

NOTICE OF MOTION TO AUTHORIZE SPECIAL COMMITTEE TO EXTEND DATE OF FINAL REPORT

Hon. Stephen Greene: 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 Monday, June 19, 2017, the date for the final report of the Special Senate Committee on Senate Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from December 15, 2017 to June 29, 2018.

[*Translation*]

THE SENATE

NOTICE OF MOTION TO PHOTOGRAPH AND VIDEOTAPE TRIBUTES TO THE LATE HONOURABLE TOBIAS C. ENVERGA, JR.

Hon. Yonah Martin (Deputy Leader of the Opposition): 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 tributes to the late Honourable Senator Enverga, with the least possible disruption of the proceedings.

[*English*]

QUESTION PERIOD

FINANCE

TAX FAIRNESS

Hon. Larry W. Smith (Leader of the Opposition): My question is for the Leader of the Government in the Senate concerning a report issued earlier today by the Parliamentary Budget Officer which analyzed the government's changes to corporate passive investment income.

The report showed that this tax hike on local businesses will increase the federal government's revenue by $1 billion in the first year or two after its implementation.

My question for the government leader is this: Why is the government determined to tax small businesses with an overly complex system of proposals while those at the highest level of power in the Liberal Party avoid paying their fair share?

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

The Government of Canada welcomes the report by the Parliamentary Budget Officer, which highlights, as the senator's question suggests, the impact of the changes the government is proposing, suggesting they will be highly concentrated on a small share of CCPCs which hold the vast majority of passive investment assets. The government intends to move forward with changes to increase fairness and lower taxes on small businesses, taking into account all the feedback the government has received during the consultation period.

Budget 2018 is expected to provide additional details and include draft legislation regarding the proposed changes. Only then will we be able to accurately predict the fiscal impact of the measures. The government is of the view that the eventual measures will likely generate significantly less revenue than what the PBO has estimated.

The government has been clear, however, that this is not and never has been a revenue-generating exercise. It's been about ensuring that wealthy individuals do not have an incentive to incorporate just so that they can get a better tax rate than middle-class individuals.

Right now, as the report suggests, there is upwards of $300 billion in passive savings sitting in private corporations not contributing to the growth of the business. And 80 per cent of this money is held by just 2 per cent of the wealthiest corporate owners.

We will create, through the measures the government is expected to bring forward, a $50,000 threshold on investment income annually, or approximately $1 million in savings, to ensure businesses can continue to save for contingencies or future investment and growth.

Under the plan the Minister of Finance is going to bring forward, 97 per cent of businesses will see no tax increase on investment income. Changes will protect past investments and income from those investments.

I think it's important for all senators and for Canadians to understand that these incentives are in place so that Canada's venture capital and angel investors can continue to invest in the next generation of Canadian innovation. It is about tax fairness.

Senator Smith: Thank you very much for that feedback.

Just so we're all on the same wavelength, what the PBO's report said is that the people who will be most affected are insurers, financial advisers, management consultants, real estate brokers, lawyers and doctors, professional people. I just want to make sure we're talking about apples and apples here, which unfortunately you didn't really talk about clearly in your response.

The government has brought forward complex changes that will hurt small businesses and drown them in red tape, as confirmed by the PBO this morning. This is the PBO's report, not our report. Yet the government is quick to defend the fortunes of other well-connected Liberals.

There is another news report today involving the Paradise Papers; it states that the tax avoidance of the revenue chair of the Liberal Party of Canada continued well past the date stated in the individual's public denial issued a few weeks ago.

Given the news today, could the government leader please tell us whether the Prime Minister is still satisfied with the explanation provided by his friend?

Senator Harder: Honourable senators, the proposals that the government is contemplating would affect about 2 per cent of the CCPCs, and that is a significantly focused and deliberately targeted group for this measure.

With respect to the other aspects of his question, let me simply say that the Prime Minister has expressed his views. They continue to be his views. The taxes paid by individual Canadians are not for the government to comment on.

STATEMENTS OF MINISTER

Hon. David Tkachuk: Senator Harder, yesterday I asked why it took two years for the Minister of Finance to disclose to the Ethics Commissioner his involvement in a private corporation that owned a villa in France. You answered that, and I quote:

> . . . the Minister of Finance has worked diligently with the Ethics Commissioner and has followed her recommendations and advice . . . .

Senator Harder, are we to understand from that answer that it was the Ethics Commissioner who advised the Minister of Finance that there was no need to disclose his stake in a private corporation that owned this villa in France?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question.

I want to assure him and all Canadians that the Minister of Finance has worked diligently with the Ethics Commissioner to ensure his compliance with all of the aspects of the ethics regulations, and that is the position that he has taken.

Yesterday I described some of the specific ways in which he has recently brought certain measures to even greater scrutiny by the Ethics Commissioner and has responded to her comments that she has made publicly.

Senator Tkachuk: Senator Harder, you also said that having a screen in place rather than a blind trust was the best measure of compliance recommended by the commissioner to the Minister of Finance.

Senator Harder, would you agree that the best measures of compliance with the Conflict of Interest Act would be those measures listed in the Conflict of Interest Act? In fact, a screen is not one of the measures listed in the act, though the divestment of assets by arm's-length sales or by placing them in a blind trust are explicitly mentioned.

Senator Harder: Surely the best compliance with the ethics act is to comply with the ethics act as advised by the Ethics Commissioner. The minister has gone out of his way to ensure in meetings with the Ethics Commissioner in her office that he is in compliance.

IMMIGRATION, REFUGEES AND CITIZENSHIP

IMMIGRATION ADMISSIBILITY—PEOPLE WITH DISABILITIES

Hon. Jim Munson: This is a question to the Government Leader in the Senate.

I was pleased last night to see that the immigration minister finally, finally, finally, after a long time, has agreed to open up the discussion on medical inadmissibility of immigration applications of those who have a medical condition. In some respects I can't believe this is on the books.

Section 38(1)(c) of the Immigration and Refugee Protection Act labels certain immigrants as medically inadmissible due to the excessive demand it is perceived they will place on social and health care systems.

In the last little while, this has included a professor at York University who has a son with Down syndrome who was ordered to go back but refused to.

Another case in testimony before the House of Commons committee: A 9-year-old boy in China was also refused permanent residency in this country as an individual living with Down syndrome.

In this country, in this Senate, we have been fighting for the rights of every child to be included in society because of, as we just heard from the senator before, the whole idea that they can participate in society, each and every one of them. Yet, I've been told the social services costs for the excessive demands are $6,665, currently, set over a five-year period.

• (1400)

The minister said it yesterday, but he did not give any timetable. How long will it take to amend this provision policy? This is about human rights and inclusion in this country. When will persons with disabilities finally feel that the Canadian government is an advocate for their inclusion into Canadian society and values?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question and for his ongoing advocacy on these matters. The minister's statement reflects his determination to review these studies.

I'm unaware of a time frame he has publicly committed to for this review, but I can assure you that by undertaking this review, he is committed to an expeditious review so the government can come to a conclusion as to how and whether to amend this long-standing prohibition, based on, as the senator will know, practice that has been debated for some time.

Senator Munson: Does "expeditious" mean "in this term"?

As the Government Representative, what is your view?

Senator Harder: As the honourable senator will realize, I don't have a view as the Government Representative. As a former Deputy Minister of Immigration, I might.

Let me inquire of the minister and report back to the chamber.

FINANCE

RECUSAL OF MINISTER ON MATTERS OF CONFLICT OF INTEREST

Hon. Denise Batters: My question is for the Leader of the Government in the Senate.

Senator Harder, four weeks ago, I asked you how many times Finance Minister Bill Morneau recused himself from discussions of the Cabinet Committee on Litigation Management when he had a conflict of interest. I kind of anticipated this might happen, so at the time I asked you to provide the answer within a few days rather than your usual response time of, potentially, six to eight months; yet here we are 28 days later, and what is your response? Nothing but crickets.

Canadians have a right to know if Bill Morneau is profiting from his position as Minister of Finance and whether his financial interests have conflicted with his public duties. It is your duty to respond in this place on behalf of the Trudeau government, and you have had weeks to do that. We need your answer now. How many times has Minister Morneau recused himself at the Cabinet Committee on Litigation Management when he had a conflict of interest?

Hon. Peter Harder (Government Representative in the Senate): I will repeat the answer of 28 days ago.

Senator Batters: Senator Harder, you have the title of Leader of the Government in the Senate, the salary of the Leader of the Government in the Senate, the budget of the Leader of the Government in the Senate and all the staff of the Leader of the Government in the Senate. You've now had four weeks to respond to this issue. You have a duty to answer to the people of Canada on this issue right now. Please answer the question.

Senator Harder: I repeat: I will seek an answer and report back.

JUSTICE

LEGALIZATION OF CANNABIS— CONSULTATION WITH INUIT COMMUNITIES

Hon. Dennis Glen Patterson: My question is for the Leader of the Government in the Senate.

Senator Harder, at a recent briefing on Bill C-45 and Bill C-46, the former chair of the federal Task Force on Cannabis Legalization and Regulation, Anne McLellan, told senators that the task force recommendations were very clear that more consultation on the broader impacts of legalization was needed. Article 32 of the Nunavut land claims agreement also clearly states that the government has a duty to consult with Inuit on any policies that have significant social and cultural implications.

What Inuit organizations has the government consulted with relating to the legalization of cannabis?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I will seek to provide a response, and if I don't have all of the answers he is seeking, I will inquire further.

I want to assure the senator and all honourable senators that the government is committed to working closely with indigenous partners, including Inuit partners, so the interests of the affected communities across Canada are considered and respected throughout the implementation of the proposed "Cannabis Act," which is before the other place.

I will note that the Task Force on Cannabis Legalization and Regulation undertook extensive consultations with indigenous peoples and organizations, including the Inuit Tapiriit Kanatami, as well as the Government of Nunavut. Recently at the Ministers of Health meetings, the issue of cannabis was on the agenda, and the minister also had opportunity to meet with indigenous organizations.

Further, as the honourable senator will know, as part of the review of Bill C-45, senators will examine the role of indigenous communities in the process of implementation. I would encourage the honourable senator and all senators to engage with how we can best ensure that those voices are all heard in the process of review. I know that Senator Dean, as the sponsoring senator, has proposed some innovative ways in which the Senate could build on the experience on Bill C-14 to ensure a full and appropriate consultation with stakeholders.

Senator Patterson: Thank you.

Senator Harder, I am aware that the government has consulted with one Ottawa-based Inuit organization, Inuit Tapiriit Kanatami, but on October 26, 2017, Nunavut Tunngavik Incorporated, the land claims implementation organization in Nunavut, passed a unanimous resolution. It asked the government to postpone the legalization, to consult with Inuit on whether to legalize, to state the timing and mitigation measures on potential negative impacts, and that treatment and rehabilitation centres for drug and alcohol addictions be established in Nunavut as part of any legalization plan.

My supplementary question is: Will the government consider engaging in meaningful consultation, as required under the constitutionally protected land claims agreement, with Nunavut Tunngavik, NTI, to address their concerns before the passage of the legislation?

Senator Harder: I will inquire with respect to NTI specifically, but I want to assure senators that the government will accept all of its obligations, as it should, with respect to the land claims agreements.

[*Translation*]

SUPREME COURT--APPOINTMENT OF CHIEF JUSTICE

Hon. Claude Carignan: My question is for the Leader of the Government in the Senate. Yesterday, Quebec's justice minister, Stéphanie Vallée, reiterated the calls from Quebec's legal community regarding the appointment of the next Chief Justice of the Supreme Court of Canada. Ms. Vallée called on the Trudeau government to respect the tradition of alternating between civil law and common law and to ensure that the next Chief Justice of the Supreme Court of Canada is from Quebec.

Senator Harder, I already asked you this question a while ago, and you gave a political answer — or a diplomatic one, I should say. Since we will be marking the departure of the current Chief Justice in the coming days, does the government plan on choosing the next Chief Justice from among the three Quebec judges put forward? Yes or no?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): Unfortunately, I can't say "yes" or "no." I can simply say that the Prime Minister will be making an announcement very soon.

FOREIGN AFFAIRS

TANZANIA—HUMAN RIGHTS

Hon. A. Raynell Andreychuk: My question is for Senator Harder. I did not advise you earlier, but I would ask for an investigation and a response to my question.

The President of Tanzania, John Magufuli, publicly declared that young girls who fall pregnant will not be permitted to return to school after giving birth. This decision marks a gross violation of the basic right to education.

The Trudeau government has repeatedly committed to the advancement of women and children's rights, and the empowerment of women and girls. As such, can you advise the Senate what efforts our government has made to speak to President Magufuli to get him to understand the seriousness and the wrong-headedness, if I can say, of this policy? To say that girls have fallen pregnant, it's not a unilateral act, and they are going to be punished by not going to school. It is estimated that some 8,000 girls will now be unable to complete schooling.

We have put a premium on working on women's issues in Africa, and we have spent considerable dollars, I understand, in Tanzania. So I would like to know what our government doing to stop this wrong-headed and obvious violation of human rights of young girls in Tanzania. How will we adjust our program and our commitment if this policy continues?

• (1410)

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and her vigilance on this. It will come as no surprise to the honourable senator that the human rights situation in Tanzania has deteriorated over some time, not just with this measure but also with other measures which the Government of Canada has been vigorous in engaging the Government of Tanzania on.

As the honourable senator referred to in her question, the Government of Canada maintains a very aggressive and activist approach with respect to women's issues and gender issues in our foreign policy and our aid programs.

The Government of Canada has engaged the Government of Tanzania on this issue specifically. Whether and how at the highest level of government there has been an exchange I will enquire so that all senators are aware of the most recent engagement. It will come as no surprise that this is a file on which the ministry and the development agency, in particular, have been very active bilaterally as well as working with other fellow donors and in appropriate organizations to bring attention to this matter in the United Nations family and, indeed, in the Commonwealth, which, as the honourable senator will know, is meeting in the spring.

Senator Andreychuk: As a follow-up to that, because there was progress in Tanzania, the programs changed to reinforcing the education system and the processes so that there was, first of all, sufficient capacity to educate, but also an emphasis on young girls. It comes as no surprise to anyone that if you have a young and healthy mother going to school it bodes well for the country. We then changed to more emphasis on government aid as opposed to NGOs and schooling through all the various support groups.

Would it be in the consideration of the government to find alternate ways, in the meantime, to make sure that these young girls are continuing their education through other means? There are sufficient other means that I think could be reached.

Senator Harder: The government is pursuing an active approach on how to deal directly with and influence the government with respect to the decisions they have made, both bilaterally and in concert with others, and it is looking at other ways to mitigate the damage done to the very people that we have at our heart in our development program and in our foreign policy in that region in particular. The suggestions of the honourable senator are, in fact, part of that broad range of possible responses.

[*Translation*]

FINANCE

BROADCASTING TAX POLICY

Hon. Ghislain Maltais: My question is for the Leader of the Government in the Senate. The Government of Quebec has decided to tax Netflix, a telecommunications company that will be operating in Quebec. Earlier today, the federal finance minister announced that, effective January 1, 2018, the Government of Quebec will have to introduce legislative measures to collect the provincial tax and also the federal tax because, in accordance with federal-provincial agreements, the provinces must collect the GST and send it to Ottawa.

However, the federal finance minister can forgo having Quebec collect this tax. Could the Leader of the Government tell us whether the government intends to forgo this tax?

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I am unaware of whether the Minister of Finance has made that decision. I will take his question as an opportunity to enquire.

FOREIGN AFFAIRS

HUMAN RIGHTS

Hon. Frances Lankin: Your Honour, I had a supplementary to Senator Andreychuk's question.

Senator Harder, you mentioned that programs for women and children are at the heart of the government's foreign policy, and I want to extend beyond the specific case — and I applaud Senator Andreychuk for raising that — to talk about the situation in Myanmar and Bangladesh and the Rohingya refugees.

Last night, as a result of information raised by Senator McPhedran and the Honourable Bob Rae, Special Envoy to Myanmar, looking at the Rohingya refugees, we heard there are 120,000 pregnant and lactating women in the refugee camp in Bangladesh, the majority of which, reports tell us, have resulted from rape by members of the Myanmar military.

I can't imagine the situation that's being faced. Today we hear that there is the beginning of a return from the camps to Burma. It is not clear whether that is voluntary or forced, given the history of these issues.

If those 120,000 pregnant and lactating women are in a desperate situation now, which they are, it will be even worse if they return to an area where they are not even considered citizens or, dare I say, human.

As you are looking into this, I would like you to seek a response from the government with respect to their foreign policy in general on these issues and on crisis issues, about the protection for women and pregnant women and the protection for children and, in particular, girl children, with respect to the sustenance of life, the supports necessary and the return to a life of safety and a life where education for young girls is possible.

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her supplementary question. It is broad ranging in its context.

Let me simply say that with respect to the Rohingya crisis, the Government of Canada, as the senator referred to herself, has put in place the special envoy in the person of Bob Rae to ensure that there is both on-the-ground and high-level engagement with and observation of what is going on, and recommendations coming from him to the government will be highly valued.

You will know that the government has committed $25 million in an additional fund for support to the Rohingyas as well as the matching dollar campaign, which is presently under way, and I believe it closes at the end of next week or this week.

These are ways in which the Government of Canada is tapping into the spirit of Canadians on exactly these kinds of issues.

With regard to the migration back or the return, as your question suggested, this is a return that will have to be highly monitored to determine that the goodwill and intent is there because of the risks that your question implies. I want to assure you, and I'm happy to report on a regular basis what further steps are being taken to ensure Canada, at least, is working with the relevant parties and agencies to ensure a monitoring of and a support to those affected, as well as working with other international organizations and like-minded countries on this matter.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Peter Harder (Government Representative in the Senate): Honourable senators, I have the honour to table the answers to the following oral questions: the response to the oral question of October 18, 2017, by the Honourable Senator Oh, concerning national revenue — Canada Child Benefit — eligibility of children of refugees; and the response to the oral question of October 19, 2017, by the Honourable Senator McIntyre, concerning democratic institutions — Chief Electoral Officer.

NATIONAL REVENUE

CANADA CHILD BENEFIT— ELIGIBILITY OF CHILDREN OF REFUGEES

(*Response to question raised by the Honourable Victor Oh on October 18, 2017*)

> The Canada Revenue Agency (CRA) recognizes that many refugees depend on the benefits and credits it administers on behalf of the Government of Canada, particularly the Canada Child Benefit (CCB). The CRA understands the concerns raised for Canadian-born children of refugees and welcomes the opportunity to clarify matters.

To become eligible for the CCB, among other conditions, the individual or their spouse or common-law partner must be a Canadian citizen, a permanent resident, a protected person, or a temporary resident who has lived in Canada for 18 consecutive months and has a valid permit in the 19th month.

However, it is the individual, not the child, who must meet the above conditions. Refugees who enter Canada as permanent residents or with valid temporary resident permits that satisfy the above condition are eligible for the CCB. In cases of refugees entering Canada without a legal status, the protected person status is only granted once the refugee receives a positive Notice of Decision from the Immigration and Refugee Board. Prior to the decision, the refugee does not have a legal status in Canada and cannot receive benefits, regardless of whether or not the child was born in Canada.

DEMOCRATIC INSTITUTIONS

CHIEF ELECTORAL OFFICER

(*Response to question raised by the Honourable Paul E. McIntyre on October 19, 2017*)

Canadians are rightly proud of our democratic institutions and they must have trust in the independent, non-partisan role Elections Canada plays in administering our federal elections.

The Government of Canada has launched the selection process for a new Chief Electoral Officer. The Government's new open, transparent and merit-based approach to appointments aims to identify high-quality candidates who truly reflect Canada's diversity.

The appointment of a new Chief Electoral Officer will be announced publicly following the completion of the selection process. It is anticipated that a new Chief Electoral Officer will be in place well in advance of the next federal election.

[*Translation*]

ORDERS OF THE DAY

CANADA BUSINESS CORPORATIONS ACT
CANADA COOPERATIVES ACT
CANADA NOT-FOR-PROFIT CORPORATIONS ACT
COMPETITION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Wetston, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill C-25,An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act.

Hon. Claude Carignan: Honourable senators, I am pleased to participate in the debate at second reading of Bill C-25.

I believe it is important to remind senators that debate at this stage addresses the underlying principle of this bill, which amends technical legislation. There is not much discussion of these amendments by Canadians, other than those somewhat more familiar with these issues.

That being said, I would like to thank senators Wetston, Moncion, Massicotte, Wallin, Omidvar and Dupuis for their contributions to the debate on Bill C-25. They dissected the content of the bill in an almost surgical fashion, particularly with regard to the notion of diversity. I therefore do not think it is necessary, dear colleagues, to once again summarize all the finer details of the changes that Bill C-25 will make.

• (1420)

However, I would like to come back to a few issues surrounding the bill.

First, I want to talk about the history of the bill, which is the result of a major consultation process. It is important to remember that the amendments proposed arise from a mandatory legislative review conducted by a House of Commons committee in 2010, which in turn led to a consultation process held by the Harper government in 2014.

On page 140 of the Conservative government's 2015 budget, it reads, and I quote:

> . . . the Government will propose amendments to the Canada Business Corporations Act to promote gender diversity among public companies, using the widely recognized "comply or explain" model of disclosure . . . .
>
> Amendments will also be proposed to modernize director election processes and communications . . . and to strengthen corporate transparency through an explicit ban on bearer

> instruments . . . . Amendments to related statutes governing cooperatives and not-for-profit corporations will also be introduced . . . .

We, on this side of the chamber, are certainly glad to see that the Trudeau government followed the recommendations made by industry stakeholders during the 2014 consultations.

What we have before us is essentially a non-partisan bill that was developed by two different successive governments. In addition, the measures in Bill C-25 were informed by broad consultations. There was consensus within the industry, and the government honoured that.

In our parliamentary system, being the opposition critic for a bill does not necessarily mean opposing that bill. I therefore invite you, honourable colleagues, to conclude debate at second reading and send the bill to committee for study. However, before the Standing Senate Committee on Banking, Trade and Commerce studies the substance of Bill C-25, I would like to share a few words of caution that I hope will guide the next stage of deliberations.

First, I would like to draw your attention to the role of the Senate. Those who know me know that I am a firm believer in the role the Senate can and must play in our parliamentary system. I am certainly not one of those people who would turn this chamber into a moot debating society that leaves the real decision-making up to the other place on the grounds that the Senate should never question what the elected representatives decide. Accordingly, I believe that we cannot allow the Senate's powers to waste away.

Nevertheless, we must recognize our limits as an institution. It seems to me that it would be dangerous for the Senate to challenge a delicate balance set out in a technical piece of legislation that was the subject of thorough consultation and the product of broad consensus among those who will be affected by these measures.

Second, there is the Canadian incorporation system. We must take the system we are trying to change into account. Nearly 270,000 corporations are incorporated under the Canada Business Corporations Act. Virtually all of them chose that route. In Canada, it is possible to incorporate federally or provincially. In fact, only 10 per cent of Canadian firms are federally regulated, and less than half of those are public corporations. Lawmakers must therefore be careful when imposing obligations on companies governed by the Canada Business Corporations Act. It is in fact very easy for them to incorporate at the provincial level, if ever the obligations become too restrictive or untenable. The incorporation system itself contains a glaring, and entirely legal, loophole.

Moreover, industry stakeholders themselves see the government as a leader when it comes to corporate governance issues. It is up to the federal government to lead the way and make changes that can be agreed upon and will then be passed at the provincial level. If changes to laws governing corporations are too abrupt or radical, the federal government will lose its leadership role. It will lose that role because it will no longer appear to have a balanced and practical position.

This brings me to another point, the Canadian securities system. When it comes to the governance of public corporations, those that have made a public offering, we are dealing with matters that fall in the grey area between the federal power to legislate over federally regulated business corporations and the power of the provinces to legislate over securities and the governance requirements for public corporations. As the Supreme Court pointed out in 2011 in Reference re Securities Act, securities fall under provincial jurisdiction.

However, most of the major changes to Canadian legislation in Bill C-25, or at least the changes that have been the focus of our debate in the Senate so far, affect public corporations. Federal lawmakers need to be cautious. Canada's securities market is already very complex, and we certainly do not want to create rules that conflict with those of another jurisdiction.

Furthermore, we must ask ourselves how much lawmakers should interfere in what basically amounts to a transaction between people who have the capacity to contract. I would remind you that no one is forced to invest in a corporation, and no corporation is forced to raise money through public offerings. As I said earlier, I fear companies may migrate to a provincial system if the federal system becomes too stringent.

However, there is also a danger that companies will abandon the public offering route altogether. I am sure Senator Wetston could tell you all about the negative consequences of reducing stock market activity as investment opportunities for institutional investors disappear. I believe that it is shareholders, not the state, who are in the best position to force companies to adopt governance rules that promote transparency and democracy. It is shareholders who must force boards to be more efficient, which includes being more representative of the community in which the company operates. In a free market economy, governments must be cautious about intervening and should always be aware there might be unintended consequences.

That being said, it is surprising that the government has chosen not to legislate on the issue of "say on pay," the concept of giving shareholders a say in the executive compensation policies of publicly traded companies. I was told that this was because there was no industry consensus. I have said it before, and I will say it again: I respect that argument. However, I believe that during its study of the bill, the Standing Senate Committee on Banking Trade and Commerce could do much to elucidate this issue and other matters of governance by determining what changes could be adopted or at least analyzed the next time the Canada Business Corporations Act is reviewed.

Diversity is another interesting matter. I would be remiss if I did not address this issue, which has been the primary subject of the debates on Bill C-25 so far. I am talking about the question of requiring public corporations to produce information respecting diversity among directors and the members of senior management. Several speakers have already pointed out that the term "diversity" was not carefully defined, and that Bill C-25 essentially requires companies to inform and not to take action.

I already spoke about what I felt our limitations are with respect to what we can do on this bill. These limitations certainly apply to this part of the bill. Indeed, this bill talks about diversity and not gender equality. Gender is only one of the generally

recognized criteria of diversity, along with Indigenous ancestry, disability or visible minority status. Some might even add sexual orientation to that list. Let's be practical. Will companies want to disclose their directors' sexual orientations, for example? A strict definition of the concept of diversity could result in this type of unintended consequence.

• (1430)

Therefore, I hope that the Banking Committee will look into the definition of diversity and how to make Canadian corporations aware of the benefits of appointing a board of directors and senior management team that better represent the community in which they operate. I firmly believe in these objectives. However, let's not be fooled. This is not just a theoretical exercise or a debate on employment equity. It is about establishing the requirements that will be imposed by the federal government on certain public corporations that make up a significant part of the Canadian economy.

Speaking of the notion of diversity, I wonder why language is not considered a criterion of diversity. All the arguments I heard about promoting diversity in corporate boards of directors and senior management teams are perfectly applicable to linguistic diversity. How is it possible that a public corporation doing business does not have a board member or senior manager who speaks the language of 23 per cent of its potential clients? Yet, that is often the case.

These corporations are clearly depriving themselves of talent and cutting themselves off from some of their clients, employees and suppliers. However, I have not heard anyone suggest that quotas or other enforcement measures were needed in order to impose linguistic diversity on corporate boards and the executive ranks of Canada's public corporations. If the Banking Committee chooses to examine the definition of diversity, why not examine the issue of linguistic diversity? Honourable senators, I believe that the committee must give special consideration to the issue of diversity so that it addresses all types of diversity, including gender, and also all other aspects of the notion of diversity.

Honourable senators, these are the things that I wanted to bring to your attention, things I would like you to think about. We are at the stage of adopting the bill in principle. I am sure that the Banking Committee will thoroughly review the matter, especially the notion of diversity and the consequences of defining it or not. The committee can make recommendations to that effect. Accordingly, I ask that Bill C-25 be passed at second reading so that it may be referred to the Banking Committee.

[*English*]

Hon. Serge Joyal: Honourable senators, I want to take part in this debate because I feel that sometimes there are bills introduced in the Senate that appear to be what I call kitchen bills, that is, bills which are aimed at streamlining procedure and housekeeping.

Bill C-25, in my opinion, is not a housekeeping bill. Bill C-25, to amend the Canada Business Corporations Act and others, at page 9,Part XIV.1 titled "Disclosure Relating to Diversity," raises a fundamental constitutional issue.

When we have a bill, the first question is to try to put it in the perspective of the values that underpin our system. The values that underpin our system, especially in relation to diversity, are two specific sections of the Charter:

> 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

That is, diversity; and:

> 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

In other words, the values that underpin legislation must reflect or take into account the preservation of the multicultural heritage of Canada, and of course the enhancements and the guarantee equally to male and female persons.

When I read Part XIV.1 on page 9 of this bill, I came to the conclusion that in fact this bill is far below the expectation of the policy of the government. What is the policy of the government? It was well stated by the Prime Minister in September: This government is unequivocal in defence of women's rights.

I repeat: This government is unequivocal in defence of women's rights.

My concern is that this bill affects women's rights and their position in the economy where the Canadian government has a say, because this bill regulates business corporations. That's part of the title of the bill.

I remind you that 50 years ago in this chamber, the Report of the Royal Commission on the Status of Women, chaired by Florence Bird, was tabled. Some of you remember her. She was a broadcaster, journalist and author. She was the first woman to chair a royal commission in Canada. That report contains specific reference to women in the economy. I want to read parts of that report because they apply to the present circumstances raised by Bill C-25.

In paragraph 11, on page 21, Florence Bird stated:

> It is common knowledge that few women . . . reach the top of the ladder in the business world. They are seldom found on corporation Boards of Directors or have seats on stock exchanges.

Later in the same report, paragraph 46, on page 29:

> There is no doubt that changes should be made in the composition of Boards of Directors of corporations so that there will be a more equitable sex distribution of decision-making power in the business world. Neither is there any doubt that the absence of women at the top means that the country is ignoring many first-class minds and abilities.

Later, at paragraph 53:

> Because they are not on corporate Boards of Directors [women] are not participating directly in any decision-making by corporations.

That was 50 years ago; not yesterday, not 10 days ago, not since the election of the present government. That was the perception and the conclusion of the Royal Commission on the Status of Women. Honourable senators, that commission received 900 testimonies, 1,000 letters, 468 briefs, and 160 recommendations. It is at the origin of what we call today the status of women policy in Canada.

I saw Senator McPhedran this afternoon. She was one of the proponents of section 28 of the Charter I just read, that women have a right to participate equally in the affairs of the nation.

You must ask yourself what role women have in this chamber to promote the status and the equality rights of women. Florence Bird was appointed a senator. She sat here from 1978 to 1983. She sat under the Liberal label, but in fact she was never a card-carrying Liberal in her life. In fact, she sat and spoke her independent mind.

I must remind you that abortion is not criminalized in Canada because of former Senator Pat Carney. She was a Progressive Conservative minister for many years. She was Treasury Board chair. She was Minister for International Trade and Minister of Energy, Mines and Resources. She sat in this chamber from 1990to 2008. It was her vote that killed the balance to make a tie that contributed to the defeat of the government legislation. That's why abortion is not a crime in Canada today. She was a Tory, she was independent and she was at the origin, as Senator Munson said, of the right for women to choose for themselves. That, in my opinion, is an important element to remember.

• (1440)

Remember the Famous Five, memorialized by the statute that you pass when you enter this chamber. The Famous Five fought to be recognized as persons equal in status and rights, and the government of the day fought them. Mackenzie King fought them and he won in the Supreme Court, but he lost in London. Many of them would have wanted, of course, to sit in this chamber. Guess what happened? Mackenzie King was resentful and so instead of appointing one of the five he appointed Cairine Wilson, whose bust you see in the entrance here.

Women have played a very important role in this chamber to promote the ability not only to decide for themselves but to play a role in the economy.

When I listened to some of the comments about how women should not be token appointments to boards, let's look at what's going on in Europe. In 2015, Germany — which is not the smallest European country; in fact, it is the economic locomotive of Europe — adopted legislation to compel the composition of boards of directors such that by 2016,30 per cent of appointments were women, and by 2018 it will be 50 per cent. Do you want to hear the names of some German companies? They include Volkswagen, BMW, Daimler, Siemens, Deutsche Bank, BASF, Bayer and Merck: The boards of all of those big German companies were compelled to have 30 per cent female membership by 2016 and 50 per cent by 2018.

Here is something very funny, honourable senators. The Bombardier C Series was sold to Airbus. I don't know if you remember when that happened three weeks ago. Who is the owner of Airbus? It is France, which has similar legislation, imposing 50 per cent female membership on that company's board. Spain is also an Airbus shareholder and has similar legislation. There is Germany, as I just mentioned, and that company has its head office in the Netherlands, another country that has a similar percentage of women participating on the board of directors.

We are in the funny situation that when the C Series was owned by Bombardier, there was no obligation for Bombardier's board to include women. But they sold the C Series to Airbus and suddenly 50 per cent of the membership on the board that now rules the C Series are women. Do you think the value of the C Series is going down? No. I know many senators here, like myself, who have links with Canadian companies that have no obligation, but the same companies own others in Europe whose boards' members are 30 or50 per cent women.

I see a smile on the face of the Government Representative, and I'm sure he understands what I mean.

In other words, it's not because a company has an obligation to report that you have reached the target. In fact, there have been two studies comparing the Canadian situation with that of France because the preoccupation was that, of course, if you appoint women to boards, the quality of the membership might not be totally assured.

There was an important study led by Laval University that concluded the following in comparing the performance of companies in France and Canada in relation to board membership:

[*Translation*]

Ultimately, all of our results unequivocally refute the argument that imposing quotas will result in the deterioration of the human capital of boards of directors.

[*English*]

In other words, there is a perception maintained and entertained that if you push women too much, you downgrade the economic leadership of the company. That's totally refuted by that study.

A similar study compared companies in Norway. Norway was the first European country to impose objectives for the participation of women, and they compared that with boards in the United Kingdom, which has the same policy as that proposed in this bill: comply or explain. What was the conclusion of the comparison between the United Kingdom and Norway?

> . . . suggesting that the rapid growth in board diversity has been achieved without any fall in the quality of female directors. . . .

> . . . our analysis . . . detects no 'negative' consequences of this initiative that may arise in the shape of the appointment of inexperienced women or a rapid growth in the numbers of appointments held by a given group of female directors.

I hope the Banking Committee will ask those people to come and testify, again, because we have to put this issue into perspective. Personally, honourable senators, I am of the conviction that a policy based essentially on "comply or explain" is a fake policy and a setback in the move to an equality of status for men and women.

In fact, that policy never gives you the guarantee that there will be results. That was true in an article from the U.K., where they have such a policy, titled "UK companies are recruiting fewer women to boardrooms as gender diversity progress stalls for first time," which stated:

> Of the new recruits to UK boards in 2016, 29 per cent were women, down from 32.1 per cent in 2014 and 31.6 per cent in 2012, according to a report which is published every two years by recruitment firm Egon Zehnder.

What does that mean? It means that the "comply and explain" policy is one that doesn't guarantee movement. That is totally confirmed by the Chair of the Ontario Securities Commission. I want to quote her, because this seems to be what we have to keep in mind in reviewing this situation:

> The number of Canadian women serving on corporate boards has inched up a mere one percentage point in the year since securities regulators first began ordering companies to track and disclose women in their ranks.
>
> Of 677 companies listed on the TSX and analyzed by provincial regulators . . . women made up 12 per cent of all board seats, up from 11 per cent a year ago.

The Hon. the Speaker: Five more minutes. Is it agreed?

Hon. Senators: Agreed.

Senator Joyal: Thank you, senators.

> Fifty-five per cent of the companies had at least one female director, up 6 per cent from last year.
>
> But that means 45 per cent did not have a single woman.

I repeat: Forty-five per cent didn't have a single woman. When I hear comments about the appointment of token women, a token woman is one person on the board. But if you have 30 or40 per cent female membership, there is no more token participation of women. Look at our chamber: There are 41 female senators out of 95. Do you think those 41 are token appointments? If we had one, she would be token but these 41 are not, because we are close to a fair balance.

I think the time has come, honourable senators, to set some targets. I'm not stupid; I know the economy. I'm involved in business and whatnot. We have to give a reasonable amount of time to move, but there has to be a direction, at least. In my opinion, we should set a target for 30 per cent in five years and 40 per cent after two more years. That is based exactly on where the European Union is heading.

• (1450)

Honourable senators, I want to quote to you a sentence from a book that Senator Wetston gave me for reflection on this issue, published last year.

Some Hon. Senators: Oh, oh!

Senator Joyal: Yes, we are on speaking terms. I'll read this, page 167. I'll read it slowly so that it remains in your minds:

> It is up to men to consent to the addition of more women on boards and on management teams.

Think about this. The progress of women is essentially in the hands of men. Don't you think it's time that we study that deeply at the Banking Committee?

I want to thank Senator Wetston for this book, because the whole of the philosophy is there.

Some Hon. Senators: Hear, hear!

Senator Joyal: In this chamber, women got the right to control their bodies. Women got the right to sit in this chamber because they fought for it against the government of the day.

Fifty years ago it was suggested that the government should take steps to move women forward to the top level in terms of economic power. They are now at the level of political power. We have had the premier in British Columbia; we have one in Alberta, one in Ontario, one in Quebec, one in P.E.I. And we had one here in this chamber that was speaking last May, the Right Honourable Kim Campbell.

Women have been able to break through in the political world. They are now at the level of breaking through in terms of economic power, and it will be up to us, with this bill, to take the next step. That's why, honourable senators, if the committee does not amend this bill to add some perspective, with a reasonable time frame to reach it, based on the experience of our partners in Canada and the European Union, and with the commitment of this government to be unequivocally feminist, we will have missed an opportunity.

That's why I'm contemplating introducing an amendment at third reading if the honourable senators who sit on the committee don't have the opportunity to review that at length and make the historical decision of where we want to bring women forward in terms of economic power. That is the question this bill raises.

The Hon. the Speaker: Senator Joyal, your time is up. Did you want to ask for time to answer a question?

Senator Joyal: Yes.

The Hon. the Speaker: Is it agreed, honourable senators?

An Hon. Senator: No.

The Hon. the Speaker: I hear a "no." I'm sorry.

It was moved by the Honourable Senator Wetston, seconded by the Honourable Senator Joyal, 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 Wetston, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Boniface, seconded by the Honourable Senator Omidvar, for the second reading of Bill C-46,An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts.

Hon. Marc Gold: Honourable senators, Bill C-46 addresses the serious social issue of impaired driving, and does so in a prudent and responsible manner. Nevertheless, this bill is complex and raises a number of questions as to how it will be implemented. These include its impact on municipal and police resources, its possible disproportionate application to minority groups, and its impact on our court system. I have no doubt that these and other important matters will be addressed by colleagues going forward.

My remarks today will focus on the constitutional dimensions of Bill C-46 in the hopes that this will help guide our deliberations both in committee and in this chamber.

[*English*]

But I assure you I'm not going to treat you like a first-year constitutional class.

Let me begin with the changes that the bill introduces respecting drinking and driving.

The bill introduces a system of random roadside breath testing for alcohol, which would replace our current system whereby one is only required to provide a breath sample upon a reasonable suspicion of alcohol consumption or impairment.

The House of Commons Standing Committee Justice and Human Rights considered the constitutional aspects of this issue very carefully. The many legal experts who submitted evidence all agreed that random breath testing does, in fact, infringe the Charter right not to be arbitrarily detained, as well as the right on arrest or detention to retain and instruct counsel without delay, although there was some disagreement amongst experts on whether or not it would also infringe our right to be secure against unreasonable search and seizure.

Nevertheless, section 1 of the Charter provides that our rights are not absolute, but are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The Supreme Court of Canada established a four-part test to determine whether a limit, otherwise prescribed by law, would be upheld as a reasonable limit.

The Hon. the Speaker: Some senators are having trouble hearing Senator Gold. If you have conversations, could you please take them outside.

Sorry for the interruption.

Senator Gold: Thank you.

Bill C-46 would satisfy the first two parts of the four-part test, because our courts have already ruled that reducing the harm caused by impaired driving is a sufficiently important objective to justify limiting Charter rights and because random breath testing has a rational connection to the bill's objective of deterring drinking and driving. But it is with respect to the other aspects of the section 1 analysis that the issue becomes more controversial and was so before the committee in the other place.

The third part of the test asks whether the law impairs the right no more than is necessary to achieve its objective, while the fourth part of the test is one of proportionality, that is, requiring us to balance Charter infringement with the benefits that the law seeks to achieve.

I will treat these two aspects together, because many scholars have correctly, in my view, noted that they address the same issue, that is, the nature and extent of the rights that are infringed and the benefits that the law seeks to achieve.

[*Translation*]

Those who support Bill C-46 argue that random roadside testing is quick, non-invasive and non-stigmatizing, and that it is analogous to random checks to verify whether a driver has a valid licence, or proof of ownership or insurance. Although critics of the bill challenge these assumptions, at least in part, I tend to agree with those who argue that the Charter infringements are relatively modest in the context of an already heavily regulated activity such as driving.

However, that is not enough. Section 1 also requires an analysis of the degree to which the means adopted in the law are necessary to achieve the objectives of the law, and whether the objectives could be achieved without infringing on our rights, or by infringing on them less. In the case of Bill C-46, this boils down to an assessment of the efficacy of random breath testing.

[*English*]

This, therefore, is the nub of the matter.

As Senator Boniface noted in her speech in this chamber, numerous studies demonstrate the positive benefits that random breath testing has had on reducing alcohol-impaired driving in other jurisdictions. Proponents of the bill rely upon these studies to support their section 1 analysis.

However, critics of the bill have questioned the weight that these studies ought to be given. They argue that the comparative studies do not take into account Canada's current practices regarding selective breath testing, and that the projected impact and benefit of random testing remains speculative.

If the critics are correct, honourable senators, then the argument under section 1 of the Charter for upholding the bill is considerably weakened.

• (1500)

For this reason, addressing the conflicting interpretations of these studies should be a central issue for the Senate committee reviewing this bill. In addition, the committee should be satisfied that there is a comprehensive plan in place to publicize the new roadside testing regime, as this is a key element in ensuring the law reaches its objective of general deterrence. Furthermore, the committee should ensure that adequate resources are in place to render the program effective.

To be sure, some of this is complicated by our federal system, wherein the responsibility for ensuring the bill achieves its objectives falls in large part upon the provinces, municipalities and local police forces. Nevertheless, as legislators we have a responsibility to be satisfied that there is a proper implementation plan in place, and one that's adequately resourced. Only then can we be reasonably satisfied that the bill would comply with the Charter.

Let's turn now somewhat briefly to the provisions of Bill C-46 concerning the offences of driving after having consumed drugs.

As you know, the bill creates a number of new offences for driving with certain levels of such drugs like THC in one's system. This bill is important regardless of whether or not cannabis is legalized. People are getting high and they are driving. They did it yesterday, they did it today, and they'll do it tomorrow. It's an under-reported problem and one that needs to be addressed.

Unlike the case of random testing for alcohol, under the bill a driver can only be required to provide a saliva sample to test for drugs if there is reasonable suspicion of impairment. However, if the roadside test indicates the presence of drugs in the system, the driver may be required to provide a blood sample. And if the level of THC in the blood exceeds certain prescribed limits — to be set out in regulations — the driver will have committed a criminal offence, the severity of and sanction for which will vary with the amount of THC in the blood and whether there was also alcohol present.

Note, however, honourable senators, that these are per se offences. There is no requirement that the driver be impaired.

[*Translation*]

Honourable senators, drug-impaired driving has long been a crime in Canada, but proving that a driver is impaired has never been an easy proposition.

First, it is only recently that road-side devices to test for the presence of drugs in the system have become available for use by police. Furthermore, these devices only detect the presence of certain drugs in the saliva, not their concentration.

Second, the devices that do measure the concentration of drugs in bodily fluids, like blood or urine, do only that. They do not and cannot establish that the person was impaired.

It must be said that the current state of scientific knowledge does not enable us to establish a clear link between the amount of THC in the body and the degree of impairment, as the effect of THC varies greatly depending on the amount, the means of ingestion, the time elapsed since use, and the differences between individual users. In other words, it impossible to draw a clear line between a particular level of concentration in the blood and the degree of impairment.

[*English*]

This raises the possibility, honourable senators, that the per se offences may infringe section 7 of the Charter, which guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except of course in accordance with the principles of fundamental justice.

Our courts have established that a law that imposes the penalty of imprisonment, even if it is discretionary, is, by virtue of that penalty, a deprivation of liberty. In this respect, the only question is whether or not the infringement is in accordance with the principles of fundamental justice.

The meaning of fundamental justice in its procedural sense — natural justice for the lawyers in the room — need not concern us here. As for fundamental justice in the so-called substantive sense — and I'm choosing my words carefully here — our courts have been somewhat inconsistent, if not spectacularly unhelpful, in providing clear and predictable tests to determine when a law runs afoul of fundamental justice.

Nonetheless, for our purposes it is sufficient to note that the principles of fundamental justice, whatever else they may mean, are infringed by laws that are vague, or arbitrary, or overbroad.

The per se offences that we are discussing today are anything but vague. They're very precise. Nor, honourable senators, in my submission, are they arbitrary. Evidence before the house committee clearly established that cannabis use does in fact affect those mental and motor operations that are relevant to driving safely on the road. Furthermore, the THC levels currently proposed in the draft regulations are in line with our current state of scientific evidence. Moreover, these levels are based upon experience in other jurisdictions. Whatever else one might say, they are certainly not arbitrary.

But is the law nonetheless overbroad in the sense that it is broader in scope than necessary to achieve its objectives? That depends, of course, on how we define the objectives.

As I read the bill, one of the objectives is to deter people from consuming drugs before they drive. The per se rules from this perspective can be justified precisely because we don't yet have the scientific basis to be more precise in correlating the level of THC in the body with the degree of impairment. It is a prudent, first-step approach as we wait for more scientific knowledge.

At least as applied to recreational users of cannabis, I'm reasonably confident that these provisions would survive a Charter challenge. But what about those who currently use cannabis for legitimate medical purposes?

Honourable senators, the Supreme Court in the *Carter* decision held that the right to make decisions concerning one's medical care is part of our right to liberty protected by section 7 of the Charter. And in the *Smith* case, the court ruled that access to cannabis products for medical purposes also engaged section 7.

For reasons underlined by Senator Saint-Germain in her remarks yesterday, this raises the possibility that the bill may infringe the Charter rights of those who are using cannabis for medical reasons. Why? Because THC can remain detectable within a regular user's blood for days and even weeks after it was last consumed. Medical users have this Hobson's choice: either they need to stop their consumption for many days prior to operating a vehicle or simply forego forever their ability to drive. Moreover, a medical cannabis user will tend to have a higher tolerance level than a less frequent user and, therefore, will not demonstrate the same level of impairment as the occasional user even if both have the same level of THC in their systems. As such, a medical marijuana user may fail the per se test but in no way be impaired.

I acknowledge that the latter point can be said to apply equally to regular recreational users of cannabis. However, there seems to be a difference between the case of a person who has chosen to ingest drugs sometime before driving, notwithstanding the law, and one who is prescribed cannabis for medical reasons, as is their constitutional right, rightly or wrongly, and is therefore unable to drive without committing an offence.

We must ask ourselves whether or not there is a way to achieve the objectives of the bill without penalizing those who are exercising their constitutional rights to medical treatment.

There are several possible approaches that may be considered, honourable senators, either alone or in combination, although I acknowledge quickly and frankly that they may create as many problems as they solve.

One would be to create an exception to the per se rules for medical users. Of course, it would still remain a crime to drive when impaired by drugs. Whether it is prescription drugs or not, it always has been and will continue to be so.

Another option would be to create a due-diligence exception, putting the burden on the medical user to establish that they waited a reasonable time between consumption and driving and that they had a valid reason to believe that they would no longer be impaired by the drug.

Yet another option might be to remove the possibility of imprisonment for medical users. In this way, section 7 would no longer be engaged, as our courts have held that a mere imposition of a fine or the suspension of one's driver's licence is not a deprivation of liberty under the Charter.

I would hope that these issues would be considered and taken up within the committee. Unlike the case of random testing for alcohol, the constitutional issues posed by the per se offences as applied to medical users did not appear to have been fully addressed in the other place.

Honourable senators, let me conclude as I began. Bill C-46 addresses a serious social problem, and it does so in a prudent and responsible manner and I support it in principle. But it is a complex bill that clearly engages our constitutional rights under the Charter. As such, it deserves our careful scrutiny both in committee and here in the chamber.

• (1510)

I thank you for your attention.

The Hon. the Speaker: Your time is up, Senator Gold, but there is a senator who would like to ask a question. Are you asking for time to respond to a question?

Senator Gold: Yes, thank you, Your Honour. With pleasure.

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

Hon. Senators: Agreed.

[*Translation*]

Hon. Claude Carignan: Thank you, Senator Gold. I have been familiarizing myself with Bill C-46, and this morning, I had the opportunity to meet with representatives, as our group's official critic for this bill.

I am concerned about the government's plan to create a criminal offence through regulation. You will have noticed that limits on the amount of drugs are set out by order rather than by way of Parliament's power to set those limits, as is the case for the 0.08 blood alcohol limit. We have been told that this is because science evolves and the rules must be flexible. However, since we have heard a certain interpretation of the science from certain ministers, I am concerned about setting these limits by way of government regulation for two reasons. The first has to do with how the science is defined, and the second has to do with making the information public, because an order is not as public as a debate in Parliament. This is legislating through regulation.

Here is my question. Have you taken a close look at the government's plan to bypass Parliament's authority to create a criminal offence?

Senator Gold: Thank you for your question, senator. I admit that I have not taken a close look at that aspect of the issue. However, you are right in saying that limits are usually in the legislation itself. My understanding is also that the government chose to legislate by way of regulation because science "evolves" and we will learn more in time about how faculties are affected.

Still, I admit that I haven't taken a close look at this.

Senator Carignan: What surprises me is the possibility of asking for a urine sample — which provides a lot of information on what a person has consumed — to try to determine the level of THC in the blood when there is no correlation between THC levels in urine and THC levels in blood.

Did you also notice the incongruity regarding unreasonable searches? It seems to me that if a person is asked for a urine sample, but the sample does not provide the evidence to prove the offence, that also constitutes an unreasonable search.

Senator Gold: That is another good question, senator. I believe there are many technical questions. I do not want to minimize their importance, but I hope that the committee will address all the aspects that I haven't touched on at all, including statements of fact. Clearly, several aspects of Bill C-46 will have to be thoroughly studied in committee and I trust that the committee will be up to the task.

(On motion of Senator Martin, debate adjourned.)

THE ESTIMATES, 2017-18

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of November 22, 2017, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2018; and
>
> That, for the purpose of this study, the committee have the power to sit even though the Senate may then be sitting, and that rule 12-18(1) be suspended in relation thereto.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUDGET IMPLEMENTATION BILL, 2017, NO. 2

MOTION TO AUTHORIZE CERTAIN COMMITTEES TO STUDY SUBJECT MATTER NEGATIVED

Hon. Peter Harder (Government Representative in the Senate), pursuant to notice of November 22, 2017, moved:

> That, in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized to examine the subject matter of all of Bill C-63, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, introduced in the House of Commons on October 27, 2017, in advance of the said bill coming before the Senate;
>
> That the Standing Senate Committee on National Finance be authorized to meet for the purposes of its study of the subject matter of Bill C-63 even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto; and
>
> That, in addition, and notwithstanding any normal practice:
>
> 1. The following committees be separately authorized to examine the subject matter of the following elements contained in Bill C-63 in advance of it coming before the Senate:
>
> (*a*) the Standing Senate Committee on Banking, Trade and Commerce: those elements contained in Divisions 2, 4, 5, 6, 10 and 12 of Part 5;

(*b*) the Standing Senate Committee on Energy, the Environment and Natural Resources: those elements contained in Division 7 of Part 5;

(*c*) the Standing Senate Committee on Legal and Constitutional Affairs: those elements contained in Division 11 of Part 5;

(*d*) the Standing Senate Committee on Social Affairs, Science and Technology: those elements contained in Division 8 of Part 5;

2. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-63 be authorized to meet for the purposes of their studies of those elements even though the Senate may then be sitting, with the application of rule 12-18(1) being suspended in relation thereto;

3. The various committees listed in point one that are authorized to examine the subject matter of particular elements of Bill C-63 submit their final reports to the Senate no later than December 12, 2017;

4. As the reports from the various committees authorized to examine the subject matter of particular elements of Bill C-63 are tabled in the Senate, they be placed on the Orders of the Day for consideration at the next sitting; and

5. The Standing Senate Committee on National Finance be simultaneously authorized to take any reports tabled under point four into consideration during its study of the subject matter of all of Bill C-63.

He said: Honourable senators, I rise today to speak in favour of the motion to pre-study Bill C-63, the second piece of budget implementation legislation the government has brought forward this year.

The bill will benefit from pre-study for three reasons: First, it will allow us to use our time more effectively to focus on specific measures contained in the bill; second, it will allow the most suitable Senate committees to thoroughly review these budgetary measures and to hear from stakeholders and Canadians; and third, it will open an earlier avenue for dialogue with the government and the other place about concerns or questions about the bill.

Pre-study has been an important tool in the Senate of Canada's execution of its mandate. In short, pre-study will allow us to do our job and do it well.

Let me say immediately what a pre-study will not do: It will not prevent this chamber from thoroughly deliberating, debating and voting on the bill once it passes in the other place and comes to the Senate. In other words, a pre-study in no way pre-empts sober second thought or supplants the committee stage in Senate proceedings. On the contrary, it enriches it. That has been our experience.

While different legislatures use pre-studies differently — some more than others — when it comes to budget bills and other complex and comprehensive pieces of legislation, pre-studies have been proven to be an extremely useful tool, one that allows greater depth of analysis and greater efficiency.

Pre-study allows us to enhance the role of sober second thought by providing time and space for focus, dialogue and greater scrutiny in the context of the government's parliamentary timetable.

As former Clerk of the Senate Gary O'Brien said this year in his appearance at the Senate Modernization Committee:

> I've always been a proponent of pre-study. It's a great way for the Senate to get involved in legislation early.

All that, plus a pre-study makes us more efficient, particularly in dealing with budgetary legislation, which plays a central role in governance. I would also note that passing budgetary legislation in a timely manner is an important way for the Senate to provide economic and legal certainty for Canadian businesses and households.

According to some scholars, Canada's Senate needs more, rather than less, pre-study.

Professor Paul Thomas has said that pre-study provides a less confrontational means for the Senate to influence the subject matter of bills before they arrive from the House of Commons.

Andrew Heard describes how pre-study can benefit us in spreading the timetable of legislative review but reminds us to do it in such a way that ensures the Senate's visible influence in the legislative process with proposed changes in pre-study being tallied and publicized.

In 2001, the Speaker of the Senate was called upon to rule on a question relating to a pre-study of a complex anti-terrorism bill. Allow me to quote some excerpts from the Speaker's ruling at the time:

> Pre-study has been a feature of Senate practice for more than thirty years. . . . Its purpose was to allow the Senate more time to examine bills, particularly complex or controversial bills, while accommodating the broad legislative time-table of the Government. At the same time, it permitted Senators greater input into the legislative process by allowing the work of the Senate to have some influence on the study of a bill while it was still in the other place. . . .
>
> As one would expect, the pre-study report certainly informed the debate on the bill, but it did not limit the course of that debate nor did it determine its outcome. They were treated as two different and separate procedures.

Looking back to 2007, in more recent times, we can see that for BIA2s, the second Budget Implementation Acts, honourable senators saw them as a worthy pre-study six times out of eight.

• (1520)

Clearly, pre-study is a practice with which the Senate has long been acquainted.

Pre-study allows this chamber to have input at a critical stage of the legislative process. Furthermore, the pre-study procedure allows the Senate to be prepared to zero in on the issues of contention contained in large and complex bills and, therefore, be ready to have a productive debate on those issues so that Canadians can understand the perspectives coming from this place. Pre-studies have also allowed the Senate to alert public opinion and the government in a timely fashion.

A total of four bills have been pre-studied in this Parliament. In all four cases, the pre-study was thorough, constructive and useful in identifying and sometimes resolving core issues.

Honourable senators may remember our pre-study of Bill C-29, last year's Budget Implementation Act No. 2. The pre-study allowed the Senate to scrutinize all parts of the bill so that, once Bill C-29 was received, the Senate was well placed to focus on those most vital issues requiring further analysis. As you recall, those issues were the proposed paramountcy of the federal consumer protection regime in the banking industry and the removal of certain tax loopholes. Our debate on these issues was thorough, certainly accessible to Canadians, and complete. It also convinced the government to remove, for deferred consideration, this section of the bill relating to consumer protection and banking.

Another recent example of the value added by pre-study is Bill C-44. Had the Senate not had the opportunity to provide constructive feedback on the measures relating to the Parliamentary Budget Officer, this could have set the two chambers on a needlessly damaging collision course.

Pre-study helps us do our job well, but it also helps the other place, as former parliamentary secretary, now Minister Petitpas Taylor, noted in reference to our pre-study on Bill C-44 when she said:

> The scrutiny and the in-depth study that the Senate applied to Bill C-44 has been an important element in our parliamentary process. Their work has informed our deliberation by providing us with the benefits of independent legislative review during the course of the House proceedings. Senators, including independents and Senate Liberals and Conservatives, raised issues that the government has, as a result, given additional consideration and careful consideration.

Finally, honourable senators, I know that you will recall the pre-study of Bill C-14 regarding medical assistance in dying.

As part of our deliberations concerning pre-study, Senator Fraser was careful to underline that while she supported the motion for pre-study, it would in no way replace thorough deliberation in committee and by all honourable senators when the final bill reached the Senate.

Senator Martin also expressed support for the motion for pre-study, recognizing that the pre-study has allowed the Senate to do "remarkable work."

Senator Joyal cited parliamentary academics, including Professor Paul Thomas, quoting where he said:

> The pre-study mechanism worked best in terms of influencing government thinking when the Senate did not forsake, but held in reserve, its ultimate right to make amendments.

I will repeat what Senator Joyal wisely added in his own words, at that moment, when he said, ". . . this is what we have to keep in mind in initiating the pre-study."

As these honourable colleagues have stated most eloquently, there is a time and place for pre-study in the Senate.

Pre-study has allowed the Senate to play its complementary role with efficiency and thoroughness to the benefit of Canadians.

Honourable senators, we have work to do. Households and businesses are relying on the government to do the work it has promised to do, and we, as parliamentarians, have an integral role to play. It is altogether reasonable and appropriate for Canadians to expect the legislation implementing Budget 2017 to pass in 2017. For my part, I think Canadians would expect us to respect the parliamentary and budget cycle because it makes good sense to do the work of today, today.

Let me remind you that in the past 10 years, all eight budget implementation bills No. 2 were passed in December, before the winter break. The last time a budget implementation bill No. 2 was passed after the break was over 10 years ago. I will note that this exception, Bill C-28, was introduced in the Thirty-ninth Parliament and was not subject to pre-study.

Timely treatment of budgetary legislation has been a good practice in the chamber and one that is completely in line with the Senate's rights, privileges and obligations to review all legislation.

In this case, and as reflected in this motion, pre-study will allow the Senate to conduct a timely and valuable review of the BIA so that when we receive the bill from the other place, we can proceed more efficiently with our work, having already studied the bill in depth.

Delay will not increase our workload; it will merely jam it.

We can anticipate a new budget implementation bill in early 2018 with a new budget. We cannot responsibly backlog budget implementation bills when we have a flexible and sensible tool that allows us to process large and complex pieces of legislation in a timely fashion. Pre-study is a pragmatic and responsible way to take care of business.

Canadian businesses and households depend on government to follow through on their commitments. With political delay, there is uncertainty. And with political uncertainty, there is economic uncertainty. As we all know, the Parliament has a role to minimize uncertainty in the public consciousness.

A pre-study of Bill C-63 will be in line with a more active Senate — a Senate that is vital to the legislative process, as a valuable partner in Canada's bicameral Parliament, with a shared goal of working well for all Canadians.

In conclusion, I hope and ask you to support the motion for pre-study. It in no way abdicates our responsibilities. On the contrary, I believe it fulfills them. I hope we can vote on this motion today so that we can advance the work in committee as early as next week.

Hon. Art Eggleton: I wonder if Senator Harder might tell us where exactly Bill C-63 is in the House of Commons process at the moment and when it would likely be coming here.

Senator Harder: Thank you, honourable senator, for the question. My understanding is that the other place is still debating it in third reading. I believe it has come out of committee. I cannot predict the practices of the other place, but I would anticipate, as one traditionally has, the bill to arrive in this place so that we have time with the bill in the Senate before we break for the winter break.

Senator Eggleton: If the bill is at third reading, it could arrive here the first of next week. What would be the point of a pre-study if, in fact, the bill is to be in our hands shortly?

Senator Harder: I can understand the question. I'm trying to make two points. One is that I had hoped that this motion would have been before the Senate several weeks ago. For various reasons which are obvious to senators that was not the case. But even were the House of Commons to send the bill, voting on it sometime next week, and it would come here sometime the week following, hypothetically, that would still allow the committee to have engaged with and begun the study of the bill so that we take advantage of, let's say, an additional 10 days of committee deliberations in advance of the winter break.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable colleagues, this motion has really two aspects. They do blend together and sometimes we talk about them together, but it's important that we understand there are two aspects.

One is the length of this particular omnibus budget bill. This one is 317 pages. A couple of banks are created in it. I have made arguments on several occasions in the past in this chamber about omnibus bills, and here we are again.

You see it by us generally agreeing to divide the bill and send sections off to a number of different committees. That's a sure sign that this bill has a lot in it that can't be dealt with well by just one committee.

We have generally agreed with the deputy government leader to the division of the workload amongst the various committees, but that's a practical decision to deal with the situation we have with a multi-faceted bill. I would like to go back to a situation where, when a bill comes here it has the same subject matter.

Bill C-49 is fine as an omnibus bill because it's all about transportation, and it goes to the Transportation Committee, and we can deal with that.

But when you get a budget omnibus bill that goes all over the place, then you have problems, and we make mistakes. We have made mistakes in the past. You've heard about those mistakes.

• (1530)

The one that keeps coming back to me is when we agreed to a small clause at the very end of a 300- or 400-page document that said that no longer would Parliament need to give approval to the executive before it could borrow money. That was such a fundamental role for Parliament to play, and we gave it away without any debate and without most of us even noticing it until it was too late. That's generally my concern about omnibus budget bills.

The other aspect of this is pre-study. Senator Harder focused his comments on the pre-study aspect, but I want you to have in mind that both aspects are here. I am generally cautious about pre-study. I know it's in the Rules. I know it can be a useful tool from time to time. But in my view, it takes us away from being a chamber of sober second thought. It puts us into a concurrent role with the House of Commons, and that has always caused me concern. I've spoken about that in the past.

Let me focus a little bit more precisely on this motion and the situation we have here.

Bill C-63, Budget Implementation Act No. 2, deals with the budget presented in the other place on March 22 of this year. The first budget implementation bill referred to by Senator Harder, Bill C-44, received Royal Assent on June 22, just before summer break, after amendments made to it by the Senate were rejected by the House of Commons. We agreed not to insist on our amendments. You'll all recall that time back in June.

This is the second bill we're dealing with, which allegedly implements certain aspects of the same budget, Budget 2017. Bill C-63 is currently at report stage in the other place. Yesterday it was reported back — and this answers Senator Eggleton's question — from committee without any amendments. My understanding is that in the House of Commons they have the bill down for report stage and third reading debate on Monday and Tuesday.

Colleagues, one of the main arguments that are traditionally made in support of pre-study — and we heard it just now from Senator Harder — is that it gives the House of Commons an opportunity to take our findings into consideration as they conduct their own examination of the bill. The other place can then take notice of our pre-study recommendations and make amendments to the legislation to address our concerns before sending it to us. That's an argument that is often made.

But the House of Commons Standing Committee on Finance has already conducted its examination of the bill. It has completed its clause-by-clause consideration. The draft house calendar, as I've mentioned, indicates that they will be doing report stage with no amendments, so that will go through pretty quickly, and then third reading on Monday and Tuesday. When we are back here Tuesday afternoon, we could be receiving the bill.

If there had been any opportunity for the other place to take our pre-study findings and recommendations into consideration, that opportunity, in this instance, is long since gone. Senator Harder indicated he had hoped this motion would have been introduced here earlier, and maybe the arguments would have been different at that time. But we are now dealing with a situation where we could be expecting this bill next week, so why are we even arguing this motion at this time? Even if we adopted the motion today, can anyone seriously suggest that the Finance Committee in the other place would be in a position to take into consideration our work on this pre-study that would just be starting next week?

Now, there is also the question of the work that our committee would be doing here. Our Standing Committee on National Finance is currently in my home province of New Brunswick holding hearings, at the government's request and encouragement, into Finance Minister Morneau's new tax proposals. When the committee returns to Ottawa, it needs to elect deputy chairs and organize itself because they haven't been able to do that on the road; it needs to work on its report on the tax change hearings that they've held throughout Canada; and it needs to begin its examination of Supplementary Estimates (B), pursuant to the motion that we just passed. That's what Finance will be doing over the next while. They're not even going to get to the pre-study for a week or more.

In these circumstances, can we realistically expect our committee to conduct a pre-study in time for it to be considered at report stage on Monday in the other place? I don't think so.

Colleagues, we have been told that Bill C-63 must pass quickly, that it needs to pass before the government starts working on its budget for 2018. It would not be reasonable, we are told, to still be examining a bill in relation to Budget 2017 as the government was preparing to introduce Budget 2018, which we expect sometime in the new year, probably in March of next year. We are told that it would be inconceivable that the government should be expected to introduce the new budget without first having the budget bills of 2017 passed and out of the way. But would that really be inconceivable?

Let's look at another budget implementation bill No. 2, the one to implement Budget 2004. That budget was tabled by Finance Minister Ralph Goodale on March 23, 2004. Almost a year later, on March 7, 2005, the Senate received budget implementation bill No. 2, which was Bill C-33. I recall that because I was the sponsor of that particular bill.

Senator Plett: It was a horrible bill.

Senator Day: It was finally passed by the Senate. Thank you for your support of that bill at that time.

Senator Mercer: He wasn't here then.

Senator Day: There was no pre-study of that particular bill, colleagues. It was treated as a normal government bill, which it was, though admittedly it dealt with some important aspects of the budget from a year earlier.

But in the meantime, on February 23, 2005,Mr. Goodale tabled Budget 2005. So the Senate received and then passed budget implementation bill No. 2 for 2004 long after the government had introduced the budget for the following year. I think that speaks to this idea that oh, my goodness, we have to get all of these budget implementation bills done for this year because another budget is coming in March of next year, is misguided. This was not seen as anything unusual back in 2004-05 by anyone.

• (1540)

As a matter of fact, on April 20, 2005, Senator Murray said during debate that "there is not an urgency attached to this bill . . . "

That's what we usually look for when we start talking about pre-studies. What's the urgency; why are we charging ahead with this particular matter? Why do we feel that we have to do something out of the normal process here?

Senator Murray said this even though it was a bill to implement provisions of the budget tabled 13 months earlier, and even though another budget had been tabled in the meantime.

In my own remarks at second reading on Bill C-33, I actually cautioned senators not to confuse my comments with respect to the 2004 Budget with the more recent announcement of the 2005 Budget. Both budgets made adjustments to the security fee passengers were being charged under the Air Travellers Security Charge. The Senate had no difficulty or problem in dealing with the changes contained in the 2004 Budget and the Budget Implementation No. 2, which we were discussing that day, even though those fees had already been changed by announcements in the 2005 Budget.

So Bill C-33 is an instructive example of a budget implementation bill of the previous Liberal government and how it was dealt with by the Senate. But now we are being told by the current Liberal government that we must pass this budget bill before the end of the calendar year, many months before the next budget will be presented. Unfortunately, we are not being given any substantive reason for this urgency. We have yet to receive the bill, but it could be here as early as next week. But to ensure that we dispose of it very quickly after it arrives, the government is urging us to agree to this pre-study motion.

We are being urged to abandon our role as a chamber of sober second thought and become a chamber of sober concurrent thought. If there was a compelling reason to take that approach in this instance, I might support it, but I've heard no compelling reason for a pre-study. If there are any provisions in Bill C-63 that cannot take effect until the bill receives Royal Assent, that would influence our decision to proceed with the pre-study. There are none.

More than a week ago, my office asked the office of the Government Representative if there were any provisions in the bill that were time sensitive, any provisions at all that required passage before we adjourned for the Christmas/New Year's break. The response did not identify any such provisions, but it did say that Senator Harder was "of the view that passing C-63 this year is appropriate and reasonable in light of public expectations, past practice with budgetary legislation, and the need to manage the timely review of the government's overall legislative agenda."

I think we heard that in so many words from Senator Harder just now. I believe I have already shown with Bill C-33 in 2004, that past practice does not support the proposition that the Senate must automatically agree to pre-studies of all budget implementation bills so that they can be rushed through our chamber as soon as they arrive here, particularly when there are no provisions that can be identified as time sensitive.

However, I do agree that the government needs to manage the timely review of its overall legislative agenda. But that review needs to be conducted within the context of the Senate fulfilling its constitutional role of a complementary legislative chamber of sober second thought. My priority here is in ensuring that the Senate can fulfill that role. The Senate should be allowed the time to do its job of reviewing the legislation passed by the other chamber. Routine pre-study short circuits that process. The House of Commons will have studied Bill C-63 for more than a month before we finally receive it. It was introduced in the House of Commons on October 22. Why should our chamber be expected to pass it in a few days after we receive it?

The government needs to do a better job of managing its legislative agenda.

Some Hon. Senators: Hear, hear!

Senator Day: The House of Commons should not take for granted that we will bypass or circumvent our normal and traditional practices in order to compensate its own failings in managing its agenda.

Finally, colleagues, I note that on page 30 of the Liberal 2015 election platform it's stated as follows:

> Stephen Harper has also used omnibus bills to prevent Parliament from properly reviewing and debating his proposals. We will change the House of Commons Standing Orders to bring an end to this undemocratic practice.

Whatever changes were made in the *Standing Orders of the House of Commons*, they were not enough to prevent this latest 317-page omnibus bill from moving forward to us.

Although the Speaker in the other place did rule that certain measures contained in this bill had to be voted on separately at second reading because they were not even mentioned in the 2017 Budget, the so-called "undemocratic practice" of omnibus bills obviously continues. But as the 2015 Liberal Party platform so clearly said, omnibus bills "prevent Parliament" from doing its job and the Senate remains a fundamental part of Canada's Parliament.

Colleagues, we need to be able to have the time to do our job when examining important government legislation. By routinely agreeing to pre-studies, we are only facilitating and perhaps even encouraging the government's reliance on omnibus budget bills, thereby making the work of Parliament and parliamentarians even more difficult.

My objection to receiving large omnibus budget bills at the last minute from the House of Commons is not new. For instance, in 2012 we received the second budget implementation bill of the year on December 6. It was 414 pages long. On December 10, 2012, when I spoke at second reading, I described how we were receiving the bill very late and how there was an expectation that we would pass it in a matter of a few days.

I said, "That is an insult to the role that we have to play as overseers of the public purse." I went on to explain that conducting a pre-study went against our role as a chamber of sober second thought.

I said:

> We lose the role that the Senate was created to perform. We are giving up on that in order to adjust to a new practice.

Senator Mitchell immediately said, "It is an assault on democracy."

Some Hon. Senators: Oh, oh!

Senator Day: The same Senator Mitchell. That is what he said about the pre-study of that ominous budget bill: "It is an assault on democracy." His words can be found at page 3,013 of the Debates.

In December 2014, we received another omnibus budget bill, Bill C-4. It was 460 pages long. When I spoke to the pre-study report of the National Finance Committee on December 10, I said:

> Pre-studies of legislation distract from the role we traditionally have of providing sober second thought.

• (1550)

I also took the opportunity of once again criticizing the government's reliance on omnibus budget bills. I said:

> Time and time again we have talked about the undesirability of omnibus bills dealing with so many different subject matters. How could we possibly treat these subject matters in the manner we should be treating them when they all come here together? The real question. . . is whether the public interest is being served by these omnibus budget bills. . . .

I did not believe then and I do not believe now that the public interest is well served by omnibus budget bills and pre-studies. And it does not matter which government introduces them; they all conflict with the Senate's fundamental role as a legislative chamber of sober second thought. Since we have been given no reason why we should be treating Bill C-63 differently or in

some special way because of some special provisions that are there that are time sensitive, I cannot support this motion for pre-study.

[*Translation*]

Hon. Larry W. Smith (Leader of the Opposition): It is a great honour to be the Leader of the Opposition in the Senate. In that capacity, I work with caucus members to conduct a comprehensive review of all bills, particularly government bills. Basically, that means that we need to ensure that any opinions that run contrary to the government's opinion are heard.

[*English*]

As a caucus, we are accountable to each other for the rigour that we bring to the important task of giving voice to those who stand in opposition to the legislative agenda of the government. Ultimately we believe that the policy process and the public are better served by our efforts of examining, debating, amending and challenging the will of the government.

The government representatives in the chamber have brought forward this motion, having advanced it singularly on the basis of precedent, specifically the legislative pre-study history of the past 10 years for Budget Implementation Act 2016, No. 2.

The Prime Minister's representative has said, "It was done then. It must be done now."

Many new members amongst us today will be familiar with the past decade's legislative pre-study history, as most if not all have been appointed by the Prime Minister, who vigorously opposed the legislative pre-study history of the past decade. In fact, they are here based on the Prime Minister's pledge to disavow the legislative pre-study practices of the past decade and many other practices, including the use of omnibus budget bills.

In fact, other members here — those formerly related to the current governing party — find themselves as part of that party's now government plan to create a "new" Senate. The Prime Minister's "modern" Senate. A Senate that their party leader and now Prime Minister proclaimed, in a semi-spontaneous moment of great drama, has an urgent need; the need for a Senate that will hold in check the unwanted reach of the executive branch into all aspects of government, particularly the Senate.

Many fine words have been spoken and lofty speeches have been given since that day in 2014. A great campaign was run and won on the pledge that no more would the executive branch bend the Senate to do its absolute bidding.

It seems a new vocabulary is now regularly associated with those who have joined the Prime Minister's quest. Glossy pamphlets, fine speeches, learned journal contributions and even glossier websites have been launched in support of the creation of a new Senate, free to challenge the executive branch and to thwart as we see fit its reach into this chamber. No efforts were to be spared in quashing arbitrary measure. There would be no rushing that which requires considered debate.

A mere 24 months into a modernized Senate, in a moment that brings new definition to what parents would call "the terrible twos," the government's resolve has wavered and is now shown to be all but broken. In its place a white ensign now flies. It proclaims a return to government practices that had been the source of great scorn and soaring rhetoric.

From our vantage point, we say to the government's leaders: Welcome back, and we hope you'll spare us any vestiges of the charade this past two years has now been revealed to be. You have asked us, the official opposition, to agree to a pre-study of an omnibus bill. Have you asked us to do so because there is some pressing need? No, no, you reply. Is there some burning, time sensitive demand? No, no, you say. You are now of the view that this has been done before and your vigorous campaign against what has been done before has ultimately convinced you that it must be done again. No longer do you wish this chamber to seek new forms but to join you as you go boldly to where no other governments have gone before. By the way, you have also invited the members you have put in here and demanded independence from to similarly fall into line, or else.

At the end of the day, the government demand for pre-study may prevail. We will see.

In closing, I wish to commend my friend and colleague Senator Joseph Day. Whilst others have waxed and waned on this issue, he has been consistent in his views and wise advice to his colleague senators on matters various, and particularly this matter of pre-study. We have all benefited from his advice and counsel.

Thank you, colleagues.

Hon. Terry M. Mercer (Deputy Leader of the Senate Liberals): Honourable senators, Senator Harder today said what pre-study will do, the Senate would do if it had the actual bill. Well, this would happen if the House of Commons would actually get off their butts and get the job done and get the bill through the House of Commons.

Senator Harder went on to talk about us having work to do. He is absolutely right. But so does the House of Commons.

Bill C-63 and a pre-study. Those of you who have been here for a while have heard my speeches at every budget time, no matter which government it has been, about the fact that they bring it in here at the last minute and expect us to get it through and they put urgency on it, but even this time they can't find an urgency to put on it. Senator Day outlined the fact that you could have budgets backing up if they don't get their work done over there.

This pre-study will continue to allow the House of Commons to treat the Senate with little or no respect. This pre-study will continue to allow the House of Commons to be lazy and too lazy to get their work done in a timely fashion. Canadians expect better than that. Voters expect better than that.

My fundamental question: What if we had time to do the pre-study and in the process, by some miracle, something happened down the hall and they changed something in the budget, they

found something wrong and they fixed it while we're up here wasting our time studying something that's different? We want to study what's actually going to be before us.

I have a message for the House of Commons: Stop wasting our time and get off your butts and do your job. Public expectation is that the House of Commons will do its job. We expect the House of Commons to do its job because everyone knows we're ready to do ours and I will not be supporting a pre-study.

Some Hon. Senators: Hear, hear!

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 Harder, seconded by the Honourable Senator Bellemare, that in accordance with rule 10-11(1), the Standing Senate Committee on National Finance be authorized — shall I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it. I see two senators rising.

And two honourable senators having risen:

The Hon. the Speaker: Do we have agreement on a bell? The vote will take place at 4:15. Call in the senators.

• (1610)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Bellemare
Black
Boniface
Campbell
Cormier
Mitchell
Moncion
Omidvar
Pate
Petitclerc
Duffy
Dupuis
Gagné
Gold
Greene
Harder
Marwah
Mégie
Pratte
Ringuette
Saint-Germain
Verner
Wallin
Wetston
Woo—25

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Bernard
Beyak
Carignan
Dagenais
Day
Doyle
Dyck
Eggleton
Fraser
Frum
Griffin
Housakos
Joyal
Lankin
Lovelace Nicholas
MacDonald
Maltais
Martin
McCoy
McIntyre
McPhedran
Mercer
Ngo
Patterson
Plett
Poirier
Raine
Richards
Seidman
Smith
Stewart Olsen
Tannas
Tardif
Tkachuk
Unger
Wells—39

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1620)

[*Translation*]

THE SENATE

MOTION TO AFFECT QUESTION PERIOD ON NOVEMBER 28, 2017, ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of November 22, 2017, moved:

> That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7,

when the Senate sits on Tuesday, November 28, 2017, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

That, if a standing vote would conflict with the holding of Question Period at 3:30 p.m. on that day, the vote be postponed until immediately after the conclusion of Question Period;

That, if the bells are ringing for a vote at 3:30 p.m. on that day, they be interrupted for Question Period at that time, and resume thereafter for the balance of any time remaining; and

That, if the Senate concludes its business before 3:30 p.m. on that day, the sitting be suspended until that time for the purpose of holding Question Period.

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

Hon. Senators: Agreed.

(Motion agreed to.)

ADJOURNMENT

MOTION ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of November 22, 2017, moved:

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, November 28, 2017 at 2 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.

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

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

VISITOR IN THE GALLERY

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

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

Hon. Senators: Hear, hear!

FRAMEWORK ON PALLIATIVE CARE IN CANADA BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Eaton, seconded by the Honourable Senator Seidman, for the third reading of Bill C-277, An Act providing for the development of a framework on palliative care in Canada.

Hon. André Pratte: Honourable senators, I am very late to this debate, and I apologize for that. My brain is still struggling to keep up with everything going on in this chamber.

Everything has been said about the importance of improving access to palliative care in this country, and it would be useless for me to repeat that. I share the sense of urgency expressed so passionately by the bill's supporters. However, I would like to say a few words about something that has not been talked about much and that is central to the Senate's responsibilities: protecting the constitutional jurisdictions of provincial governments.

[*Translation*]

As you know, under section 92 of the British North America Act, the provinces have jurisdiction over the "establishment, maintenance and management of hospitals." What this essentially means is that, these days, our health care systems are managed by the provincial governments.

However, the Government of Canada is also considerably involved in the health care sector through its own jurisdictions in various areas, such as criminal law, research, public health, indigenous health, and health care for our Canadian Armed Forces members.

Personally, I am not a big fan of such rigid approaches to the division of powers. I believe in the cooperative federalism the Supreme Court has been advocating for for the past several years.

That said, we live in a federation, and some degree of order is needed in such a system. This can be attained by respecting the jurisdictions set out in the Constitution. In addition, the federal government is not "superior" to the provincial governments; rather, it must be their partner. When it comes to health, Ottawa must respect the autonomy of those who manage the health care systems, for at least two practical reasons above and beyond purely constitutional reasons. First of all, governments closest to patients and communities are better positioned to make the right decisions. Secondly, these systems are already extremely complex, and nothing would be worse than adding another layer of red tape on top of the existing provincial bureaucracy.

It is with these and other considerations in mind that I approached the study of Bill C-277.

The bill provides for the development of a national framework "designed to support improved access for Canadians to palliative care." The objective of the framework is to: a) define what palliative care is; b) identify the palliative care training and education needs of health care providers as well as other caregivers; c) identify measures to support palliative care providers; d) promote research and the collection of data on palliative care; e) identify measures to facilitate a consistent access to palliative care across Canada; f) take into consideration existing palliative care frameworks, strategies and best practices; and, g) evaluate the advisability of re-establishing the Department of Health's Secretariat on Palliative and End-of-Life Care.

[*English*]

When listening to speeches and to committee testimony on the bill, when talking to stakeholders who support its adoption, I heard expressions such as "national standards" and "consistency of care," and that's where my fears lie, as they always do when the federal government, with its enormous spending power, claims to dictate to the provinces where and how to invest in health care.

It's true that access to palliative care is uneven across the country. There is a glaring lack of trained staff, and caregivers desperately need help. It is better if a national framework can help fill these gaps. That's what I heard when I spoke to various palliative care providers, including in my own province of Quebec. People everywhere point to the positive momentum the federal government created 15 years ago with the establishment of the Secretariat on Palliative and End-of-Life Care. Yet a national framework must not impose a way of doing things drawn up in Ottawa or inspired by theoretical research. It must give due regard to the work that is being done now and the plans that already exist.

[*Translation*]

In the case of Quebec, which I am more familiar with, the province already has a detailed plan for the development of palliative care and end-of-life care for the period of 2015 to 2020. The plan sets out nine priorities, which include ensuring fair access to palliative and end-of-life care, ensuring a fluid continuum of services offered by various palliative and end-of-life care providers and partners, helping people receiving palliative and end-of-life care stay in their homes, recognizing and supporting family caregivers, ensuring the quality of services provided to the patient and his or her family members, and skill development and research.

• (1630)

All of the concerns addressed in Bill C-277 — equal access, support for care providers, skill development, and research — are already the essence of the Government of Quebec's five-year plan. As such, any federal approach to palliative care must not merely "take into consideration", as stated in the bill, but "respect" the plans already put in place by the provincial governments, who every day have to make the very difficult choices associated with health care management.

I know that some government-suggested amendments were made to the bill in the other place to ensure that it would respect provincial jurisdiction over health. I am happy about that, but I still have concerns.

[*English*]

It all depends on how things will be done. I will applaud if action at the national level can provide an additional push to improving palliative care across the country, for instance, through better data collection, additional financial resources and better sharing of ideas.

However, if we're dreaming of standardized care from coast to coast to coast or national standards imposed, for example, through conditional federal programs or transfers, it will do more harm than good, in my humble opinion. It will result in bickering, duplication and inefficiencies that could easily have been avoided.

That said, honourable senators, given the urgency to improve access to palliative care in many parts of the country and having consulted with stakeholders in my province and elsewhere in the country, and in the hope that a national framework on palliative care will be developed in accordance with the principles of cooperative federalism, I will be voting in favour of Bill C-277.

I should have said earlier that the adjournment should return to Senator Petitclerc.

(Debate adjourned.)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Bovey, for the second reading of Bill S-237, An Act to amend the Criminal Code (criminal interest rate).

Hon. Ghislain Maltais: Honourable senators, I think we have covered everything about this bill that needed to be covered, and what interests me is what comes next. As a result, Madam Acting Speaker, I move that this bill be referred to the Banking, Trade and Commerce Committee for consideration.

Hon. Pierrette Ringuette: I thank Senator Maltais for his good intentions on this issue.

Hon. Joan Fraser (The Hon. the Acting Speaker): Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator Ringuette, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.)

BAN ON SHARK FIN IMPORTATION BILL

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator MacDonald, seconded by the Honourable Senator Tkachuk, for the second reading of Bill S-238, An Act to amend the Fisheries Act and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (importation of shark fins).

Hon. Pierrette Ringuette: Honourable senators, I would like to thank Senator MacDonald for introducing this bill. I really enjoyed rereading the speech that he gave in support of this bill, as well as the speeches given by Senators Galvez and Griffin.

Over the past few weeks, I have had the opportunity to watch some very interesting documentaries on the subject. I do not want to spend too much time talking about them, but I would like to draw your attention to the fact that shark finning has been illegal in Canada since 1994 and that, in 2015, Canada imported over 144,000 kilograms of shark fins. It seems a lot of Canadians enjoy this delicacy. I, personally, have never tried it.

Based on the speeches we have heard in this chamber, I understand that shark fishing is done in a particularly cruel and vicious way, but we heard very little about the socio-economic, historic and cultural aspects of this type of fishery for some of the planet's populations. I think a little reflection on that is needed. I could draw a parallel with everything we have heard in this chamber regarding the seal hunt. I remember how outraged many of us were after what the European Union did when it wanted to completely ban all seal imports, a little like what this bill proposes to do. I think we need to have a closer look at populations that might fish for shark in a respectful manner.

I support the principle of the bill, but I have to wonder whether we have thought of all its implications. Should we not examine the bill through a more introspective lens? This morning I became a member of the Senate Fisheries and Oceans Committee, so I will be there to hear the witnesses. I really hope they will be able to tell us more about the socio-economic, cultural and historic importance of the shark fishery in certain regions, hopefully before we examine the bill at third reading, as it is proposed.

• (1640)

With that, I thank Senator MacDonald and I await with great curiosity the deliberations in committee and the testimony that it will hear during the course of its study. Thank you.

[*English*]

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

(On motion of Senator MacDonald, bill referred to the Standing Senate Committee on Fisheries and Oceans.)

THE SENATE

MOTION TO URGE THE GOVERNMENT TO TAKE INTO CONSIDERATION THE FUNDING OF LITERACY PROGRAMS IN ATLANTIC CANADA—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Griffin, seconded by the Honourable Senator Martin:
>
> That the Senate affirm that literacy is a core component to active citizenship, a determinant for healthy outcomes, and, at its core, key to building an innovative economy with good, sustainable jobs;
>
> That the Senate urge the Government to take into consideration the particular regional circumstances of Atlantic Canada based on smaller populations, many of which are in rural areas, when determining whether to implement programs using project-based funding compared to core funding;
>
> That the Senate further urge the Minister of Employment, Workforce Development and Labour to make an exception to the present terms and conditions of the Office of Literacy and Essential Skills project-based funding programs in order to request an emergency submission to the Treasury Board for $600,000 of core funding for the Atlantic Partnership for Literacy and Essential Skills based on their 2017 pre-budget consultation submission to Parliament; and
>
> That a message be sent to the House of Commons to acquaint that house with the foregoing.

Hon. Paul E. McIntyre: Madam Speaker, this motion was last adjourned by Senator Greene. However, after talking with him, he agreed that I would speak on it today.

[*Translation*]

Honourable senators, I rise today in support of Senator Griffin's motion urging the government to consider funding literacy programs in Atlantic Canada. Senator Griffin's proposals are well established in the motion, pursuant to notice of September 26.

Before getting into the motion, I have to talk about the situation in New Brunswick, which is of great concern to me since that province is known for its high rate of illiteracy. Last February, to address this widespread problem, the Province of New Brunswick unveiled its literacy strategy. The key priorities of this strategy are laid out in a document entitled *Unleashing the power of literacy: New Brunswick's Comprehensive Literacy Strategy*. Note that New Brunswick's provincial strategy is based on the recommendations made in the report entitled *The Power of Literacy - Moving towards New Brunswick's Comprehensive Literacy Strategy*. Naturally, the provincial government invested in these efforts to support literacy programs for children and adults.

To come back to the motion, I also want to note that it comes in the wake of Senator Griffin's speech on the importance of literacy as a human right in the context of the inquiry of former Senator Hubley, Inquiry No. 14.

I understand that, in Atlantic Canada, funding for literacy programs is divided into project-based funding and core funding. At present, it seems that the Department of Employment, Workforce Development and Labour supports the current model of project-based funding. According to the umbrella organization, Atlantic Partnership for Literacy and Essential Skills, this funding model does not take into account the specific regional context of Atlantic Canada, which has a smaller population that is often located in rural areas.

I know that the federal government is working closely with the provincial and territorial governments to support the inclusion of literacy and essential skills in employment and training programs. I also know that the provinces and territories can count on federal funding for that purpose, but that it consists primarily of project-based funding.

With that in mind, Senator Griffin's motion calls on the Senate to urge the Minister of Employment, Workforce Development and Labour to make an exception to the present terms and conditions of project-based funding programs of the Office of Literacy and Essential Skills and to make an emergency submission to the Treasury Board for core funding for the Atlantic Partnership for Literacy and Essential Skills based on their 2017 pre-budget consultation submission to the Senate. The motion calls for the restrictions associated with project-based funding to be removed. It is therefore important for the four Atlantic provinces to receive the same stable and permanent core funding in order to ensure the viability of these literacy programs.

Therefore, honourable senators, I encourage you to support this motion and so support literacy in Atlantic Canada.

[*English*]

The Hon. the Acting Speaker: Is it agreed, honourable senators, that this item remain adjourned in the name of Senator Greene?

Hon. Senators: Agreed.

(Debate adjourned.)

[*Translation*]

TRANS CANADA TRAIL

HISTORY, BENEFITS AND CHALLENGES—INQUIRY—DEBATE CONCLUDED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Tardif, calling the attention of the Senate to the Trans Canada Trail — its history, benefits and the challenges it is faced with as it approaches its 25th anniversary.

Hon. Paul E. McIntyre: Honourable senators, today I will add my voice to Senator Tardif's in continuing debate on her inquiry calling the attention of the Senate to the Trans Canada Trail, also known as the Great Trail, its history, benefits, and the challenges it is still faced with. I would like to begin by thanking Senator Tardif for initiating the inquiry and congratulating Senators Petitclerc and Day for their significant contributions to the debate.

My dear colleagues, as you know, everything begins with a dream. The story of the Great Trail began because of a dream shared by two Canadians, Pierre Camu from Quebec and Bill Pratt from Alberta. These two visionaries dreamed of linking the magnificent recreational trails that criss-cross this country into one single trail connecting all Canadians from coast to coast.

• (1650)

[*English*]

As we all know by now, the Great Trail — the "world's longest networks of multi-use recreational trails, comprised of land and water routes across urban, rural and wilderness landscapes" — saw the light in 1992 to mark the celebration of Canada's one hundred twenty-fifth anniversary. The Great Trail spans 24,000 kilometres throughout Canada, stretching from coast to coast to coast, through every one of the provinces and territories, linking all Canadians across 15,000 communities.

The biggest trail in the world is made up of more than 500 individual trails.

On the Great Trail website, it is mentioned that:

> Each trail section is developed, owned and managed locally by trail groups, conservation authorities and by municipal, provincial and federal governments . . . .

> Thousands of Canadians, community partner organizations, corporations, local businesses and all levels of government are involved in developing and maintaining these trails. The Trans Canada Trail does not own or operate any trail.

The Great Trail is a large Canadian volunteer project.

[*Translation*]

Visitors to the trail can get their fill of spectacular scenery. The trail showcases Canada's urban, rural and wilderness landscapes as it meanders along roads, footpaths, and waterways. The Great Trail offers Canadians a wide range of outdoor experiences as we celebrate Canada's 150th anniversary. All of the scenery along the trail is breathtaking, regardless of what part of the country you are in. However, the four Atlantic provinces also offer a variety of activities along the trail. Although the eastern provinces are smaller, be assured that the scenery will not disappoint. It is very easy to access these four unique provinces, and their sections of the trail provide outdoor enthusiasts with impressive and unforgettable views of widely diverse landscapes.

As it says on the website for The Trans Canada Trail, the section of the Great Trail located in New Brunswick is now entirely connected. The Great Trail route in New Brunswick spans over 900 kilometres from the province's northwest border near Edmundston to the Confederation Bridge in the south, passing through many scenic landmarks, historic communities and magnificent marshes. New Brunswick is the fifth province in Canada to reach the milestone of being connected province-wide, after Newfoundland and Labrador, Prince Edward Island, Yukon and Saskatchewan. This achievement was recently marked at a public celebration at Government House, the historic residence of the New Brunswick Lieutenant-Governor.

Honourable senators, in my province, there are five sections of The Great Trail that are not to be missed: Dobson Trail to Fundy Footpath, the Valley and South Riverfront Trails, the Sackville Waterfowl Park and the Marshes, the Petit Témis Trail, and the Fundy Trail Parkway.

There is something for everyone of all ages to enjoy. Whether you are a thrill-seeker looking for adventure, a nature lover interested in taking a family hike to spot magnificent flora and fauna and see the highest tides in the world, or a tourist out to see the sights, these five majestic sections of the trail are sure to impress.

Colleagues, The Great Trail is the culmination of 25 years of hard work, and it is only the beginning. As I mentioned, 2017 is both the 150th anniversary of this country and the 25th anniversary of The Great Trail. It is important to note that the Trail is now fully connected.

However, connection is not the same as completion. In other words, although parts of the Trail are still unfinished, the Trail itself is fully connected, which means it spans the entire country, uniting Canadians from coast to coast to coast. The full connection of the Trail was celebrated on August 26 in every province and territory.

This year, we are celebrating the creation of The Great Trail, but the work needs to continue. We must now focus our efforts on the future and on the ongoing development and preservation of this national treasure. The Trans Canada Trail is a long-term, large-scale project that is constantly evolving. Since there is always room for improvement, each generation will have to get involved and adopt the Trail as its own, in order to maintain and develop it by creating new trails and perfecting it further. We need to keep working with volunteers, donors, and employees at all levels of government to enhance and improve the Trail.

Although the Trans Canada Trail unites all Canadians from coast to coast to coast, we still have a long way to go. As mentioned by Senators Tardif, Petitclerc and Day, it is true that some parts of the Trail are still unsafe. That is something that needs to be improved. In that sense, some sections of the Trail are more dangerous than others. That is why the provincial and federal governments need to oversee trail construction, because it is vital to have construction, safety and accessibility standards in place to protect Canadians and ensure cross-country consistency.

In its last budget, the federal government committed to investing $30 million over five years to help complete, improve and maintain the Trans Canada Trail, in partnership with the provinces and the Canadian people. Let's hope that the funding announced by the government will ensure that minimum standards are put in place.

The Great Trail is our trail. Thousands of people use it to walk, jog, hike, bike, ski, ride horses, canoe, skidoo, and so on.

Honourable senators, we have a duty to further develop The Great Trail, make it safe, use it and protect it. It is a treasure and a national symbol for us to leave to future generations, a powerful symbol of Canadian unity, a national dream.

[*English*]

The Hon. the Acting Speaker: If no other senator wishes to participate in this debate, the item is considered debated.

(Debate concluded.)

INCREASING OVER-REPRESENTATION OF INDIGENOUS WOMEN IN CANADIAN PRISONS

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Pate, calling the attention of the Senate to the circumstances of some of the most marginalized, victimized, criminalized and institutionalized in Canada, particularly the increasing over-representation of Indigenous women in Canadian prisons.

Hon. Frances Lankin: Honourable senators, I rise today to speak to the Inquiry No. 19, dealing with indigenous women in prisons. I'd like to begin by thanking Senator Pate, who brought forward this inquiry. She has been doing an amazing job in raising these important issues for all of us here in the Senate. More broadly, she's certainly done so in the House of Commons, publicly with the work she's done since being a senator, for many years before that in her role with the Elizabeth Fry Society and as an activist with respect to prison reform, in particular regarding the treatment of indigenous women.

There have been interventions on this inquiry that have been eloquent and to the point. They have set out a number of issues of concern in the very alarming statistics that represent the numbers behind which are the women experiencing what all of us looking at this in detail would agree are unacceptable circumstances in treatment and conditions in their imprisonment in the corrections part of our justice system.

Today, I want to focus primarily on the issue of release and reintegration, but I'm also going to speak briefly to this week's Auditor General's report. I find it relevant to the issue of release and reintegration, and there are some other points that are responsive to the issues raised by previous speakers.

One part of the way in which Correctional Services Canada handles release and reintegration relates to the Corrections and Conditional Release Act. I want to point out there was quite a history that led to the passage of this legislation, which I believe was in 1992.

I'm looking at a quote from the Honourable Senator Consiglio Di Nino. In the second reading debate of what was then Bill C-36, he talked about the work of the Senate and House of Commons on this bill, having been assisted greatly by the public consultation and scrutiny that had taken place. Over 12,000 individuals were heard from during consultations based on a discussion package, which was entitled *Directions for Reform*. It was released in 1990. That report came from, as I understand it, the House of Commons Standing Committee on Justice and the Solicitor General at the time, and there were a number of recommendations that led to and found themselves in the Corrections and Conditional Release Act, which I'll refer to as the CCRA.

• (1700)

One of those recommendations dealt specifically with issues of indigenous inmates and made reference to "the serious disruption of Native culture and economy that has taken place in this century" and "the devastating effect on the personal and family life of Native inmates." It goes on to give some of the general background.

More specifically, in recommendations it talks about Correctional Service Canada entering:

> . . . into further contractual arrangements with Native organizations to assist Native [prisoners] in preparing release plans and applications for early release.

There was a second report that was relied upon by the House of Commons and the Senate at the time they considered Bill C-36, and that was the report of the Canadian Sentencing Commission. That report, I believe, was called *Taking Responsibility*. One way or the other, those titles go along with those two reports.

In that report, the senator speaking at the time made reference to some of their findings and recommendations and indicated that this approach of having a specific way of making agreements with indigenous communities around the programmatic support of release and reintegration of indigenous prisoners was:

> Consistent with the government's policy of endorsing greater Aboriginal control over matters that affect them, the proposed corrections act contains provisions for the establishment of agreements between federal corrections and aboriginal communities to permit such communities to assume varying degrees of responsibility for aboriginal [prisoners].

That became embodied in the CCRA as sections 81 and 84. If you look at the Correctional Service Canada website discussions of the CCRA, you will see that those provisions set forward the purpose as one where the CCRA recognizes the unique needs and circumstances of Aboriginals in federal corrections and that sections 81 and 84 intended to alleviate the over-representation of Aboriginal people in federal prisons. According to the website, those sections are said to encourage the involvement of Aboriginal communities in the correctional process and to allow Correctional Service Canada to work with Aboriginal communities who could then create innovative services that are not available within Correctional Service Canada and that are perhaps more culturally appropriate for Aboriginal prisoners.

Why is this relevant to the discussions that we have today in this inquiry and in other places? It's relevant because nothing has changed. While the legislation came into effect, the appalling lack of utilization of those provisions and the appalling lack of support for indigenous communities to have the resources to actually propose and develop the kinds of supports that would be of assistance remain the key reasons why we see a much higher percentage of indigenous prisoners spending longer time before being paroled, spending more of their sentence and seeing themselves with less success in terms of appropriate cultural release oversight and reintegration programming.

This comes more specifically to the issue of indigenous women by looking at the proportion of indigenous women that make up part of the women's population in prisons. I will talk about the statistics in a moment, but they have been alluded to before. I would like to turn to the findings the Auditor General reported this week. I refer to Report 5, which is entitled *Preparing Women Offenders for Release — Correctional Service Canada*.

They concluded that the first problem was assessing women offenders' security and rehabilitation requirements. There is some specific reference to indigenous women, and I'll come to that, but most of this deals with women. And I remind you again that when we get to the statistics you will see how there is over-representation of indigenous women in that population, so we are speaking directly to the conditions that they experience.

I was shocked to find out, regarding the security screening tool used to assess the security level of the institution — minimum or maximum security — that women, specifically indigenous women, are referred to in a tool that was developed more than 25 years ago based on a sample of male offenders. If that's not offensive in and of itself — that there has not been an update in 25 years to this tool — to understand how it so poorly represents an accurate security screening of women prisoners, one need only look at the over-representation of a population of inmates based on gender in maximum security institutions.

What is the import of that? Well, it has an effect on the kind of programming that these inmates can access and have support to. So we find a number of problems. There is a screening tool that doesn't work. There has been developed of late some attempt to bring a bit of a gender approach to the screening, but it was found by the auditor that correctional staff routinely override the tool that is to be more gender sensitive and revert to the 25-year-old one. So it is an inappropriate tool, and there is a clear recommendation that it needs to be updated and brought in line with understanding the real risk of reoffending. That is what we're supposed to be looking at.

In conjunction with that, the fact that someone is in a maximum prison limits their access to programming. There is already a woeful lack of programming for these women. And the auditor found that the programming that is built is often not done in conjunction with looking at what the women's earliest date of parole might be. There are often situations where the woman engages in the kind of preparation for release and parole that would be suitable, but the programming can't be finished in the time before her earliest point of parole comes up. So routinely, those women will not be able to access a parole release because the programming hasn't finished to appropriately, as assessed, prepare her for release and reintegration with supervision into the community. That's largely a function of a lack of resources for the programming, and it's a function of the kind of security screening that goes on. So that hinders early release and reintegration.

Indigenous women in particular, the auditor found, had uneven access to correctional programs and intervention, and not just culturally supportive ones — that is absolutely clear. But also in terms of levels of incarceration, there is a primary impact on indigenous women. There is insufficient access to some of the successful programs that have been highlighted, like Pathways Initiatives and healing lodges, and they recommend that there has to be an increase in these.

Also true is that these women are denied, on a comparative basis, access to employment opportunities. There is an operation called CORCAN, which is an employment opportunity in prisons for inmates, and indigenous women do not have sufficient access and have under-represented access to that or to any kind of exterior employment day programming and that sort of thing. So once again, we limit opportunities in terms of release and rehabilitation.

This is not directly related to release, but there was a finding by the auditor that there is a desperate need to improve mental health services. Many of us know that a large proportion of the prison population is made up of people with mental health issues and that we are in a situation of warehousing people because there are inadequate mental health supports.

• (1710)

There have been commitments made and agreements put in place to transfer inmates to become patients of institutions that can treat for mental health. It's routinely not done, and people are left in prisons. More to the point is the significant abuse that people are experiencing, often put in segregation cells because of the behavioural issues that, in institutions that lack resources, the staff are unable to deal with.

The recommendation is that there should not be a use of segregation cells for inmates with mental health issues. They also say there needs to be more resources to address mental health issues and, as I just said, the practice of segregation should end.

In terms of the release of offenders into their communities, the report of the auditor talks about three quarters of offenders having remained incarcerated past their parole dates. Again, the proportion of that that applies to indigenous women is very high.

It is a critical situation that there be interventions in planning release in order for us to address issues of recidivism, in particular the kind of programming that would address problems that people may come to the justice system and the correctional system with. It might be addictions, or they might be victims of abuse. There is a range of socio-demographic issues that are predictors of recidivism, and if we don't deal with and address them through supportive programming while in prison, we write the future for these people, and we are writing it in — I'm going to say it directly — a racist and discriminatory way as it applies to the lack of supports for indigenous women.

Lastly, I want to address some of what this means in terms of understanding the issues and effect on women. We know that they are not getting the kind of support that they require: inappropriate screening and inappropriate proportions of people ending up in maximum security.

The Hon. the Speaker: Senator Lankin, I'm sorry for interrupting, but your time has expired.

Is leave granted for five more minutes, honourable senators?

Hon. Senators: Agreed.

Senator Lankin: Inappropriate levels of supports and programming intervention to assist those people, lack of timeliness in terms of the kind of preparation for release programming that doesn't end at the same time that parole opportunities come up.

To take us back to sections 81 and 84 of the CCRA, there is a responsibility on the minister and on Correctional Service Canada to engage, to plan for and support the work of local indigenous communities, to bring people out and remain under local supervision with culturally appropriate interventions for reintegration.

Again I will say that the department is failing woefully in exercising their responsibility on this, and they often turn to saying that indigenous communities are not coming forward, that there is a proactive responsibility on those communities to come forward. Your Honour and honourable senators, those communities, as you know, are stretched in terms of capacity, with all sorts of needs for various programs without resources being provided to them, and this is a clear area where resources must be provided.

There is work being done in raising attention to this and clear calls to engage with the government, a government that has placed a priority on reconciliation and movement on these issues. I think the Senate could be helpful through the committee work that follows this inquiry.

Again, I appreciate the work that Senator Pate and her staff are doing, and my office. They were very helpful to us in our look at this and providing us with information.

(On motion of Senator Pate, for Senator Dyck, debate adjourned.)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Ngodup Tsering, Mr. Tsering Tashi and Mr. Thubten Samdup. They are the guests of the Honourable Senator Patterson.

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

Hon. Senators: Hear, hear!

STATE OF POLITICAL PRISONERS IN TIBET

INQUIRY—DEBATE CONCLUDED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Patterson, calling the attention of the Senate to the state of political prisoners in Tibet.

Hon. Dennis Glen Patterson: Honourable senators, I rise today to speak to my inquiry on the state of political prisoners in Tibet.

As you know, it's our privilege as senators to meet with delegations from time to time. Last June I met with a delegation of Tibetans in Canada from the Tibetan Canadian Cultural Centre in Toronto and Students for a Free Tibet. They were escorted by my friend, former Senate colleague and champion of human rights in Tibet, Con Di Nino.

I was moved by the stories told by these young Tibetans of cultural and religious repression being suffered by Tibetans by under the Chinese majority in that province, how the Tibetan language has been removed from school classrooms since 2000 and how Tibetans cannot gain employment unless they speak, read and write Mandarin. They told me how difficult the process has become for obtaining visas and how that has reduced tourism, which had been a source of income and reinforcing cultural values for Tibetans. They said that Tibetan nomadic yak herding people have been removed from their ancestral lands and housed in concrete ghetto-style housing, and that this drastic change in living circumstances has led to suicide, alcoholism and prostitution.

I have seen examples of this with my own eyes in neighbouring Qinghai Province, where I participated in an exchange with Northern Canadians in 2008. We shared with Chinese authorities there that our experience in Canada of dispossessing Native people of their traditional lands and lifestyles and repressing Native languages has had dire intergenerational consequences for many.

These stories resonated with me, since I represent a region which is striving to preserve and enhance the first language of the vast majority of its citizens, Inuktitut. In a region where, even with the protections of the Charter of Rights and Freedoms and a benevolent federal government, it is an ongoing struggle for Inuit to preserve their language and culture, and negative health and social indicators still greatly exceed the norms elsewhere in our country.

These young Tibetans told me that in their opinion, the Chinese Han majority are anxious to control and exploit Tibet's rich natural resources, its water, gold, copper and zinc, and are fearful of the return of their revered spiritual leader the Dalai Lama, lest he leads them to a revolution.

But they told me that the Dalai Lama, who was recognized by Canada as an honorary citizen, is only wanting to restart a dialogue with the Chinese government toward making Tibet a truly autonomous province as provided for in the Chinese Constitution. This is known as the Middle-Way Approach, which seeks to find a peaceful solution to these issues within the confines of the Constitution of the People's Republic of China. They emphasized that Tibetan culture and Buddhist religion is based on peace and compassion.

This position was reiterated by the president of Tibet's government in exile, Dr. Lobsang Sangay, who visited Ottawa earlier this week. Dr. Sangay, who holds a doctorate in law from Harvard University, maintains that the most prudent course of action is to seek recognition as a genuinely autonomous region in China that has full control over important portfolios such as education, language and other tools of cultural preservation.

They encouraged me to initiate this inquiry to shine a light on the situation of Tibetans as repressed peoples in their homelands and suggested that a focus on the active suppression of basic rights and freedoms in Tibet can best be expressed by telling the stories of political prisoners: those who, in many cases, have dared to advocate for human rights and have paid a terrible price for doing so.

Today I wish to tell the story of one prisoner I consider a political prisoner.

• (1720)

In Tibetan culture, the Panchen Lama is a great spiritual adviser who is second only to the Dalai Lama. Traditionally, the Panchen Lama would hold control over the Tsang region, which is independent of the Ganden Podrang authority led by the Dalai Lama.

On May 15, 1995, the Dalai Lama announced that six-year-old Gendhun Choekyi Nyima had been recognized as the eleventh Panchen Lama. The Government of China rejected the Dalai Lama's statement as "illegal and invalid," and on May 17, 1995, authorities abducted the child and his family. Later, Chinese authorities installed Gyaincain Norbu as the Panchen Lama instead. Neither Gendhun Nyima nor his parents have been seen or heard from since.

In May of 1996, China acknowledged it was holding Gendhun Choekyi Nyima and his family at a secret location. China's ambassador to the UN claimed that "(Gendhun) has been put under the protection of the government at the request of his parents." It was confirmed again in September 1996, when delegates of the Chinese "Ethnic Affairs Commission" in Montreal responded to inquiries on the subject that Gendhun Nyima was "healthy and studying to become a monk" under the protection of Chinese authorities.

In February 1998, American clerics visiting Tibet were told that Gendhun Choekyi Nyima was in Beijing, but in March 1998 the vice governor of the Tibet Autonomous Region, Yang Chuantang, told Austrian delegates that he was actually living in Lhari, the place of his birth. In April 1998, a third location was put forward when a British journalist was told that the child was studying, possibly in Gansu Province.

In 2000, during a session of the EU-China bilateral human rights dialogue, European Union and British officials were shown two photographs of a young boy whom Chinese delegates said was the Panchen Lama. However, forensic analysis later confirmed that the photographs were not of Gendhun Choekyi Nyima.

In August 2001, Chinese authorities promised photographs to a Polish delegation visiting Tibet, but the delegation was later told that the boy was "far away" from Lhasa and so the pictures could not be obtained immediately. They were never produced.

In October 2001, an Australian delegation was told that the parents of Gendhun Choekyi Nyima were insisting that no foreign delegations be allowed to meet with him.

In a statement made on September 6, 2015, Chinese officials again acknowledged that the Panchen Lama, now 26 years old, was living under China's control. "The reincarnated child Panchen Lama you mentioned is being educated, living a normal life, growing up healthily and does not wish to be disturbed," said Norbu Dunzhub, a member of the Tibet Autonomous Region's United Front Work Department.

UN special procedures have raised this case in numerous examples without result. Most recently, on September 27, 2013, the UN Committee on the Rights of the Child inquired about the location of the Panchen Lama during China's periodic review. China refused to respond to the question which pursued a 2005 query regarding the Panchen Lama's education while in detention.

Honourable senators, I am concerned and disturbed to learn that a child was abducted by the state and that his whereabouts and current condition remain unknown.

In closing, honourable senators, I do hope that this inquiry will serve, as our government reaches out to engage with China, to emphasize that in doing so we must also reinforce and advocate for the basic human rights and freedoms that we cherish and protect in Canada.

I look forward to the participation of other honourable senators in this inquiry and the sharing of their experiences and viewpoints.

Hon. Marilou McPhedran: Honourable senators, today I rise to speak to the inquiry tabled in the Senate by my colleague Senator Dennis Patterson on June 20, 2017. I wish to thank Senator Patterson for his leadership on this issue.

[*Translation*]

This human rights violation in Tibet is most significant. We need to continue to uncover the facts and urge governments to take meaningful action.

[*English*]

On Tuesday morning, I met with some members of the Tibet delegation here with us today. Their president in exile, Lobsang Sangay, referred to as the Sikyong, has emphasized the importance of seeking a peaceful, non-violent resolution of the Tibet issue. Sikyong supported the Dalai Lama's "middle way" approach which would "provide for genuine autonomy for Tibet within the framework of [the] Chinese constitution." As China has established a dual system mechanism with Hong Kong and Macau, he noted that it made no sense to continue the resistance for a similar resolution for Tibet.

Every year since 1991, according to the 2016 Special Report of the Tibetan Centre for Human Rights and Democracy, an average of 194 known Tibetans have been detained. To date, we are advised of 2,057 Tibetan political prisoners currently detained in known or unspecified centres and prisons across the Tibet region.

Colleagues, the situation in Tibet is complex due to skilled obfuscation. Chinese authorities refuse to share numbers of detainees and specific details with regard to their names and locations. Statistics are difficult to come by, but the situation does not seem to be getting better. Many prisoners have faced torture, beatings and degrading treatment during interrogations. They have faced trials that do not meet international standards and some have not had any trials at all. Prisoners have faced punishments while incarcerated, including long periods in isolation, and some are still imprisoned — years past their sentences. There is no presumption of innocence in Chinese law, and verdicts in these political cases often seem to be predetermined.

Although China's National People's Congress passed a criminal procedure law which included a ban on torture and other coercive means of securing confessions, there is little evidence of its implementation in relation to Tibet.

Contrary to Articles 4 and 5 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which call for the establishment of such criminal laws and their implementation internally, the Chinese government has failed to extend these protections to Tibetans.

The convention, ratified by China in 1988, also calls, in Articles 10, 11 and 14, for education and information for law enforcement against torture, with systemic reviews of interrogation rules, instructions, methods and practices of those in custody; and, appropriate redress and rehabilitation for victims of torture.

Since the unrest in Tibet in 2008, Chinese authorities are reported to be relying on even harsher treatment of political prisoners detained across Tibet.

I would like to shed light on the case of Dr. Yeshe Choedron, a political prisoner arrested in March 2008 and sentenced on November 7 of that year by the Lhasa Intermediate People's Court to 15 years of imprisonment. She was convicted of espionage for providing "intelligence and information harmful to the security and interests of state [to] the Dalai clique's security department."

Dr. Choedron was 65 when arrested — a Tibetan woman who had retired from her profession as a medical doctor. She is believed to be held at the prison in Drapchi. She was one of the thousands arrested, secretly tried and sentenced during the 2008 uprising. There is little new evidence about her case since the sentencing nine years ago.

Dr. Choedron is now 74, if she is alive.

• (1730)

Unconfirmed reports by authorities indicate that she is in poor health, at best. Other prisoners detained in 2008 have reported torture and ill-treatment while in prison. In 2014 Tenzin Delek Rinpoche died while in custody, and a medal of courage was created in his memory.

Colleagues, I speak of Yeshe Choedron and the Tibet political prisoners today because we need to wake up. The international community needs to do better, and we need to do better in facing these human rights violations in breach of international law — violations by China.

Individuals like Yeshe Choedron deserve to live their rights and have equal opportunities, as we do. The Universal Declaration of Human Rights, Article 1, states, "All human beings are born free and equal in dignity and rights."

This protection of rights and the ability to live rights is not solely for the elite of this world. Canada, at home and abroad, has committed to championing human rights.

I was at the UN peacekeeping ministerial meeting last week when our Prime Minister spoke about the importance of sustainable peace and justice for all individuals, especially in conflict, when he said that we need to be bold. Tibet is but one example where we can and should do better and be bold in protecting human rights.

I would like to thank, once again, Senator Patterson for his leadership on this inquiry, and to acknowledge that Dr. Yeshe Choedron, still a Chinese prisoner, has been awarded the Tenzin Delek Rinpoche Medal of Courage. I close with a prayer for her survival in conditions that have been known to kill. Thank you, *meegwetch*.

[*Translation*]

Hon. Thanh Hai Ngo: Honourable senators, I am pleased to speak to the inquiry of the Honourable Senator Patterson calling the attention of the Senate to the state of political prisoners in Tibet. I also want to thank my honourable colleagues who also spoke out to make the Canadian public aware of the persistent fundamental human rights violations in that region.

[*English*]

To understand the state of political prisoners in Tibet, we must first look at the draconian public surveillance rules that have led to the detention and deaths of thousands of innocent Tibetans.

To give you an idea of just how brutal the situation in Tibet really is, in 2016 and 2017, Freedom House ranked Tibet second after Syria and before Somalia, Eritrea and North Korea for the worst ". . . aggregate scores for political rights and civil liberties . . ."

The fact that the Tibetan people have fewer rights and liberties than a failed state and the world's worst dictatorship should raise serious concerns about the treatment of 3 million Tibetans at the hands of the Chinese authorities. Since 1950 Tibet has been ruled by the Chinese Communist Party and has been divided into the Tibet Autonomous Region and 12 Tibetan autonomous prefectures.

Rights observers have documented wide-ranging violations of fundamental rights, including an alarming rate of detentions, prosecutions and convictions of Tibetans for the peaceful exercise of their freedoms of expression, assembly and religious belief and cultural identity.

The Chinese authorities tightly restrict all news media and independent expression in Tibet. Individuals who use the Internet, social media, or other means to disseminate dissenting views or share politically sensitive content face arrest and stiff penalties. This includes Tibetan cultural expression, which the authorities associate with separatism and is subject to especially harsh restrictions.

Those incarcerated in recent years have included scores of Tibetan writers, intellectuals and musicians. Among some prominent cases in 2016, blogger Drukar Gyal, also known as "Druklo," was sentenced to three years in prison last February on charges of inciting separatism and endangering social stability.

In March 2015, a popular Tibetan writer and blogger using the pen name Shokjang was arrested. His whereabouts were unknown until February 2016 when he was sentenced to three years of imprisonment for "inciting separatism."

Two additional writers, Lu Konchok Gyatso and Tashi Wangchuk, remained in custody in 2016, one for planning to publish a book and the other for speaking to the *New York Times* about the loss of Tibetan language teaching. With no fair trial and no access to family, Tashi Wangchuk was tortured and has suffered extreme inhumane and degrading treatment in detention. He was initially detained for a lengthy period in a "tiger chair," where he was subjected to interrogation and repeatedly beaten by police officers. Since January 2017, there has been no information about his well-being, no evidence of him committing a crime has been made public, and his lawyers have limited access to meeting with him.

Since 2012 the communist authorities have set up committees of government officials within monasteries to manage their daily operations and enforce party indoctrination campaigns. These re-education campaigns typically force participants to recognize the Chinese Communist Party's claim that China liberated Tibet and to denounce the Dalai Lama.

Freedom of religion is harshly restricted in Tibet in large part because the authorities interpret reverence for the Dalai Lama and adherence to the region's unique form of Buddhism as a threat to Chinese Communist Party rule. Possession of Dalai Lama-related materials can lead to official harassment, arrest and punishment, including restrictions on commercial activity and loss of welfare benefits. The Religious Affairs Bureaus, which control all religious activity, force monks and nuns to sign a declaration rejecting Tibetan independence, expressing loyalty to the government and denouncing the Dalai Lama.

Since President Xi took power, he has repeatedly called for the sinicization of all religions warning against "overseas infiltrations via religious means" and "ideological infringement by extremists." Under his regime, a great number of Tibetan Buddhist monks have been arrested during the year for publicly protesting state repression, opposing land grabs or displaying images of the Dalai Lama.

The Dalai Lama, an honorary Canadian Citizen, continues to advocate for the basic rights of the Tibetan people. A man who teaches patience, compassion and tolerance is the biggest threat to China's wish to maintain control over Tibet. China takes this so seriously, they went so far as to ban Lady Gaga just for meeting with the Dalai Lama.

Honourable colleagues, one day the faith of the Dalai Lama's successor will become a problem for the world, as mentioned by my colleague, Senator Patterson.

[Senator Patterson]

[*Translation*]

Freedom of movement in Tibet is strictly limited, especially on key dates. The monks and nuns are particularly targeted. Tibetans outside the Tibet Autonomous Region who travel to Lhasa have to turn over their national identification cards to the authorities and inform them daily of their plans. According to Human Rights Watch, almost all residents of the Tibet Autonomous Region were prohibited from travelling abroad in 2016.

These human rights abuses are attributable in most part to the fact that the Chinese Communist Party controls the justice system, hence the lack of judicial independence. According to an incomplete database on China created by the Congressional Executive Commission on China, 650 Tibetan political prisoners were behind bars on August 1, 2016. The accused do not have access to any true legal representation. Trials are held in camera if state security is invoked. Chinese lawyers who offer to defend Tibetan suspects have been harassed or disbarred.

Security forces routinely resort to arbitrary detention, and the families of the detained are often kept in the dark as to the health of their loved ones and where they are being detained. What is more, Tibetan prisoners of conscience have reportedly died in detention in circumstances that would suggest torture. In February 2016, for example, a Tibetan man who was believed to have been tortured died while serving a 13-year prison sentence for refusing to fly a Chinese flag.

• (1740)

Chinese authorities have arrested and convicted many Tibetan writers, scholars and singers for "fomenting separatism."

Last December, Peng Ming, a 58-year-old democracy activist, died in prison under suspicious circumstances. His family was not allowed to see the body, and authorities denied his adult children permission to enter the country to collect his ashes.

In June, the Tibetan Centre for Human Rights and Democracy reported that Yeshi Lhakdron, a Tibetan Buddhist nun detained in Kardze County in the Tibetan region of Kham, which is now administered under Sichuan Province, had died of torture while in custody. That same month, a 40-year-old Kardze man who had been detained for allegedly possessing a gun also died in custody, reportedly after enduring severe torture.

On May 13, Lobsang Choedhar, a monk from Kirti monastery in the Tibetan region of Amdo, was reported to be in critical health after being tortured in prison. He was serving a 13-year sentence for calling for the return of the Dalai Lama and the release of the Panchen Lama. Unfortunately, Chinese authorities ignored calls to release him for medical treatment.

[*English*]

Honourable senators, the authorities in Tibetan areas continue to detain Tibetans arbitrarily for indefinite periods. I'm not saying anything new here. Since the annexation of Tibet, Buddhist temples have been destroyed and thousands have been killed, and the situation is still grim.

So here we are looking at the Chinese government controlling border areas, combatting separatism and extracting natural resources — the cost of which is the severe repression of Tibet's unique religious, cultural, linguistic heritage and the civil rights of the Tibetan population.

Honourable senators, Tibet is really under house arrest, and its people are suffering. According to the International Campaign for Tibet, a total of 150 Tibetans have self-immolated in Tibet and China since February 27,2009 —26 of whom are no more than 18 years old. What is most disturbing is the silence about the ongoing abuses perpetrated by the Chinese authorities. Canada has a dynamic Tibetan community members of which began here as refugees and who are calling for freedom and justice.

In 2017, issues of human rights and specific cases of prisoners of conscience have never been more important to raise with China as Canada approves the acquisition of state-owned enterprises, embarks on free-trade talks and takes a seat on the China-led Asian Infrastructure and Investment Bank.

Once again, I wish to thank all honourable senators who have participated in this discussion and I encourage all my honourable colleagues to look into the human rights situation and the state of political prisoners in Tibet who suffer every day at the hands of the Chinese Communist Party.

Honourable senators, the Dalai Lama is famously quoted as saying, "It is not enough to be compassionate, we must act."

I hope that we as parliamentarians will remember his wise words and the plight of the Tibetan people and call for the release of political prisoners at every opportunity when we deal with China.

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise today to speak to the inquiry of Senator Patterson, which draws the Senate's attention to the state of political prisoners in Tibet.

This is a statement that our departed colleague, the late Senator Tobias Enverga had intended to make in support of Senator Patterson's inquiry. I'm honoured to participate today on behalf of Senator Enverga, who, like me, deeply valued human rights, the rule of law, fairness and justice and due process.

Colleagues, sadly, this is not a new issue, as it has been in the international spotlight for some time. For decades, there have been countless Tibetans taken as political prisoners by Chinese authorities within the People's Republic of China. Often times, these individuals have been convicted of so-called "crimes" relating to peaceful political activities or the mere exercise of their fundamental human rights. Included in this group are a number of monks, nuns and individuals who inherently promote peace and harmony. These political prisoners must endure harsh and brutal conditions, which include torture, sleep and food deprivation, and long periods of isolation. It is a known fact that many have died as a result of this treatment. These atrocities and human rights abuses have gone on for far too long and they must end.

Honourable senators, since protests began most recently across the Tibetan plateau on March 10, 2008, more than 600 known individuals have been detained as political prisoners. Any peaceful expression of Tibetan identity in the current political climate of the People's Republic of China can be characterized as "reactionary" and thus is viewed as criminal.

I would like to bring to the chamber's attention one specific case, that of Mr. Lobsang Jamyang. Mr. Jamyang is a writer and a monk who was detained on April 17, 2015, in China's Sichuan province at the age of 28. It is believed he is still held in the region currently. Upon his detention, he was held incommunicado for one year, which is a violation of Chinese law. In January 2017, Mr. Jamyang was indicted on charges of "leaking state secrets" and "engaging in separatist activities." No evidence was provided to support these claims. In May 2016,Mr. Jamyang was sentenced to seven and a half years, with the trial taking place behind closed doors.

At the time of his detention, he was studying Buddhism at Kirti Monastery. He had also contributed articles to popular Tibetan language websites in Tibet. A man of peace and a supporter of Tibet, Mr. Jamyang's current health situation is unknown, although it is reported that he was subjected to beatings and torture during the one year of detention prior to his trial and sentencing.

Honourable senators, Mr. Jamyang's case is not unique. He is merely one example of a deeply concerning pattern of human rights abuses taken against Tibetans within the People's Republic of China.

Yet, there are many groups and individuals who have done good work on this issue and who have raised attention and support for the many Tibetans who face this type of daily persecution. I would like to mention the International Campaign for Tibet, which has not only raised awareness on this issue over the years but has also helped to secure the release of many Tibetan political prisoners.

Honourable senators, I stand today in support of Senator Patterson and denounce the actions taken against the countless Tibetans, such as Mr. Lobsang Jamyang, who have been taken prisoner and subjected to inhumane conditions for simply exercising the basic human rights that we are so lucky to be afforded in Canada. Thank you for your attention to this very important inquiry.

Hon. Linda Frum: Honourable senators, the People's Republic of China's abuse of human rights towards the people of Tibet has continued unabated for far too long. Even within the context of China's authoritarian regime, Tibet has suffered among the worst.

Since the conquest of the region by Mao in 1950, innocent Tibetans have faced imprisonment for crimes they did not commit, are prohibited from practising their religion and are unable to express their freedom of speech.

Sophie Richardson, the China director of Human Rights Watch said, "ultimately the message of the Chinese authorities' terms for Tibetans is clear: Political nonconformity will be punished severely."

I thank Senator Patterson for bringing this important matter to the Senate Chamber. I will be using my time today to share with you the plight of a prominent 30-year-old Tibetan writer and blogger named Druklo. Also known by his pen name, Shokjang, he is known for his critical and thought-provoking articles about the situation in Tibet, especially the resettlement of Tibetan nomads. Shokjang was detained by Chinese authorities on March 16, 2015, by national security police officers and was sentenced 11 months later to three years in prison. No details of the charges against him have ever been released publicly and his health situation is unknown.

• (1750)

According to sources, his family and friends can only visit him under very strict conditions. For example, if Shokjang's visitors speak to him in Chinese, they can spend 30 minutes together. However, if they speak in Tibetan, that visit is limited to 5 minutes.

The fact that Shokjang is being jailed for exercising his freedom of speech is unacceptable.

I call on all senators to join me in calling on the Chinese government to release Shokjang and all Tibetan prisoners of conscience.

The Hon. the Speaker: Honourable senators, if no other senators wish to speak, this matter is considered debated.

(Debate concluded.)

(*At 5:51 p.m., the Senate was continued until Tuesday, November 28, 2017, at 2 p.m.*)