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OFFICIAL REPORT
(HANSARD)

Thursday, June 15, 2017

The Honourable GEORGE J. FUREY
Speaker

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THE SENATE

Thursday, June 15, 2017

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

Prayers.

SENATORS' STATEMENTS

INDIGENOUS AFFAIRS

Hon. Lynn Beyak: Honourable senators, I would like to thank each of you who heard my speech here in the Senate on March 7, 2017, on residential schools and offered support from the outset and who cared about my well-being during the unpleasantness that followed.

Even if you disagreed with my perspective, you were kind and thoughtful, as has been my experience in the Senate of Canada on all issues. I want to briefly tell you about the past two months and the positive response to free speech that I have received from across the country.

I discovered that many people who actually read my remarks sent an avalanche of support from across our great nation. It began with a highly respected journalist and soon included indigenous and non-indigenous Canadians from every walk of life, including historians, scholars, judges, teachers, academics, chiefs, elders, shamans, nurses, clergy, law enforcement, government workers and many others.

They wrote incredible letters of support, newsletters and articles of support for free speech and for my true statements, taken directly from residential school documents and the Truth and Reconciliation Commission report itself, confirming the good with the bad.

Recently a colleague from the independent caucus sent me a *Vancouver Sun* article that contained an interview with Chief Robert Joseph, who I had pleasure to greet in my office with his daughter Shelley last month. What a wise and wonderful family. We discussed the residential schools and moving forward together.

The *Vancouver Sun* article also points out that residential schools are a small part of the challenges facing indigenous people in Canada. It goes on to note that as more facts are revealed, a small minority found the schools bad, a small minority found them good. The vast majority of the nearly 900,000 indigenous Christians in Canada referenced in the article, according to the census, took the good with the bad and moved on with their lives.

In conclusion, I would like to read a sentence from the preface of the Truth and Reconciliation Commission of Canada report of 2015.

> Many students have positive memories of their experiences of residential schools and acknowledge the skills they acquired, the beneficial impacts of the recreational and sporting activities in which they engaged, and the friendships they made.

The report was signed by Chief Wilton Littlechild, Dr. Marie Wilson and Murray Sinclair. We need to address the hurt and anger and move forward in compassion, forgiveness, good faith, hope and love.

ABORIGINAL HISTORY MONTH

Hon. Kim Pate: Honourable senators, as Canada celebrates National Aboriginal History Month and the contribution that indigenous peoples have made to our country, I rise today to pay tribute in particular to the indigenous women who have taken action in promoting equality and protecting indigenous culture and land. These include our friends and colleagues Senators Lovelace Nicholas and Lillian Dyck. They also include the late Mary Two-Axe Earley and Patricia Monture, Jeannette Corbiere Lavell, Sharon McIvor, Susan and Tammy Yantha, Dr. Lynn Gehl, Dr. Pam Palmater and Beatrice Hunter. Today I would like to in particular speak about Ms. Hunter.

Ms. Hunter is an Inuk woman, a daughter, mother, grandmother and land protector who was recently incarcerated in Her Majesty's Penitentiary in St. John's, Newfoundland for asserting her basic human and indigenous rights. Her crime? She engaged in a peaceful demonstration against the Muskrat Falls development project, a project that was begun without adequate consultation with the Inuit community that occupies the land. She harmed no one and was motivated only by love and a sense of responsibility to her family, her community and the land.

The federal government reaffirmed Canada's international commitment to adopting the United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP, without reservation.

UNDRIP recognizes that indigenous peoples have rights that constitute minimum standards for the survival, dignity and well-being of their communities, and that governments have the duty to consult regarding land use. The Canadian Charter of Rights and Freedoms guarantees Ms. Hunter and every other person in Canada freedom of expression and the freedom of peaceful assembly. Demonstrating is a basic civil right, not a crime justifying imprisonment.

Last week Senator Sinclair and I wrote an open letter to Newfoundland and Labrador Premier Dwight Ball expressing our extreme disappointment about the incarceration of Ms. Hunter. We were very concerned about the welfare of her and her family, and, like many other women, while in jail she was subjected to daily strip searches after being forcibly moved a thousand miles away from her family and support systems. Her story is a demonstration of how the Canadian judicial system continues to fail indigenous women.

With Canada's one hundred and fiftieth anniversary celebrations about to be upon us, this nation is moving toward a new era of recognizing and working to right historical wrongs

and turning to reconciliation processes to renew the relationship between governments, Canadians and indigenous peoples.

• (1340)

As such, we encourage all governments to join in supporting Ms. Hunter and other indigenous women in their efforts in order that each of us contribute to remedying the wrongs of the past and the present and working toward a true future of reconciliation.

Thank you, *meegwetch*.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Kenneth T. Williams, playwright of *Café Daughter*, an NAC production describing the early life of the Honourable Senator Dyck, accompanied by his mother Ethel Blind, along with Lisa C. Ravensbergen, Tiffany Ayalik, and Marian Brant. They are the guests of the Honourable Senator Dyck.

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

Hon. Senators: Hear, hear!

[*Translation*]

CITY OF LONGUEUIL

ADDRESSING YOUTH CRIME

Hon. Pierre-Hugues Boisvenu: Honourable senators, today I would like to recognize some remarkable work the Longueuil police service has been doing to crack down on pimping and rescue a number of girls from child prostitution and, in many cases, the drug scene. *La Presse* reported on the police's work on June 12.

The Longueuil police service made it clear that these young people's unlawful activities include many other serious crimes. Police officers are now finding 12- and 13-year-olds involved in prostitution, and they're very concerned. Younger and younger girls are being recruited, resulting in often irreversible harm. The Longueuil police service put its best investigators on this and assigned a team of patrol officers who tailed six young male pimps day and night around the Longueuil metro, a choice location for recruiting young girls.

Quite a few of the young girls who hung out in the area had been to youth centres; they were easy prey. In just a few months, 150 crimes and misdemeanours were committed by young people in the area. That includes theft, drug trafficking, sexual assault, and gang rape. The police say this has been a problem in the area for 20 years, and they lack adequate means to stamp it out. This is why it is essential to the fight against these criminal organizations that all of the legislation in Bill C-452 be implemented quickly.

The investigators came to the conclusion that, for the operation to succeed, they had to do more than prosecute the pimps. They also had to support the victims throughout the legal process so they would feel comfortable testifying against their pimps. These girls rarely press charges themselves. In most cases, the police do so on their behalf. Now they are beginning to work more closely with investigators and are even agreeing to testify against their pimps.

Under the current legislation, to convince a prosecutor to lay criminal charges against a pimp, a large number of statements must be gathered. Bill C-452 reduces the number of statements required, thereby allowing police officers to do their job more effectively.

The Longueil police service has adopted much the same approach as that of the L'Escale youth centre in Montreal North, where nearly 90 per cent of young dropouts and offenders are given a second chance thanks to a collaborative effort by the school system, police officers and parents. Last May, the Longueuil police service invited 15 families, including the parents of victims and pimps, to a meeting. For four hours, the police really shook them up. The families of 15 teens, including both boys and girls, were present at the meeting, teens who had been involved in 80 criminal incidents recently, including a gang rape.

The meeting with the parents, dubbed "contact group" by the police service, was adopted and integrated into its recidivism prevention strategy.

In the spring of 2016, the police force had organized its first "contact group" with the parents of another gang. One year later, out of about 15 young gang members, only one had been arrested again by police.

Honourable senators, in light of the disturbing increase in child prostitution in Quebec, as well as rising crime rates among youth aged 12 and 13, an increase of more than 30 per cent in 10 years to be precise, urgent action is needed.

In closing, I want to thank *La Presse* journalist Caroline Touzin for her powerful reporting on the work of the Longueuil police service, an exemplary role model for the rest of Canada.

[*English*]

THE HONOURABLE MOBINA S. B. JAFFER

EXPRESSION OF THANKS ON SIXTEENTH ANNIVERSARY AS SENATOR

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to celebrate my sixteenth year in the Senate.

Hon. Senators: Hear, hear!

Senator Jaffer: Reflecting upon my journey, I realize I would never have been appointed to the Senate without the support of my amazing parents. My dad was a member of Parliament in

Uganda and my mother was the first woman to attend university in East Africa.

Both of my parents gave me opportunities throughout my life, even if it meant great sacrifices for themselves. There are no words that can thank them enough. I really miss them.

This year also marks the forty-fifth year of marriage with my kind, caring and patient husband, Nurella Jeraj.

I would also like to give a big thank you to former Prime Minister Chretien and Mrs. Chretien, not only because he appointed me as a senator from British Columbia, but also because they have supported me and given me many opportunities over the last 40 years.

In 1990, Mr. Chretien was the first Liberal leader to insist on including visible minorities on the Liberal party executive. As a result, my son and I were elected as vice-presidents. Throughout all of this, Senator Mercer has been a great friend and supporter, especially for my son.

I would like to thank my siblings Zenobia, Nimet, Aneez, Bergees and Umeshaffi, along with their spouses, my nephews and nieces who have always been my cheerleaders under all circumstances.

Honourable senators, the Senate has seen great change, and it is still a work in progress. I want to thank the Speaker Furey for all his work, all senators and especially my independent Liberal colleagues for all their support.

I would also like to thank the staff and security at the Senate for all the support they always give me.

I am proud to call myself a senator today, thanks to the tremendous work done by Senator Housakos, Senator Cordy, Jacqui Delaney, Mélisa Leclerc and our great Communications team. Today we can proudly say we are senators because they have helped to change our image. Thank you very much.

I would also like to thank my amazing staff: Gavin Jeffray, Seema Rampersad, Alex Mendes, Jonathan Coté and Melina Bouchard.

Honourable senators, many people ask me: Why do you fight so hard? I fight hard every day for the three anchors in my life: Azool, Shaleena and Farzana. The reason I fight is that I want a better world for our children and grandchildren, just as all you do.

Finally, sunshine enters my life every day when my grandchildren Ayaan and Almeera call me to say: *Tu me manques, et je t'aime*.

Honourable senators, I look forward to continuing to work with all of you. Have a great summer and get a good rest. Thank you.

NATIONAL ARTS CENTRE

CAFÉ DAUGHTER

Hon. Yuen Pau Woo: Honourable senators, I know all of you are planning to spend your weekend reading the 290 pages of Bill C-44, but if you happen to be in Ottawa I suggest you take some time out to go to the theatre.

The National Arts Centre is putting on *Café Daughter*. It is a story set in the early 1900s, when Saskatchewan law intended to protect the morality of white females and forbade Chinese restaurant owners from hiring Caucasian women. Against this backdrop, nine-year-old Yvette Wong helps out in her parents' café. Her parents are a mixed-race couple, her father Chinese and her mother Cree. Despite being extremely bright, Yvette finds herself in the slow-learners class at school because of her skin colour, so her mother charges her with a secret. Yvette must never tell anyone she's part Cree. Well, this Yvette Wong character is based on no less than our colleague Senator Lillian Dyck.

Hon. Senators: Hear, hear!

Senator Woo: Senator Dyck, from North Battleford, Saskatchewan, was the daughter of a Cree mother and a Chinese father. Her father came to Canada in 1912 and paid the infamous head tax. Like the Yvette Wong character, she was an extremely bright child who went on to become a professor of neuropsychology at the University of Saskatchewan before her appointment to the Senate of Canada.

The play features the main star — it is a one-woman act — Tiffany Ayalik, from Yellowknife. It is written by the famous Cree playwright Kenneth Williams, who is with us in this gallery today.

Hon. Senators: Hear, hear!

Senator Woo: Friday, 8 p.m.; Saturday, 4 p.m. and 8 p.m.; and Sunday, 8 p.m. You can go to all three and still have time to study Bill C-44.

Hon. Senators: Hear, hear!

• (1350)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. Sean Foyn and his son, Zachariah Foyn. They are the guests of the Honourable Senator Bernard.

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

Hon. Senators: Hear, hear!

[*Translation*]

ROUTINE PROCEEDINGS

PARLIAMENT OF CANADA ACT

DOCUMENT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, a document entitled *Extension of the "Parliamentary Precinct" in section 79.51 of the* Parliament of Canada Act *for the purposes of the celebration of Canada's Day, from June 30, 2017, at 8:00 A.M. to July 2, 2017, 11:59 P.M.*

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

Hon. Senators: Yes.

[*English*]

COMMISSIONER OF LOBBYING

ACCESS TO INFORMATION ACT AND PRIVACY ACT—2016-17 ANNUAL REPORTS TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the reports of the Office of the Commissioner of Lobbying for the fiscal year ended March 31, 2017, pursuant to the Access to Information Act and to the Privacy Act.

[*Translation*]

PUBLIC SECTOR INTEGRITY COMMISSIONER

2016-17 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the report of the Office of the Public Sector Integrity Commissioner of Canada for the period ending March 31, 2017, pursuant to the Public Servants Disclosure Protection Act.

[*English*]

FISHERIES AND OCEANS CANADA—CASE REPORT OF FINDINGS IN THE MATTER OF AN INVESTIGATION INTO A DISCLOSURE OF WRONGDOING TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the Case Report of Findings of the Office of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing (Fisheries and Oceans Canada), pursuant to the Public Servants Disclosure Protection Act.

[*Translation*]

THE ESTIMATES, 2017-18

MAIN ESTIMATES—SIXTEENTH REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the sixteenth report (second interim) of the Standing Senate Committee on National Finance on the expenditures set out in the Main Estimates for the fiscal year ending March 31, 2018.

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

OFFICIAL LANGUAGES

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON CANADIANS' VIEWS ABOUT MODERNIZING THE OFFICIAL LANGUAGES ACT—FIFTH REPORT OF COMMITTEE PRESENTED

Hon. Claudette Tardif, Chair of the Standing Senate Committee on Official Languages, presented the following report:

Thursday, June 15, 2017

The Standing Senate Committee on Official Languages has the honour to present its

FIFTH REPORT

Your committee, which was authorized by the Senate on Thursday, April 6, 2017, to examine and report on Canadians' views about modernizing the *Official Languages Act*, respectfully requests funds for the fiscal year ending March 31, 2018, and requests, for the purpose of such study, that it be empowered to:

(a) engage the services of such counsel, technical, clerical and other personnel as may be necessary;

(b) adjourn from place to place within Canada; and

(c) travel inside Canada.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and

Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

CLAUDETTE TARDIF

Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix A, p. 2250*.)

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

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

AGRICULTURE AND FORESTRY

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON THE POTENTIAL IMPACT OF THE EFFECTS OF CLIMATE CHANGE ON THE AGRICULTURE, AGRI-FOOD AND FORESTRY SECTORS—EIGHTH REPORT OF COMMITTEE PRESENTED

Hon. Ghislain Maltais, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, June 15, 2017

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

EIGHTH REPORT

Your committee, which was authorized by the Senate on Thursday, March 9, 2017, to examine and report upon the potential impact of the effects of climate change on the agriculture, agri-food and forestry sectors, respectfully requests funds for the fiscal year ending March 31, 2018, and requests, for the purpose of such study, that it be empowered:

(*a*) engage the services of such counsel, technical, clerical and other personnel as may be necessary;

(*b*) adjourn from place to place within Canada; and

(*c*) travel inside Canada.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

GHISLAIN MALTAIS

Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix B, p. 2259*.)

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

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

[*English*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FIFTEENTH REPORT OF COMMITTEE PRESENTED

Hon. Leo Housakos, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, June 15, 2017

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIFTEENTH REPORT

Your committee has, in obedience to the order of reference of Thursday, May 11, 2017, prepared amendments to the *Senate Administrative Rules* to recognize parliamentary groups of senators and now recommends as follows:

1. That the *Senate Administrative Rules* be amended as follows:

(*a*) in chapter 1:03,

(i) by replacing the definition of "caucus" with the following:

""Caucus" means either a recognized party or a recognized parliamentary group as defined in the *Rules of the Senate*.", and

(ii) by replacing the definition of "House officers" with the following:

""House officers of the Senate" means the Speaker, the Speaker *pro tempore*, the Leader of the Government, the Leader of the Opposition, the leader or facilitator of a recognized party or of a recognized parliamentary group, and their respective deputy leaders and whips.";

(*b*) in chapter 5:02,

(i) by adding the following after section 14

"**14.1** A leader or facilitator of a recognized party or of a recognized parliamentary group is entitled to an additional office allowance, in an amount set by finance rule, for such purposes as are approved by the Internal Economy Committee.

14.2 A leader or facilitator of a recognized party or of a recognized parliamentary group is entitled to additional staff to be paid out of the additional office allowance provided under section 14.1.", and

(ii) by adding the following after section 24:

"**24.1** For greater certainty, a House Officer shall be provided with one additional office allowance under this Chapter.";

(*c*) in chapter 5:03, by replacing section 3 with the following:

"**3.** The Senate Administration, acting in consultation with all leaders and facilitators, shall assign a meeting schedule and reserve a room to be made available for the use of each Senate committee and subcommittee that meets regularly."; and

(*d*) in chapter 5:04, by deleting section 1.

2. That the Law Clerk and Parliamentary Counsel be authorized to make editorial and consequential changes and clerical corrections as may be required.

3. That the amendments come into force on adoption of this report.

Respectfully submitted,

LEO HOUSAKOS

Chair

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

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

SIXTEENTH REPORT OF COMMITTEE PRESENTED

Hon. Leo Housakos, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, June 15, 2017

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

SIXTEENTH REPORT

Your committee has, in obedience to the order of reference of Thursday, May 11, 2017, prepared amendments to the *Senate Administrative Rules* to recognize parliamentary groups of senators and now recommends as follows:

1. That the revised *Senate Administrative Rules* appended to the twelfth report of your committee, presented in the Senate on Tuesday, May 9, 2017, be amended as follows:

(*a*) in chapter 1:03,

(i) by replacing the definition of "caucus" with the following:

""Caucus" means either a recognized party or a recognized parliamentary group as defined in the *Rules of the Senate*.", and

(ii) by replacing the definition of "House officers" or "political officers" with the following:

""House officers" or "political officers" means the Speaker, the Speaker *pro tempore*, the Leader of the Government, the Leader of the Opposition, the leader or facilitator of a recognized party or of a recognized parliamentary group, and their respective deputy leaders and whips.";

(*b*) in chapter 5:02,

(i) by adding the following after section 9:

"**9.1** A leader or facilitator of a recognized party or of a recognized parliamentary group shall be provided with an additional office allowance, in an amount set by finance rule, for such purposes as are approved by the Internal Economy Committee.", and

(ii) by adding the following after section 24:

"**24.1** For greater certainty, a House Officer shall be provided with one additional office allowance under this Chapter.";

(*c*) in chapter 5:03, by replacing section 3 with the following:

"**3.** The Principal Clerk of Committees, acting in consultation with all leaders and facilitators, shall assign a meeting schedule and reserve a room to be made available for the use of each Senate committee and subcommittee that meets regularly."; and

(*d*) in chapter 5:04,

(i) by deleting section 1, and

(ii) by replacing subsection 4(2) with the following:

"(2) A caucus shall be provided with interpretation services at its meetings.".

Respectfully submitted,

LEO HOUSAKOS

Chair

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

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

[*Translation*]

APPROPRIATION BILL NO. 2, 2017-18

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-53, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2018.

(Bill read first time.)

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

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

APPROPRIATION BILL NO. 3, 2017-18

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-54, An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2018.

(Bill read first time.)

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

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

• (1400)

[*English*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

JOINT VISIT OF THE SUB-COMMITTEE ON TRANSATLANTIC DEFENCE AND SECURITY COOPERATION, SUB-COMMITTEE ON TRANSATLANTIC ECONOMIC RELATIONS AND THE OFFICERS OF THE SUB-COMMITTEE ON TRANSATLANTIC RELATIONS, MAY 9-11, 2017— REPORT TABLED

Hon. Vernon White: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Joint Visit of the Sub-Committee on Transatlantic Defence and Security Cooperation (DSCTC), Sub-Committee on Transatlantic Economic Relations (ESCTER), and the Officers of the Sub-Committee on Transatlantic Relations, held in Svalbard, Norway, from May 9 to 11, 2017.

MEETING OF THE DEFENCE AND SECURITY COMMITTEE, JANUARY 20-23, 2017— REPORT TABLED

Hon. Vernon White: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association respecting its participation at the Meeting of the Defence and Security Committee, held in Washington, D.C., United States, from January 20 to 23, 2017.

QUESTION PERIOD

CANADIAN HERITAGE

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION— TAX ON BROADBAND SERVICES

Hon. Larry W. Smith (Leader of the Opposition): Honourable senators, my question today is for the Leader of the Government in the Senate.

In December 2016, the CRTC, Canada's telecom regulator, declared broadband internet a basic telecommunications service. The national regulator announced a strategy to boost internet service and speeds in rural and isolated areas.

The chair of the CRTC said:

> The future of our economy, our prosperity and our society — indeed, the future of every citizen — requires us to set ambitious goals, and to get on with connecting all Canadians for the 21st century.

Just today, the Standing Committee on Canadian Heritage in the House of Commons recommended a 5 per cent tax on broadband distribution to help fund Canada's media industries. In the election campaign, the government committed not to impose a Netflix tax and declared that this proposal is nonsense. Taxpayers already received bad news in the last budget regarding tax increases. We can think of the automatic tax increases on alcohol that we discussed in the last days in the Senate. I agree with the CRTC's view that connecting all Canadians coast to coast to coast is essential for the prosperity and growth of the economy of this country.

So my question is simple. Can the Leader of the Government in the Senate agree that any additional tax on broadband services or a Netflix tax will be bad for Canadian taxpayers and will go against the objective of preparing Canadians for the economy of the 21st century?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and I want to confirm that this Government of Canada will not impose a 5 per cent tax on broadband services. In the fall, the minister responsible, the Minister of Canadian Heritage, will outline a new approach to growing Canada's creative sector, one that supports both creators and the public at large, and is focused on the future.

INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT

FOREIGN INVESTMENT—NATIONAL SECURITY

Hon. Thanh Hai Ngo: Honourable senators, my question is for the Leader of the Government in the Senate.

Earlier this year, Minister Navdeep Bains green-lighted the sale of one of British Columbia's biggest retirement home chains to Anbang.

The chair of this Chinese conglomerate, Wu Xiaohui, has been arrested by Beijing according to a Tuesday evening report in China's Caijing media, which was, to no surprise, deleted within hours. Minister Bains says he is disturbed by this news but doesn't see any need to revisit the security concern that would allow Anbang to invest in a Canadian health care provider.

Senator Harder, the Government of Canada cannot gamble with the well-being of our seniors and Canadian jobs by selling them to foreign corrupt officials with direct ties to the Chinese Communist Party. Canadians expect the government to do their due diligence before selling their future to China.

Can you tell us why exactly the Anbang chairman was arrested and why does the Government of Canada continue to refuse to conduct a full-fledged national security review of these accusations?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for his question. As the minister responsible, Minister Bains has made clear it is the view of the Government of Canada that this transaction is appropriate and within the authority of the minister, and it stands by its decision.

Senator Ngo: I have a supplementary question. The company's lack of transparency and its direct ties to the Chinese communist elite are a problem for Anbang.

In April 2017, Iowa-based Fidelity & Guaranty Life backed out of a deal to be purchased by Anbang after the Chinese company failed to obtain regulatory approval in the United States. Minister Bains kept insisting this acquisition followed a robust and thorough review process when in reality it's only following the lowest security threshold required by the act. The security implications are obvious, yet the takeover was approved.

The identity of the Anbang investor is clearly questionable and the security implications are so obvious. Will the minister publicly disclose the investor's undertakings if he is so confident that there is no risk?

Senator Harder: Again, I thank the honourable senator for his question. It is important for Canadians and all parliamentarians to understand that the process involved is one that is, as he described, robust in that it does allow for broad consultations for a 45-day period in which, if there are concerns raised, there can be a fuller and more comprehensive review.

With respect to undertakings under the Investment Canada Act, it is not the policy of this government or previous governments with respect to this act to make public undertakings because that would provide confidential information of a commercial nature that would be inappropriate for public distribution.

[*Translation*]

OFFICIAL LANGUAGES

MODERNIZATION OF ACT

Hon. Claudette Tardif: My question is for the Leader of the Government in the Senate. In his 2016-17 annual report, the Commissioner of Official Languages made only one recommendation. As the 50th anniversary of the Official Languages Act approaches, the Commissioner of Official Languages recommended that the Prime Minister, the President of the Treasury Board, the Minister of Canadian Heritage and the Minister of Justice and Attorney General of Canada assess the

relevance of updating the act, with a view to establishing a clear position in 2019. Leader, does the government intend to adopt and implement that recommendation?

Hon. Peter Harder (Government Representative in the Senate): Yes.

Senator Tardif: I might ask the Leader to elaborate a little on his affirmative answer. Could you give us some more information?

I would also like to ask you for an update on the planned review of the Official Languages Regulations with regard to communications with and services to the public, announced by Minister Brison in November 2016.

[*English*]

Senator Harder: I appreciate the interest in the matter and it's broadly shared by other senators. I will leave it to the ministers to make those announcements. My understanding is that those announcements are being planned and the commitment has been made and articulated.

PUBLIC SAFETY

CANADA BORDER SERVICES AGENCY— DETENTION OF REFUGEE CHILDREN

Hon. Mobina S. B. Jaffer: Honourable senators, my question is also to the leader in the Senate.

Leader, I have asked you this question many times; I'm sure you are getting tired of it. I'm of the opinion, leader, that the minister made a commitment almost two years ago about the detention of migrant children and we still do not have the answers. I know you won't have the answers today, but I'm hoping that when we come back, we will.

As you know, leader, based on data from 2011 to 2015, immigration detention centres across Canada hold an average of 242 children a year, often due to failed refugee claims.

On the one hand, I'm glad that Minister Goodale, when he came to us two years ago, talked about alternatives to detention so children would not be detained, but it has been two years. What has been happening?

• (1410)

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and her ongoing interest in this matter. It's not at all an irritation, and I would be happy to seek an update from the minister. I know he is giving priority to this concern, and I hope to have positive news to report when I have the inquiry returned.

Senator Jaffer: I have a supplementary question. Leader, I was in error to say the minister is not doing anything. That wouldn't be fair. Senator Oh and I met with people in Toronto and Montreal. We had a panel session with the UNHCR as to what Canada is doing with the detention of children, especially in Toronto and Montreal.

My angst is that it's done by the love of some people and maybe the federal government gives some money. But I'm asking you to please ask the ministers, because I believe we need to have a national strategy and we need to have a policy that we will never detain children. For example, Montreal has a great program, as does Toronto, but those are just two. I'm asking for a national strategy.

Senator Harder: I will add that to my inquiry. Thank you.

JUSTICE

REQUEST FOR EXTRADITION OF JOANNES RIVOIRE

Hon. Dennis Glen Patterson: Honourable senators, my question to the Government Representative is about Joannes Rivoire. He was a missionary posted to various communities in Nunavut from 1960-64 and again from 1975-93. He returned to his native France in 1993. In 1998, a Canada-wide warrant for his arrest was issued. He faces three different charges from three different complainants: one for indecent assault and two counts of sexual intercourse involving females under the age of 14 in Rankin Inlet and Repulse Bay. Not having its own territorial attorney general, Nunavut has to rely on the Federal Public Prosecution Service of Canada. It is this body that could initiate an extradition order on behalf of the victims.

I wrote on April 3, 2017, to Minister Wilson-Raybould, urging Canada to push for the extradition of Father Rivoire. He took a position of trust in the communities and misused it in the most egregious manner. He should be tried for his crimes in order to provide closure to the complaints and their families. It is also believed this trial will bring to light other complainants who did not feel comfortable coming forward.

I can assure you there is a great deal of public concern about this case in Nunavut. Will the Minister of Justice, in the spirit of justice and reconciliation, direct the International Assistance Group to begin the formal process required to ask for Mr. Rivoire's speedy extradition to Canada?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for bringing this case to my attention and the attention of the Senate. Extradition requests are confidential state-to-state communications. It would not be appropriate for me to confirm or deny the existence of an extradition request in this matter.

I can, however, indicate that Canada and France are party to an extradition treaty, and I will, of course, bring your representation to the attention of the minister.

[*Translation*]

PROTECTION OF CHILDREN

Hon. Pierre-Hugues Boisvenu: My question is for the Leader of the Government in the Senate. In 2015, with a view to protecting children and providing parents with a tool to protect their children from sexual predators, the Conservative government passed Bill C-26 establishing the National Sex Offender Registry.

In December 2016, a year and a half later, the government of the day passed an order implementing Bill C-26, with the exception of clauses 37 to 42, which allowed for part of the registry to be made available to the general public, especially to families who want to protect their children.

Can the Leader of the Government in the Senate tell us what justifies the government's decision not to provide parents and the general population with a prevention tool that would help to prevent crimes and reduce child abuse? I would add that this crime has seen the greatest increase in the last 10 years.

[*English*]

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for the question. I will have to make inquiries in order to return to him the proper response.

[*Translation*]

Senator Boisvenu: At the same time, could the Leader of the Government in the Senate confirm some information with the minister, with whom I met last Friday on this very issue? We know that the minister received a letter from his senior officials, who recommended to the government that it not make part of the registry available to the public, claiming that the public would take justice into their own hands. In the past 10 years, the RCMP has issued 30,000 descriptions to the various police forces in Canada, and there have been only two assaults.

I ask the Leader of the Government in the Senate to see that the minister ensures that the government bases its decision about the registry on relevant information rather than bow to pressure from his department to go another direction.

[*English*]

Senator Harder: I'll raise this with the minister, as well.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Mr. David Blunt, Clerk of the Parliaments and Legislative Council, Parliament of New South Wales.

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

Hon. Senators: Hear, hear!

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, pursuant to rule 4-13(3), I would like to inform the Senate that as we proceed with Government Business, the Senate will address the items in the following order: Third reading of Bill C-16, all remaining items in the order that they appear on the Order Paper.

CANADIAN HUMAN RIGHTS ACT CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE SUSPENDED

On the Order:

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

Hon. Tobias C. Enverga, Jr.: Honourable senators, today I rise to speak to third reading of Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code. I had the opportunity to speak on this bill at second reading, and I would like to once again declare my fundamental opposition to this bill.

Many of my colleagues here have given passionate speeches in this debate, and I thought it would be important for me to speak again as this bill inches closer to its third reading vote.

I would like to reaffirm to honourable senators here that I am in no way opposed to equal rights for all Canadians. Quite the contrary: I am committed to the equal and non-discriminatory treatment of all individuals, and I firmly believe that we need to continue the fight against prejudice and bigotry in our society.

However, colleagues, although well-intended, this bill fails to achieve its intended and stated goal. The inclusion of a new group in the Canadian Human Rights Act and in relevant hate crime sections of the Criminal Code does not improve the condition for those who are discriminated against. I would like to reiterate strongly that our laws, including the Criminal Code, are no place for an awareness campaign to assist in building understanding for those who do not fit into the colloquial "norm."

It is important to remind honourable senators that Bill C-16 does not establish a new right or a protection from abuse that is not already found in our Charter of Rights and Freedoms. The essential right that ensures equal treatment for a transgender identified person is that of sex. You cannot discriminate against a person because of their sex. This protection is afforded in section 15(1) of the Charter, which states:

• (1420)

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Honourable senators, I would now like to acknowledge the fact that we have a large number of people in this country who are not comfortable with potential scenarios that this bill might present. As this is the case, we are now looking at two competing rights.

On one side is the right of an unidentified number of people, belonging to the transgender identified group, who do not necessarily have any physical characteristics that make it possible to determine who belongs to that group and thus, who should be protected by those rights.

On the other hand, there is the right of an also unidentified number of people who belong to various groups without any common physical characteristics to go to the washroom, fitting room or dressing room without feeling that their security of person is compromised.

Honourable senators, I have always been an advocate of inclusion through my work in this chamber: inclusion for ethnic minorities through our policy of multiculturalism, and inclusion of those with disabilities, to name a few. I consider inclusion to be a cornerstone of our society. I have a strong belief that the inclusion resulting from our multiculturalism is uniquely Canadian and is what makes our country a global leader in diversity and tolerance.

It is with inclusion in mind that I once again raise my opposition to this bill. I would like to reiterate my concern about the rights of those who are not comfortable in the same washroom, fitting rooms or dressing rooms as someone of the opposite sex, whatever gender they may identify themselves to be. My suspicion is that that group is larger than the group that is transgender-identified.

Honourable senators, it is not necessarily a fear of criminals committing sexual crimes, as some have voiced in this debate, that makes me reluctant to support this bill, although it does concern me to some degree. My reluctance springs from the fact that we are pitting two separate, disparate groups against each other. It is with this fear of division in mind that I cannot say with confidence that Canadian society has reached the point where we, as parliamentarians, are leading it.

Honourable senators, Canada has long prided itself on being open and welcoming to immigrants from around the world; immigrants who come to Canada and are of different and varied cultural and religious backgrounds. The prime example to help illustrate this point is Islam. Let us consider the practices that are important to those who are of that faith. All here are aware of the practice of many Muslim women to wear head covers, often in the form of a hijab. Generally, we find that the head covers are worn as a symbol of modesty and privacy so as to not show one's hair to men.

If a person is unwilling, for religious or cultural reasons, to show a man one's hair, how are we expected to force such a person to share the most private and intimate of spaces with someone who appears, in all physical and biological ways, to be of the opposite sex? I ask, honourable senators: Is it possible that, in passing this bill, we would be discriminating against our Muslim friends, as well as other groups, and their practice and policy of modesty?

I would like to echo the fact that by passing Bill C-16, to ensure the rights of a still unknown number of persons, we force values that are not part of our social fabric upon a large majority. I do not believe that this is going to increase acceptance of diversity.

The last concern I would like to voice, honourable senators, is this question: What qualifies a person to invoke these new amendments when going before a tribunal or court of law? The bill does not define this issue. I know that some in this debate have previously compared gender identification to that of religion based on the personal nature of faith.

While this may be a valid comparison at an individual level, religion is highly regulated at a societal level. We have baptismal certificates, memberships lists et cetera, that will have a significant impact on religious practice. Conversely, what will the qualifier be for a person to be able to take their case to the Human Rights Commission? Are we going to see the emergence of a gender-identity register? These are very serious questions that are not answered by this bill.

Honourable senators, it is my hope that I have provided good points that have helped further debate on this very important matter. I hope colleagues here will deeply consider the issues that I have raised when deciding how to vote on this bill.

Thank you.

(Debate suspended.)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Ms. Gabriela Cuevas Barron, Senator, Senate of the United Mexican States. She is accompanied by Mr. Fernando Gonzalez Saiffe, Counsellor, Embassy of the United Mexican States.

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

Hon. Senators: Hear, hear!

CANADIAN HUMAN RIGHTS ACT CRIMINAL CODE

BILL TO AMEND—THIRD READING

On the Order:

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

Hon. Yonah Martin (Deputy Leader of the Opposition): Honourable senators, I rise to speak about Bill C-16 at third reading.

After very careful consideration, I have decided to add my words to the already substantive debate on this bill, out of a great sense of responsibility as a Canadian citizen and a legislator.

Should Bill C-16 become an act of Parliament, and should criminal or civil cases of discrimination based on gender identity or gender expression be before the courts, commissions or tribunals, as Senator Baker so reminds us of the permanence and weight of our collective debates and individual interventions made in our chamber, I wish to be on record with my concerns about Bill C-16 becoming law, but also about my faith in our judiciary, tribunals and all of the hard-working individuals who may refer to our debates in the future to inform their arguments and, more important, their judgments. I also want to put on record my rationale for the way I will be voting today.

• (1430)

First, let me acknowledge the efforts of the sponsor of Bill C-16, Senator Grant Mitchell, and our critic, Senator Don Plett, for the extensive research and dedicated work they have done over the past number of years. Their depth and breadth of knowledge about the impacted community of transgender people, the complexity of the issues that we must consider, and the broad consultative process that was undertaken with the legal community, advocates and stakeholders, not to mention withstanding the scrutiny or criticism from all sides, including media, their leadership and commitment deserve our recognition. The thoughtful and thought-provoking debate we have had is to their credit, so much so that I am compelled to be a part of it today.

My vote against Bill C-16 is because of my concerns about the redundancy and the potential unintended consequences of the bill, as written, including restricting free speech. My deep empathy and belief in the protection of rights and dignity of the trans community for whom this bill is written will remain, irrespective of Bill C-6's passage or rejection, just as the protection of their rights already exists at all levels.

My first concern about redundancy is shared by other senators who have spoken and witnesses who have appeared before committee during the study of the bill.

The government's rationale for Bill C-16 is to codify gender identity into the Canadian Human Rights Act and the Criminal Code to ensure that transgender individuals have guaranteed access to the justice system and that it will ensure they live free of discrimination and protect them from hate propaganda.

I argue that at the basis of our constitution, our Human Rights Act and the Criminal Code, all Canadians are already treated equally under the law regardless of who they are. Therefore, protection of transgender Canadians from discrimination punishable by law is already within the current legal framework of Canada.

At the core of Canadian law is the Charter of Rights and Freedoms within the Constitution Act. It outlines that everyone has certain fundamental freedoms, democratic rights, legal rights and equality rights. In fact, section 15(1), as previously alluded to, describes equality rights as:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

As a result, every Canadian is already afforded the same rights under the law.

Similarly, the Canadian Human Rights Act includes all Canadians in its mandate, which states:

> . . . all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Indeed, David Langtry, the Acting Chief Commissioner of the Canadian Human Rights Commission in 2013 stated in committee that the commission, the tribunal and the courts view gender identity and gender expression as protected by the Canadian Human Rights Act. Even without Bill C-16, he testified that the commission already accepts complaints with respect to transgender issues and that discrimination based on gender identity is already protected by the Canadian Human Rights Act.

In fact, "sex" has been interpreted by the Canadian Human Rights Tribunal and by the courts to include discrimination against transgender Canadians as a prohibited ground for discrimination.

Precedence has shown the rights of transgender Canadians being upheld. For example, New Brunswick does not have a clause including "gender identity" in their provincial code, yet according to the New Brunswick Human Rights Commission transgender persons are protected under the grounds of "sex."

The same decision was made by the Nunavut Human Rights Tribunal and the Human Rights Tribunal of the Yukon Territory. It is also how the Charter of Human Rights and Freedoms of Quebec have been interpreted. In fact, a review of legal cases will show that most transgender Canadians have won the cases they have brought in front of a tribunal or court.

So given our current legal framework, honourable senators, discrimination against transgender persons that are being experienced in spite of all the protections that already exist will not be resolved by Bill C-16.

Understanding, love and respect cannot be legislated. As a former educator, I believe it must be addressed through education, awareness-building initiatives, social media and other media to change the hearts and minds of Canadians who employ, teach and interact with transgender people in their daily lives.

Another issue with Bill C-16 is that it adds a specific group of individuals to the Human Rights Act and the Criminal Code, which is inconsistent with the broad identifiable groups that are

currently listed. The prohibited grounds of discrimination in the Human Rights Code, which I already read aloud, include broad groups like age, sex, race and ethnicity. Each identifiable group has various subgroups that make up the group.

However, Canada's legal framework does not list out every group, unlike Bill C-16, which aims to include a specific group, or a subgroup, already being covered under the broad category of "sex." Thus, adding a specific group by adding "gender identity" or "gender expression" in that list is inconsistent with the rest of the list. To be fair and explicit, we should then list out each religion, ethnicity and so on.

However, it is understood that these subgroups are already included in the broad categories. In fact, the lack of an exact definition of gender identity in Bill C-16 adds a group to existing legislation which causes legislation to also then become a bit ambiguous, and at the discretion of those who will end up interpreting what "gender identity" means. This potentially will cause unintended consequences that remain to be seen. So in our aim to be more specific, we could also add more ambiguity. As we understand today, it is a spectrum and it is still being fully understood.

One of those potential consequences, as some witnesses in committee had mentioned, is that Bill C-16 in its current form may compel speech, which goes against a fundamental right that we uphold in Canada.

Senator Plett's motion to add one sentence "For greater certainty" — and if I may read the full sentence:

> For greater certainty, nothing in this Act requires the use of a particular word or expression that corresponds to the gender identity or expression of any person.

- which was defeated, would have added language to this bill that would have given assurances of protecting free speech. Unfortunately, Bill C-16 in its current form, unamended, provides no such certainties.

His amendment was clear and simple, implying that the bill would focus fully on discrimination faced by the transgender community without jeopardizing Canadians' freedom of speech.

I want to restate my opposition to the discrimination experienced by transgender Canadians across our country. In a country like Canada, we should be promoting inclusivity and diversity.

As a former educator, as I have stated before, I firmly believe education is the path forward to reduce the stigma transgender Canadians experience. As a proud British Columbian, I am happy to see the kind of work that is being done in various school districts and in communities in my home province to advance transgender issues. I know that work is being done across our country as well.

This is the path that should be encouraged. In the future, I would be happy to review any proposed government education or awareness programs that would promote inclusion and reduce discrimination in society toward transgender Canadians. I'm an advocate for inclusion in society, but it is solely for the reasons I have mentioned that I will be unable to support Bill C-16.

• (1440)

Hon. Serge Joyal: Honourable senators, before I have the opportunity to express to you and share with you my reflection in relation to Bill C-16, there's one thing I want to remind honourable senators of, and especially those among us who have been in this chamber for a certain period of time. It is 12 years ago, almost to the day, that we were debating the Civil Marriage Act. I remember that debate very well. I sponsored the bill, and the critic was former Senator St. Germain from British Columbia. As a matter of fact, the debate was quite long. Those of you who were in the chamber in those days will remember that we sat until July 20, so be patient, we still have a month to go.

In fact, the debate on Bill C-16 started almost to the day. I say that because I was reflecting on my notes and I thought that before I express my conclusion in relation to Bill C-16 there is something I want to say. I think this is linked with the debates we generally have in the chamber, which is a chamber whereby there are conflicting views to be expressed if we want to have a real debate on the merits and on the substance of an issue.

That's why, in a democratic kind of Parliament, there is an opposition and a government side, or there are pros or cons. The cons have to be as forceful in their arguments as those who support the measures. And what I like about our democratic form of organization is that when I enter this chamber I know that I can rely on the fact that there are people who are going to be supporting a strong, robust debate because the opposition is there.

I want to commend Senator Plett and other senators who have been part of this debate because on an issue that is so emotive and so personal because when we start talking about sex, be it heterosexual, lesbian, gay or transgender, everybody has a reaction because we all have a sexual life and sexual experience. When there is legislation — and I say this without a play on words — lifting the veil on this issue, well, you can see that there is friction. And I think that's normal, but it has to be done with respect towards others.

That's why I want to refer to the point made by Senator Plett in his remarks, when we heard witnesses at the Standing Senate Committee on Legal and Constitutional Affairs, Ms. Theryn Meyer and Professor Gad Saad, and I might have asked a question with a tone that seems to be on the basis of a reprimand, I want to assure you, and to assure Ms. Meyer and Professor Gadd that my intention was in no way to not respect their different opinions. I want to put that on the record so they can rely on this in the future to make sure we're clear on both sides.

I will remind honourable senators that the witness Meyer concluded her brief with the following:

> If you truly care about trans and gender non-conforming people and our lives and livelihood, you will vote against Bill C-16.

In other words, the witness was asking me to vote against Bill C-16. Of course, I could not but realize that Bill C-16 essentially amends two statutes, which we all know; it amends the Canadian Human Rights Act and the Criminal Code. But of course what is not mentioned in the act is that when they amend

the Criminal Code they don't in fact give the substance of the Criminal Code section being amended. And the section of the Criminal Code that is being amended is 318, titled "Advocating genocide."

My first reaction, when I was confronted with a witness who was telling me to vote against Bill C-16, was to ask this question: Are you asking me to vote against advocating genocide for transgender people? It is a very serious decision to take. You might have different opinions on the basis of the protection under the Canadian Human Rights Act. As Senator Martin has just said, you might think it is redundant or you might think it is already covered. Well, I think we can have a debate on this. It seems to be okay, but when you ask someone to vote against Bill C-16, the second part of Bill C-16 is advocating genocide, well, then, I pause and say, morally, before I do that I have to think that's very serious.

In my debate with the witnesses, if I ever appear to question the sincerity or the right position in which that witness tried to help us in reflecting on the bill, again I apologize for that, Senator Plett, and I have no problem saying it in front of all this chamber even though we were only 12 or 13 senators around the table.

That being said, honourable senators, I would like to have an exchange with you this afternoon on my thoughts about Bill C-16. Bill C-16 has a lot of impact on Canadian society. Bill C-16 goes much beyond the mere small percentage of Canadians who happen to be transgender, because it is a debate that calls upon the very principle on which our Canadian society evolves. It is a broader debate than just limited to the rights and protection of transgender people.

As you all know, Canada's character is that of a secular and pluralistic society and it is increasingly a multi-perspective country. We evolve, we multiply the identity, and we all try to make sure that the rights of one are not impinging on the rights of others. When we were a simple society, defined on the basis of Judeo-Christian values, a patriarchal society, it was very stable. We had the impression that's the way the world order would prevail for centuries.

Well, we're now in a kind of society that is defined by different approaches, and those elements of the definition of Canadian society are enshrined in section 1 of the Charter of Rights, where the Charter talks about a democratic society. What are the essential elements of our democratic society? The Supreme Court of Canada has defined the essence of what Canada is, and I quote from a 1986 decision of the Supreme Court called *Oakes*. Here is how the Supreme Court defined section 1 on that democratic society:

> . . . respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity. . . .

I underline "cultural and group identity."

> . . . and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the Charter.

That's what we talk about when I say this debate is much bigger than the group of Canadians who are targeted or a group of people that we want to address in this bill. This bill puts on the whole of Canada the fundamental, foundational values on which this country evolved.

• (1450)

In my humble opinion, it's my personal conviction that if we are to maintain the social cohesion and the unity of this country, it is because we will always have that in mind. When we approach an issue as difficult or as sensitive and emotional as the condition or status of transgender people, we have to keep that in mind.

The second element I want to share with you, honourable senators, is a question that has been very well stated by a professor of the University of Ottawa, Jena McGill, in an article published last year in the *Alberta Law Review*, entitled, "'Now It's My Rights Versus Yours': Equality In Tension with Religious Freedoms." In other words, do I have to abandon my rights to have yours respected? That's the essential tension that exists in a society whereby section 15, the equality clause, guarantees the same level of dignity and opportunity to any group of Canadians, whatever their gender, their sex, their religion, their race, their background, all those distinctions that could pit one person against the other.

Because, of course, we hold different religious beliefs. Each one of us has his or her beliefs. In other words, we see the world according to a certain number of values, and we draw from those values a certain way of behaving, of acting, of putting emphasis on one way of doing things or not.

We are all motivated by our reading of the world, and when that fundamental issue is raised, as Senator Plett has very well put it, is it freedom of religion or freedom of expression against equality? When you have that kind of conflict, what are the principles that apply to resolve it?

That's why I think that this bill is important because — no doubt about it; I have absolutely no hesitation — it is going to end up in court. Last year, at this period of the year, when we were debating Bill C-14, medical assistance in dying, many of you certainly remember — I'm looking at our colleagues Senator Ogilvie and Senator Seidman, who were part of the special joint committee — that I told you that the ink will not be dry and it will be already in court. We learned in the paper this morning that a case has been launched in a Quebec court, and there was one in British Columbia. The Quebec government will soon refer to the Court of Appeal of Quebec a challenge of what is a "reasonable expectation of death." In other words, those issues are there. The reconciliation of my rights versus yours is something that is there and is dependent on those issues.

How does the court approach that kind of balancing of your rights versus mine? This is the key issue, and the Supreme Court of Canada has developed a very well-articulated system of questions.

The first one that the Supreme Court says — and it is the golden rule — is that there is no hierarchy of rights. All the rights that are in the Charter, from section 2 to section 15, including the linguistic rights — I'm looking at my colleagues Senator Tardif or Senator Cormier or Senator Gagné. I will not forget sections 16 and 23, linguistic rights, but let's think about the chunk of the Charter from sections 2 to 15. The court says that in all of those rights, there's no hierarchy. In other words, freedom of religion is not superior to the equality rights of section 15.

Of course, there are conflicts sometimes, and we have lived it with the Civil Marriage Act. I remember again, with an emotional memory of former Senator St. Germain, that the argument 12 years ago was, "You are going to force a municipal commissioner to marry people against their personal religious convictions, and you would impinge on the freedom of religion of subsection 2(a) of the Charter."

May I request five minutes?

The Hon. the Speaker *pro tempore***:** Honourable senators?

Hon. Senators: Agreed.

Senator Joyal: Thank you, honourable senators. I get carried away. That's the first principle. There is no hierarchy of rights.

The second principle that the Supreme Court has well established is that no Charter right is absolute. In other words, freedom of expression is no more absolute than freedom of religion. As a matter of fact, freedom of expression has been limited if there is a cost to vulnerable members of society. It has been limited on the issue of pornography, for instance, or hate speech.

Freedom of expression, of course, is essential to democracy. As I say, we speak; that's why we debate. We all understand how important it is, but there is no absolute right. That's the second principle that the Supreme Court has come to very clearly, and I will mention some decisions of the court later on.

The third one, which is as much a principle, is that when we have to balance the rights, yours and mine, the court will have regard to the full context of the situation.

So when I was listening to, "You will compel me to address that person by ze, zir or a neutral pronoun," if it's done in the context of no intent to harm the person, no intent to vilify the person, no intent to raise detestation of the person, no intent to compel that person to prove his or her worth because of her gender expression, the context has to be taken into account. The fourth principle the court has put forward is that in the exercise of balancing the rights, the court has to determine the extent of the severity of the harm done or the limit put to the rights. Let's state the example of the municipal commissioner who is called to marry a couple who present themselves in a town hall or a city hall to get married. It is a decision of the Supreme Court that is very recent, 2012. It is not an old case. The court has balanced the rights and said that when you are confronted with two conflicting rights, the court will measure the impact. Does the exercise of the freedom impinge the core of the rights of one person versus a peripheral limit to the other right? In other words, the court will balance who is in a better position to maintain his or her right. If the municipal civil servant refuses to marry, well, then you state in front of everybody that those people have the right to marry, but they will not be able to exercise it.

On the other hand, the municipal civil servant who will be compelled to marry will not have to change his or her views in terms of his religious conviction, and it will be a minimal limit to his or her freedom of expression. That's what the court concluded in the Saskatchewan case that I just referred to. In other words, there is the core impact versus the peripheral impact.

I come back to the point raised during the debate we had. There are people who think, in their very strong intellectual conviction, that gay status can be cured. As you know, to be gay, before 1973, according to the psychiatric association, was to be sick. It was a mental disease. The medical and psychiatric science of the day all said you could be cured. The doctors would try to look into your past. Maybe you had a bad relationship with your parents. Your father was absent; your mother was dominating. All of the interpretations stemmed from this.

• (1500)

May I please finish?

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

Senator Joyal: May I request one more minute?

The Hon. the Speaker *pro tempore***:** One minute.

Senator Joyal: I am left with the impression of a dancer left with one leg in the air and the curtain falls. I'm grateful for your patience, honourable senators.

I think scientists can debate. The passage of this bill will not prevent those who hold the conviction — be they psychologists, doctors or any kind of profession — that gender identity is a social construction from continuing to research, debate, publish, animate and whatnot, as much as those who hold the view that you can be cured from being gay can continue to research and whatnot. That doesn't prevent it. It's when you wilfully stigmatize the person in front of you so that the person is outed and on the Internet they run after you and you become the object of vilification — that's where the balance between my rights and your rights stems. I think the court knows the answer very well.

Thank you.

[*Translation*]

The Hon. the Speaker *pro tempore***:** That is a very good way to finish!

[*English*]

Hon. Lillian Eva Dyck: Honourable senators, I rise today to speak on Bill C-16. I wasn't really intending to do so, but I felt compelled to speak about it. I feel very honoured to follow the

previous speakers as a scientist, and now a senator, debating from a different kind of platform.

Today I wanted to focus on the aspect of compelled speech and freedom of speech, which is pretty much what our colleague Senator Joyal has just done, and what this means in terms of the balance of rights between a person who might identify as a transgender individual versus someone else who is interacting with that individual.

The phrase "compelled speech" is an intriguing one. What does it actually mean? I don't think people really understand what that phrase means. In some sense, I think that's probably a deliberate tactic. That phrase has been invented to convey the concept that you'll be compelled to call a transgender individual by a pronoun like "zi" or "zir," or some of these other ludicrous pronouns, frankly, that no one has or even heard of until the last two months.

In fact, it reminds me of the phrase that has been touted here before, namely, "unborn child." What is an unborn child? An unborn child is a fetus, but if you use the phrase "unborn child," it sounds much more alive than if you use the word "fetus."

Words convey certain meanings and invoke certain ambiguity in the individual. With "compelled speech," we all rise up and say, "No one is going to compel me to say or do something that I don't want to." We kind of get our backs up and say that it's infringing upon my rights as an individual to say what I wish to say.

As other senators have said previously, there's nothing in Bill C-16 that will force someone to call a transgender individual by any of these unusual pronouns. But "compelled speech" is really talking about limiting free speech. It's really an aspect of freedom of speech. I think what we need to consider when we talk about freedom of speech is what Senator Joyal has just said, namely that it is a balance. When you're speaking, you are speaking to someone in a dialogue. It isn't just about your rights but also about the rights of the person to whom you're speaking and having a conversation. It's a very important aspect of the bill.

It really bothered me when I thought about this aspect of "compelled speech" and the amendment. Frankly, I didn't vote for the amendment. I was against it, but later I thought that if we had accepted the amendment, it would be a bit dangerous because it would then validate that concept that somehow there is such a thing as "compelled speech." So I think it was good that the amendment was not incorporated because it validates a nebulous concept, which is misleading.

Senator Joyal also said that when it comes to "gender identity," this is not just two words. This is very important. Every single human being has a gender and sexuality. That is essential to who you are. For a transgender individual, their gender identity is as important to them as it is to us, but they're being singled out because they don't fit into this illusion of a binary concept of just being male or female. For example, for a male, if you call a man "her" or "she" or you call him "nancy," that's usually interpreted as an insult. If you continue to call that man "nancy" or "she," then you continue to insult that man because I think the man would like to be called by the proper pronoun.

Similarly for me, as a woman, if someone calls call me "he" — and my hair is short, so sometimes I am called "he" — the person is apologetic because they didn't want to insult me. If they continue to call me "he," however, then I know it's an insult. I would say, "I am a woman. I would like you to call me by the proper pronoun." If you continue to do that to me, I would consider that harassment and I could probably file a harassment case under the human rights laws. The important thing to remember in human rights law is that perception is vital. The perception of the person who feels they are being harassed is vital.

So the perception of the transgender individual is that for a trans woman to be called "he" repeatedly is a putdown, like it would be to call me "he." You know by the person's body language and by their reaction that it's offensive and an insult. That person would then say, "Please don't call me that. If you continue to do that, it is most definitely a case of harassment."

Honourable senators, it's very important that we remember that gender identity is a key component of who we are as human beings, and this idea of perception is key to the issue of harassment and discrimination. I think Senator Joyal talked to you about this when he said, "We have to put it into the proper context." Perception is a key concept that must be considered because perception of harassment is the key to understanding the dynamics of harassment between what could be called the harasser and the victim.

This concept of perception is also critical to understanding the concept of freedom of speech. As pointed out earlier, freedom of speech does have limits. There is no such thing as complete freedom of speech. We always have to balance it with the rights of the person with whom we're having a conversation and with their right to live the life that they can lead in this society, free from harassment.

Even here, in the chamber, we do not have unlimited freedom of speech. Our Rules do not permit unparliamentary language, or sharp or taxing words. We do that so we can have proper conversations and so that we're not unwittingly putting down another senator. We always call each other "honourable senators," or "senator," or "honourable colleagues." We don't call each other formally by our first names here in the chamber.

• (1510)

As an example, recently when Senator Plett felt or perceived that Senator McPhedran had called him a bigot, he raised a point of privilege and the Speaker ruled in his favour. In that case, Senator Plett's perception was validated, so that underlines a concept of perception. Senator McPhedran said it was not her intention to offend Senator Plett. So there was a ruling made on the balance between what was said, what was intended and what was perceived. That's what freedom of speech is all about, and that's also what harassment is all about. If Senator McPhedran had continued to speak along those lines, then she could have been found guilty of harassment, but she did not do that.

How does this relate to Bill C-16 and pronouns? I've already outlined that. If I or any other person were to call a trans woman by the pronoun "he," that trans woman may well be offended. If

that trans woman spoke to me and said to me, "Please, I would rather be called 'she' than 'he'," and I ignored that and continued to call that trans woman "he," that would be discrimination. She could take this case to a human rights tribunal, and in all likelihood I would be found guilty of harassing her because I called her by the wrong pronoun and had done it willingly and as a way to discredit her, humiliate her or make her feel less than what she was really worth.

Continually calling someone by the wrong pronoun can be a way to put them down. It is a way to harass someone. It is somewhat akin to name-calling. It's not exactly name-calling. As anyone from a different race knows, race baiting, calling you by all those names we don't dare repeat in the chamber, is a way to put that person down. In my view, calling someone by the wrong sexual identity, the wrong gender identity, is the same thing because your race and your sex define who you are and we should respect that. We should respect the wishes of those who wish to be called by the correct pronoun and terminology.

I support the passage of Bill C-16 because it goes beyond what provincial human rights acts have done. Provincial human rights acts will prevent discrimination on the basis of employment or entry into public places, but this bill will actually amend the Criminal Code. That is really important because the Criminal Code applies to the whole country and will protect transgender individuals who we know, the statistics prove, are more likely to be physically assaulted.

By strengthening the Criminal Code to ensure that there are sufficient consequences for physically assaulting a transgender individual, we are actually enhancing their safety. The human rights acts will not do that. They prevent you from harassing the person, but the Criminal Code prevents you from physically harming them. The rate of physical harm is severe, so I'm in favour of this bill.

Hon. Lynn Beyak: I have a question, if I may.

The Hon. the Speaker *pro tempore***:** Will you take a question, Senator Dyck?

Senator Dyck: Yes.

Senator Beyak: I took a university tour of the United States for research in 2008, and compelled speech was on the dockets then because of the First Amendment in the United States, so it's not a new term. I guess words do matter, but an unborn child three days before birth is a child. A fetus is three, four or five months. People use that terminology because it's a fetus right up until the birth, of course. However, to say here in Canada when we're paying taxpayer money to abort babies at eight or nine months, it's a debate that we maybe should have. An abortion at three months perhaps. We need a law in Canada.

I was just questioning, as a woman, why you would support Bill C-16 when feminists have fought for so many years to protect women from the violence perpetrated against them by men. This will allow men to go into women's change rooms and bathrooms across the country. I would like your opinion.

Senator Dyck: Senator Beyak, I explained that question about the bathroom predators in my speech at second reading, that the predators in the bathroom is an overinflated fear being inflicted upon the country and that we also have to balance the rights between the transgender community and the rest of Canada. If you were to look at my second reading speech, you would find the answers there.

Senator Beyak: I did read it, but I think that one incident of violence in a bathroom against a woman is one too many.

Hon. Dennis Glen Patterson: I would thank senators who have spoken on this bill, which has gained such symbolic importance, but I'd like to particularly thank Senator Frum for her comments yesterday. I wish to associate myself with them and take a few moments to reinforce them.

She has eloquently expressed what I have considered from the beginning to be a serious flaw in the bill, which is that the definitions of the protections for gender identity and gender expression are, as she so eloquently stated, vague, loose and imprecise. As she said, the bill creates "statutory protection of an individual's choice" — and I thought this was very eloquent — coming from a woman in particular — "of fashion, makeup and hairstyle." That's what gender expression means, she said, "your look, your air, your manner and countenance." Now, how precise is that?

She also pointed out to me the striking irony of a bill supposedly about advancing human rights in establishing gender expression and identity as protected grounds as opposed to transgender as protected grounds, redefining what it means to be a woman from something biological to something defined by external experience. I agree with Senator Frum that this bill will, I fear, trigger litigation from women who seek to prove a right to women's-only safe spaces and sex-segregated activities. Senator Joyal has also predicted there will be litigation from this bill.

It was very impressive to me to hear a woman's point of view about how a woman may desire a female-born woman roommate, be it in an athletic or spa facility, prison cell, elder care facility or abuse shelter, where a woman may wish to be protected from, as Senator Frum described it, the male gaze.

Now, I do want to be very clear that, like everyone else I think who has spoken on this bill, I do fully support the right of transgender individuals to enjoy the same protections as every other member of society. I've met with transgender individuals about this bill who have urged me to support it, and I pledged to give it serious consideration.

But my concern remains that in protecting this right I'm also concerned that we must respect the rights of other members of our society. This vague definition of gender expression gives me cause to worry about protecting the rights of others.

So in thinking about how to vote, I decided I must register my concerns about this vague definition of gender identity and gender expression and the consequences of that vagueness. This bill will be litigated, and those who think their rights have been infringed will have to go to the time and expense of seeking redress from the courts.

Having said all that, this is a government bill. I do believe that there is an important role for an official opposition in our bicameral Parliament, and I was pleased to see Senator Harder reaffirm that yesterday in speaking to a point of order on another bill.

• (1520)

I also believe that even as independent senators — by the way, I do consider myself as an independent senator who's grateful to be working with like-minded independent senators in the Conservative caucus — we should respect the will of the elected members of the other place, as I do, unless there are exceptional circumstances of human rights, constitutional rights or laws that violate civil rights and are unfair to regions or minorities. So I do fear that this bill will impact some rights while advancing others, but I am confident the courts will deal with that.

By the way, I'm frankly not persuaded by the free speech arguments.

Your Honour, though it is badly drafted, to me, this bill has become a symbol of tolerance and modernity, so I do hope that it creates better lives for those who have been persecuted, though I frankly doubt that laws enacted even by Parliament can ever do much about altering human behaviour.

With all those reservations and having put them on the record, I'm going to support the bill. Thank you.

The Hon. the Speaker *pro tempore***:** Senator Patterson, would you accept a question?

Senator Patterson: Yes.

Senator Dyck: Thank you, Senator Patterson. I know often people say laws do not alter human behaviour. I think that's true to some extent, but let me ask you a question about laws regarding drunk driving. Has that altered human behaviour?

Senator Patterson: I think I said not all laws alter human behaviour.

I think, in fact, what happened, though, with the drunk driving laws, which have been on the books for decades, there was probably more of an impact on public awareness, and campaigns of those like Mothers Against Drunk Driving had more to do with the reduction of impaired driving offences in Canada. In that connection, may I say that one good thing about the hours we've spent debating this bill and the attention it has been given in the media, I do believe and hope that it has elevated the situation of transgender people, dramatized the persecutions that we've heard about them suffering. I hope public awareness will improve their situation, even though I don't think the mere words of a statute will have that much impact.

Senator Dyck: I have a supplementary question. Yes, I think public awareness is critical to changing the behaviour of people.

[Senator Patterson]

But with regard to drunk driving, in Saskatchewan, we have just increased the penalties for drunk driving because despite that public awareness, even one of the ministers responsible for highways and traffic, who was warning people not to drive while drunk, was convicted of drunk driving. Therefore, now the laws have been changed to increase the penalties.

Clearly, I think the penalties are important. Would you agree it's a combination of penalties as well as education?

Senator Patterson: Well, I would agree that laws can have an impact if they're well drafted. I don't think this is a well-drafted law.

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

Hon. Senators: Question.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Mitchell, seconded by the Honourable Senator Gagné, that this bill be read a third time.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker *pro tempore***:** All those in agreement, please say "yea".

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore***:** In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** I see two senators standing. Have the whips come to agreement?

Senator Plett: Thirty minutes.

Senator Mitchell: Thirty minutes.

The Hon. the Speaker *pro tempore***:** Senators, we will meet at 3:54.

Call in the senators.

• (1550)

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Jaffer
Ataullahjan	Joyal
Baker	Kenny
Bellemare	Lang
Bernard	Lankin
Boisvenu	Maltais
Boniface	Manning
Bovey	Marshall
Brazeau	Marwah
Campbell	Massicotte
Carignan	McCoy
Cordy	Mégie
Cormier	Mercer
Dagenais	Mitchell
Dawson	Mockler
Day	Moncion
Dean	Oh
Downe	Omidvar
Duffy	Pate
Dupuis	Patterson
Dyck	Petitclerc
Eaton	Pratte
Eggleton	Ringuette
Forest	Runciman
Fraser	Saint-Germain
Frum	Seidman
Gagné	Stewart Olsen
Galvez	Tannas
Gold	Tardif
Greene	Wells
Griffin	Wetston
Harder	White
Hartling	Woo—67
Hubley	

NAYS
THE HONOURABLE SENATORS

Batters	Neufeld
Beyak	Ngo
Doyle	Plett
Enverga	Tkachuk
Housakos	Unger—11
Martin	

ABSTENTIONS
THE HONOURABLE SENATORS

Cools	Smith—3
MacDonald	

• (1600)

POINT OF ORDER

Hon. Mobina S. B. Jaffer: Honourable senators, I have a point of order and I do this very reluctantly, but I believe our time has come that when we talk about people in this chamber, we have to respect all of us in the chamber.

There are two Muslim women here today, and we feel that today we were addressed as not being modest and, Your Honour, I would like to do this point of order because I bring to your attention what was said by Senator Enverga:

> Let us consider the practices that are important to those who are of that faith. All here are aware of the practice of many Muslim women to wear head covers, often in the form of a hijab. Generally we find that the head covers are worn as a symbol of modesty and privacy so as to not show one's hair to men. If a person is unwilling, for religious or cultural reasons, to not show a man one's hair, how are we expected to force such a person to share the most private and intimate of spaces with someone who appears, in all physical and biological ways, to be of the opposite sex?
>
> I ask, honourable senators, is it possible that, in passing this bill, we would be discriminating against our Muslim friends, as well as other groups, and their practice and policy of modesty.

Your Honour, I don't know how else to say but to say that with everything that is happening around us just now, with all the crime statistics we are hearing, in this chamber, I respectfully ask that you respect the two women that sit with you. To point to a faith — and just the one faith — when we know as a fact many faiths have sent us letters that they do not support this bill. And I'm not asking anybody here to support this bill or not to support this bill, but, honourable senators, I say to you, we are hurting; we are really hurting.

This hurts us. Don't do this to us, and in the Senate, we have a rule, Your Honour, regarding unparliamentary language. It says under 6-13(1) that "All personal, sharp or taxing speeches are unparliamentary and out of order." I respectfully say to you, my colleagues, two women sit amongst you. Don't call us un-modest. We also have the same challenges all of you who are of faith have; don't make it harder. I believe it is unparliamentary to call us not modest.

I respectfully say to you, my colleagues, two women sit amongst you. Don't call us un-modest. We also have the same challenges all of you who are of faith have; don't make it harder. I believe it is unparliamentary to call us not modest.

Hon. Tobias C. Enverga, Jr.: Your Honour, colleagues, I did not intend to hurt anybody or say anything that could be perceived as negative about Islam or our Islamic women here.

What I had intended to convey was my concern for their protection. I had indicated that many Muslim women wear head coverings as a sign of their modesty. I never said or implied that all Muslim women wear a hijab. I feel that all Muslim women, including those who choose to wear a head covering as well as those who do not, should be respected and protected in their right to modesty and privacy. That was my intent.

If I hurt anybody here, I apologize for that. It was never my intent whatsoever.

The Hon. the Speaker: I thank Senator Jaffer for raising this point of order about language in debate, and I very much appreciate Senator Enverga's apology. I do remind senators of rule 6-13(1), and that not just sharp and taxing comments are unparliamentary and out of order, but also personal comments. When you are preparing your speeches, honourable senators, I ask you to please refer to this rule and to be constantly mindful of the decorum of the Senate and respect for all the individuals who make up this place.

CITIZENSHIP ACT

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

The Senate proceeded to consideration of the message from the House of Commons concerning Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act:

Tuesday, June 13, 2017

ORDERED,—That a message be sent to the Senate to acquaint their Honours that, in relation to Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act, the House:

agrees with amendments 1(a), 1(c), 4 and 5 made by the Senate;

proposes that amendments 1(b)(i) and (ii) be amended by replacing the number "60" with the number "55";

proposes that amendment 1(b)(iii) be amended by replacing the words in paragraph 5(1.04)(a) with the following words "made by a person who has custody of the minor or who is empowered to act on their behalf by virtue of a court order or written agreement or by operation of law, unless otherwise ordered by a court; and";

proposes that with respect to amendment 2:

the portion of subsection 10(3) before paragraph (a) be amended by deleting the word "revoking" and adding the words "may be revoked" after the words "renunciation of citizenship";

paragraph 10(3)(d) be amended by replacing all the words after the words "advises the person" to the word "Court." with the following words "that the case will be referred to the Court unless the person requests that the case be decided by the Minister.";

the portion of subsection 10(3.1) before paragraph (a) be amended by replacing the word "received," with the words "sent, or within any extended time that the Minister may allow for special reasons,";

paragraph 10(3.1)(a) be amended by deleting the words "humanitarian and compassionate" and adding after the words ''including any considerations" the words "respecting his or her personal circumstances" and by adding the words ''of the case" after the words ''all of the circumstances'' and by deleting the word ''Minister's" before the words "decision will render the person";

paragraph 10(3.1)(b) be amended by replacing the words "referred to the Court" with the words "decided by the Minister";

subsection 10(4.1) be amended by replacing that subsection with the following "(4.1) The Minister shall refer the case to the Court under subsection 10.1(1) unless (a) the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied (i) on a balance of probabilities that the person has not obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, or (ii) that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case; or (b) the person has made a request under paragraph (3.1)(b).";

subclause 3(4) be amended by deleting all the words beginning with "(4) The Act is amended by adding the following" to the words "under this Act or the Federal Courts Act.";

proposes that amendment 3(a) be amended in subsection 10.1(1) by replacing the words "If a person" with the words "Unless a person";

proposes that with respect to amendment 3(b):

subsection 10.1(4) be amended by replacing all the words beginning with "If the Minister seeks a declaration" and ending with the words "knowingly concealing material circumstances." with the words "For the purposes of subsection (1), if the Minister seeks a declaration that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the Immigration and Refugee Protection Act, the Minister need prove only that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.";

by deleting subsection 10.1(5);

proposes that amendment 6(a) be amended by replacing clause 19.1 with the following "19.1(1) Any decision that is made under subsection 10(1) of the Citizenship Act as it read immediately before the day on which subsection 3(2) comes into force and that is set aside by the Federal Court and sent back for a redetermination on or after that day is to be determined in accordance with that Act as it reads on that day. (2) A proceeding that is pending before the Federal Court before the day on which subsection 3(2) comes into force as a result of an action commenced under subsection 10.1(1) of the Citizenship Act is to be dealt with and disposed of in accordance with that Act as it read immediately before that day.";

proposes that amendment 6(b) be amended by replacing clause 20.1 with the following "20.1 If, before the day on which subsection 3(2) comes into force, a notice has been given to a person under subsection 10(3) of the Citizenship Act and a decision has not been made by the Minister before that day, the person may, within 30 days after that day, request to have the matter dealt with and disposed of as if the notice had been given under subsection 10(3) of that Act as it reads on that day.";

respectfully disagrees with amendment 7 because it would give permanent resident status to those who acquired that status fraudulently;

proposes that amendment 8 be amended by replacing all the words after "(3.1) Subsections" with the following words "3(2) and (3) and 4(1) and (3) and section 5.1 come into force on a day to be fixed by order of the Governor in Council.".

Hon. Peter Harder (Government Representative in the Senate) moved:

That the Senate concur in the amendments made by the House of Commons to its amendments 1(b)(i), 1(b)(ii), 1(b)(iii), 2, 3(a), 3(b), 6(a), 6(b) and 8 to Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act;

That the Senate do not insist on its amendment 7 to which the House of Commons has disagreed; and

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

Hon. Ratna Omidvar: Honourable senators, I rise for what I hope and I'm sure for what you hope, too, is the last time I speak about Bill C-6. I thank Senator Harder for his motion, which I support. Perhaps like me, you have received emails and phone calls from citizens and those hoping to become citizens.

I have heard personally from students, mothers, grandmothers, businesspeople, live-in caregivers. No two stories are ever the same, but they are joined by a common thread, the desire to become a full participant in this country, the desire to become a Canadian.

• (1610)

I will limit my remarks to the contents of the message we've received. I believe it to be a landmark message. We sent three amendments over, and they have sent a message back approving two of three.

Let me briefly address each amendment moved respectably by Senators McCoy, Oh and Griffin.

I'll begin with the amendment that I fought the hardest for, restoring due process for citizens facing revocation. When we set out to fix the legal gap that saw citizens lose their citizenship without any semblance of due process, the senators who worked with me on this — Senators McCoy, Pratte, et cetera — we had a few non-negotiable criteria: a full and fair hearing before an independent decision-maker, full disclosure of the facts of the case, consideration of humanitarian and compassionate grounds, and safeguards on the front end of the process so that when a person receives their revocation notice the process is laid out in plain language.

My colleagues and I chose the Federal Court as the preferred route for redress for various reasons, although we knew that this was not the only acceptable option.

I often said, using my famous — perhaps, overused — metaphor of a house that I don't really care if it's a blue house, a red house or a green house. I care that we have a house.

I think the government has given us a house and, in fact, it is a stronger house than what we proposed. That is my conclusion after consulting with Senate legal counsel, with outside lawyers and my good friends at the British Columbia Civil Liberties Association.

The Senate amendment, the McCoy amendment, restored the right to a hearing at the Federal Court for anyone facing revocation on grounds of fraud or false representation. In our model, individuals were required to exercise their right to go to court. In other words, they had to say to the minister, "I want to go to court," and those who didn't say that would have recourse to ministerial decision.

The government has flipped this model. Everyone gets to go to Federal Court. Individuals can opt out and have a ministerial decision instead. So someone may opt out of a Federal Court hearing, for example, if it's a clear case of fraud, so why waste their time and money?

There is another important change in the government's version before us. The Senate amendment would have removed double revocation so that you would not lose your citizenship and permanent residency in one fell swoop. The government puts that double revocation back in place. If your fraud reaches back to your permanent residence application, you lose both your citizenship and your permanent residence status, and become a foreign national.

This is acceptable in my opinion for one very important reason: Because we have a stronger front-end process where the majority

of cases are decided in Federal Court, not by a minister or his or her delegate — a Federal Court, in particular, which will take humanitarian and compassionate grounds into consideration. It is on balance a strengthened model.

It won't escape your notice that the Federal Court's decision in the *Hassouna* case, which came down about three weeks ago, no doubt influenced the message that we have before us. In that decision, Madam Justice Jocelyn Gagné ruled the current revocation process to be fundamentally flawed and unfair. She found four areas of due process that were missing: an oral hearing, disclosure of the case against the individual, an independent decision maker and the opportunity for humanitarian and compassionate review. These ingredients sound familiar to me. I hope they sound familiar to you. All are found in the Senate amendment, and all are found in the government motion.

I want to give credit where credit is due. I credit Immigration Minister Ahmed Hussen for his leadership and collaboration toward strengthening our proposal. It has been an honour to work with so many talented people on the passage of this proposed law. I'm still young in the Senate, if I can use that word to describe a senior citizen, but I believe I would remember — fingers crossed — the passage of this amendment as one of my proudest moments.

I want to now speak to the second amendment, Senator Oh's amendment. I want to congratulate Senator Oh for introducing this amendment. The government has agreed that this important issue ought to be addressed by Bill C-6. It widens the circle of inclusion by enabling minors to independently apply for citizenship.

Under the current rules, minors who are without guardians or who have parents who are not citizens or who have parents who don't want to be citizens are excluded from the citizenship process. As Senator Oh pointed out, the only exception is to request a waiver for a grant of citizenship on compassionate grounds from the minister, a highly discretionary and lengthy process.

I hope the government, and I hope Senator Oh, will see this change as the beginning of what I think is a larger examination that is required on the rights of children and youth across the immigration and citizenship portfolio.

Finally, the amendment to increase the age exemption for language and knowledge testing: I did not agree with the principle of this amendment, but I will not delve into the reasons for or against. We've already had a very constructive, substantive debate here in the chamber, and I thank my colleague Senator Griffin for leading that respectful debate. Instead, I will ask us to defer to the decision of the other place as a matter of process on this particular issue. Let us remind ourselves that the difference here is a five years — an age exemption of 55 years versus 60 years.

Colleagues, we have fulfilled our role and function as senators by examining this particular issue and by voting, on division, to advise the other place on an alternative. They said 55, we said 60 and they have said 55 again.

So what are we to do? What is the role of the appointed Senate when two houses are divided? When I'm in confusion and perplexed, I reach for wisdom from my books. I came across a quote in Shakespeare, from a very famous play you will all remember:

> Two households, both alike in dignity,

This, of course, is from *Romeo and Juliet*. I will not pretend to having any Romeos or Juliets in mind, but I think of the word "dignity" — "Two households, both alike in dignity."

In this circumstance, I believe the Senate can do three things, all with dignity. It can concur, it can insist on its amendment or it can make a new, somewhat in-between proposal. I do not pretend there's just one answer for all contexts. It is more likely and more credible that we decide differently every time, depending on the issue.

On this particular issue, I believe the right decision is to concur and to defer to the will of the elected government. We are not dealing with a question of constitutionality; we are not dealing with a conflict of jurisdiction or authority; we are dealing with minority rights. However, both sides of the debate claim to uphold these minority rights.

Moreover, we have a very clear mandate from the elected Commons: The message comes back to us with the majority of votes, 214 to 92.

I will end on something even clearer: That 78 sitting days is far too long for a significant government bill to live in the Senate. I do not want it to reach 79 or 80 days. Timing matters.

I have heard two important words that uphold bicameralism: robust and functional. As an appointed and complementary body, we must be robust, but we must also be functional.

Once law, Bill C-6, as amended by both houses, will facilitate citizenship, and restore equality and citizenship. These are significant changes that are long overdue.

I urge you to think of what this bill means for Canadians and for Canadians-in-the-making, especially in this very special moment in our history, as we mark our one-hundred fiftieth birthday. I urge you to vote in favour of this motion.

Thank you very much.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak to Bill C-6.

I want to thank Senator Omidvar, the sponsor of Bill C-6. She has worked tirelessly on this bill; I thank you for your work, Senator Omidvar.

• (1620)

I also want to thank Minister Hussen for working with us on our amendments. Honourable senators, this bill has been debated for a long time, and all aspects of it have been debated. Our work

has been really thorough and there are two important amendments that were accepted. One was an amendment on the fairer process, and that the review would go to the Federal Court before your citizenship is revoked.

Second was the protection of children. I want to once again thank Senator Oh for the amendment he brought on children's rights.

Senators, I want to remind you what I had said in a previous speech. I don't even remember at which stage that was now, because we have had so many speeches. In one of my speeches, I spoke about the challenges children face.

I want to tell you the story of Mohamed, who was a young refugee child. He and his mother fled from Somalia. It is a long story, but when he finally arrived here after many years, his mother could not apply for citizenship because she did not know English.

Mohamed tried very hard to get citizenship. His mother was traumatized and she did not have a waiver for language. Unfortunately, Mohamed also had to wait until he turned 18, as he was not able to obtain a waiver. Now, as a result of the hard work done by all of us, Mohamed will not be in the same predicament, nor will other people who are in the same circumstances.

Honourable senators, I believe that we have made sure that there is a fairer process for revocation of citizenship, and we have empowered children.

Now, it is time to vote.

Hon. Victor Oh: Honourable senators, I rise today to speak on Bill C-6, an Act to amend the Citizenship Act and to make consequential amendments to another Act.

Let me start by saying that I support the decision of our colleagues in the House of Commons to reject the amendment that proposed to set the maximum age limit applicable for the requirements to demonstrate adequate knowledge of one of the official languages, as well as knowledge of Canada and the responsibility and privilege of citizenship, from 54 to 59 years of age.

My reasoning is simple: While it was previously sufficient to demonstrate practical listening and speaking skills, applicants must now meet more stringent criteria.

The stricter requirements have had a negative impact on permanent residents who came to Canada under the family class, or the humanitarian and refugee class.

It is not a prerequisite for such individuals to demonstrate language proficiency in an official language to immigrate to Canada.

Many permanent residents in this group are from ethnic minorities and low-income backgrounds.

Women in particular are disproportionately affected, because family and child care responsibilities often take precedence over opportunities to upgrade their language skills.

Let me restate what I have said before: While the ability to communicate and understand each other is important, it is not an indicator of the extent to which a permanent resident contributes to the economic, social and cultural development of Canada. It is also not an indicator for how strong their sense of identity, attachment and belonging to Canada is.

Colleagues, there are many permanent residents who have made Canada their home, and wish to remain here. This bill will enable those over the age of 55 to naturalize and become full citizens of Canada.

I personally believe that this is a welcome development, but recognize that there are still remaining issues that need to be addressed to make citizenship more accessible.

For example, permanent residents between the ages of 18 and 55 who are unable to meet the language and knowledge requirements will still continue to be disenfranchised, in particular those with limited education and low literacy skills.

The request for a waiver on compassionate grounds is not a feasible option for such individuals because this ministerial direction is only granted in exceptional cases, more often than not for medical reasons.

Now, I will move on to discuss two other amendments that were adopted by our colleagues in the House of Commons.

The first amendment aims to increase procedural fairness with respect to citizenship revocation proceedings. I thank Senator McCoy, who introduced this amendment, for her diligent work. I will not comment on the specifics, but would like to make a quick observation.

Since our Federal Court will soon become the main decision-maker in most revocation cases related to fraud and misrepresentation, it is critical that we allocate the resources necessary to make sure that our justice system remains fair and efficient.

A first step in this direction would be for the government to prioritize filling the vacancies in federally appointed court benches.

The second amendment supported by our colleagues in the House of Commons would ensure equitable access to citizenship to all children with permanent resident status.

I introduced this amendment in April because of my belief that Canada has a responsibility and an obligation to ensure the rights of children and youth are protected, especially in situations where those most vulnerable are deprived of rights and opportunities.

I am grateful to the advocates, academics, lawyers and community members who brought this issue to my attention, and who provided me with support and advice over the past few months.

I am also thankful to my colleagues in the Senate and House of Commons, who recognized the urgent need to address a fairly serious discrimination against children.

For those who are still unfamiliar with this amendment, please allow me to explain its purpose.

Under the Citizenship Act, there are only two processes available to those wishing to apply for citizenship in Canada.

The first process is available to eligible children who apply concurrently with a permanent resident parent or guardian, and to those who have a parent or guardian who is already a citizen.

The second process is available to permanent residents who are over the age of 18. In theory, children who cannot apply under the first process can request that the minister waive the age requirement on compassionate grounds to submit an application for citizenship under the process normally available to adults.

In practice, this is an ineffective and inappropriate option, for reasons that I have previously discussed.

This government bill made no initial attempt to increase access to citizenship to eligible children who were unable to apply for citizenship because of circumstances outside of their own control.

This amendment addressed this serious oversight by removing the requirement that individuals be over the age of 18 to submit an application for citizenship.

• (1630)

By changing the age criteria for eligibility, it provides children without parents or guardians, or whose parents are unable or unwilling to make an application, with the right to apply for citizenship on their own.

Similar to children who are now able to submit an application for citizenship with their families or who have a guardian who is a citizen, those who apply for citizenship independently will still need a guardian to sign their application and be required to countersign their application after the age of 14.

To be perfectly clear, this amendment does not change the process through which children would have entered Canada and obtained permanent resident status. It simply ensures that vulnerable children who meet all criteria for eligibility have access to citizenship.

Among those who would benefit from this change are children in the care of child welfare authorities. I want to note that the government made a small modification to this amendment in order to clarify who can apply on behalf of a child. As the minister explained, the reason is that the concept of "de facto guardian" was found to be unclear.

As a result, the language used in paragraph 5(1.04)(a) was changed from:

> . . . made by either parent, by a legal or de facto guardian or by any other person having custody of the minor, whether by virtue of an order of a court of competent jurisdiction, a written agreement or the operation of law; and

To:

> . . . made by a person who has custody of the minor or who is empowered to act on their behalf by virtue of a court order or written agreement or by operation of law, unless otherwise ordered by a court. . .

I have no objection to this modification because the alternative language has no significant impact on the substance of the amendment.

Colleagues, it brings me immense pride and joy to have played a role in advancing the rights of vulnerable children in Canada. Once this bill becomes law, the lives of many will be positively impacted by their ability to obtain permanent and secure status in our country.

The support from the House of Commons for this amendment demonstrates that Canada is committed to giving primary consideration to the best interests of the child. It is my sincere hope that the Senate will reaffirm this today. I strongly encourage you to vote in support of this bill.

[*Translation*]

Hon. Raymonde Gagné: Honourable senators, I take note of the message from the House of Commons on the Senate amendments to Bill C-6. The bill benefitted from being debated in the Senate, and I congratulate the sponsor of the bill, Senator Omidvar, on her tireless efforts. Congratulations!

The House of Commons chose to reject Senator Griffin's proposed amendment over the age at which a person would be exempt from the requirement to demonstrate knowledge in one of Canada's two official languages. Where Bill C-6 dropped the age limit from 65 to 55, Senator Griffin's amendment proposed it be dropped to 60 years.

The humanitarian grounds behind this reduction to 55 years are understandable and can even be described as noble. I understand them and accept the will of the other place.

However, for the equally important humanitarian reasons that prompted me to support Senator Griffin's amendment at third reading, I urge the government not to underestimate the role of language in the integration of newcomers to Canada.

It is not the intent of Bill C-6 that concerns me, but the unexpected consequences that may result from it. Since the awarding of citizenship is no longer linked to language learning for thousands of newcomers, it is no surprise that we find ourselves having to work twice as hard to encourage them to learn one of our two official languages. Will current resources be enough, or will a decrease in demand result in an equivalent decrease in allocated resources?

Dear colleagues, we will have to ensure greater oversight and follow-up with the government to ensure that this loosening of the law does not prompt it to cut language training for newcomers.

Think of how hard it must be for newcomers who do not have the opportunity to learn English or French. In the larger cities mainly, many newcomers might have the benefit of having members of their cultural community around, people they can interact with in their mother tongue. Outside these urban centres, however, the risk of isolation is very real. Job hunting even for a part-time job is difficult if not impossible.

The situation is even more challenging when it comes to health care. People with health concerns are vulnerable enough without the added trouble of a language barrier.

This isolation and vulnerability have a tremendous social cost. It goes without saying that in a bilingual country like ours, where access to health care in French remains a major challenge in a number of provinces, it is hard to imagine that there are enough resources to go around to ensure widespread access to health care in other languages. We must step up our efforts by investing so that all newcomers benefit from linguistic integration as soon as they arrive to Canada.

Honourable colleagues, we will have to monitor the impact of this change on the ability of newcomers over 55 to learn one of our two official languages. If there is a significant drop as a result, then both our country's linguistic duality and the successful integration of newcomers will suffer as a result. Let us not forget that integration is about more than just getting citizenship.

I support the underlying spirit of openness and welcoming in Bill C-6 and I will vote in favour of the message received from the other chamber. However, I hope that the government is committed to going beyond symbolic gestures and will implement a real linguistic integration program for all. That would be a great way to illustrate how important it is to us as Canadians that our new fellow citizens are properly welcomed and integrated. Thank you very much.

[*English*]

Hon. Dennis Glen Patterson: I haven't spoken on this bill at all. I do know that the matters before us relate to the message, the amendments rejected by the House of Commons. I do want to speak before this bill is voted upon because of a most odious provision the bill still contains and the reason I will vote against it today.

I absolutely fail to understand — and I listened carefully to Senator Omidvar — the reason for repealing the provision in the Citizenship Act to take away the privilege of Canadian citizenship to dual citizens convicted of terrorism. To me, those convicted of terrorist acts are guilty of subverting our democracy. They are traitors. They should not have the privilege of citizens. Our veterans fought and died for the freedoms that they will obtain when their citizenship is continued. And our veterans will turn over in their graves if we pass that provision in this bill.

• (1640)

To me, giving those cowardly anarchists citizenship after convictions for terrorism devalues what it means to be Canadian. I have asked my constituents what their views are on this. I couldn't find anyone who agreed it made sense, especially new Canadians, and I think public opinion polls bear this out.

I also never understood the reasoning of the man who's now the Prime Minister, in political debate in the last election, in saying that a Canadian is a Canadian is a Canadian. To me, that is a tautology that replaces logic. Even when he said "because it's 2015," it conveyed some logic and some reason for the position taken — not very much, but something.

So I must confess that I believe the only reason for that provision in this bill is to demonstrate that the new government is for change by undoing what the previous government put in place, and that is not a reason to vote for this bill. I will not vote even for the thoughtful amendments that have been put in place because of the utterly odious provision to restore citizenship to convicted terrorists.

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

Some Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Harder, seconded by the Honourable Senator Bellemare, that the Senate concur on the amendments made by the House of Commons to its amendments — may I dispense?

Hon. Senators: Dispense.

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

Some Hon. Senators: No.

Some Hon. Senators: Agreed.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do honourable senators have advice on the time?

Senator Mitchell: Thirty minutes.

Senator Plett: Thirty minutes.

The Hon. the Speaker: The vote will take place at 5:12. Call in the senators.

• (1710)

Motion adopted on the following division:

YEAS
THE HONOURABLE SENATORS

Ataullahjan	Hartling
Baker	Jaffer
Bellemare	Joyal
Bernard	Kenny
Boniface	Lankin
Bovey	Maltais
Brazeau	Marwah
Campbell	Massicotte
Cools	McCoy
Cordy	Mégie
Cormier	Mercer
Dawson	Mitchell
Day	Moncion
Dean	Oh
Duffy	Omidvar
Dupuis	Pate
Dyck	Petitclerc
Eggleton	Pratte
Forest	Ringuette
Fraser	Saint-Germain
Gagné	Tannas
Galvez	Tardif
Gold	Wetston
Greene	White
Griffin	Woo—51
Harder	

NAYS
THE HONOURABLE SENATORS

Batters	McIntyre
Beyak	Mockler
Boisvenu	Neufeld
Carignan	Ngo
Dagenais	Ogilvie
Doyle	Patterson
Eaton	Plett
Enverga	Runciman
Frum	Seidman
Housakos	Smith
Lang	Stewart Olsen
MacDonald	Tkachuk
Manning	Unger
Marshall	Wells—29
Martin	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1720)

[*Translation*]

THE SENATE

MOTION TO PHOTOGRAPH AND VIDEOTAPE ROYAL ASSENT CEREMONY ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 14, 2017, moved:

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

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

Hon. Senators: Agreed.

(Motion agreed to)

[*English*]

ADJOURNMENT

MOTION ADOPTED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate), pursuant to notice of June 14, 2017, moved:

> That when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Monday, June 19, 2017, at 4 p.m.;
>
> That committees of the Senate scheduled to meet on that day be authorized to sit even though the Senate may then be sitting and that rule 12-18(1) be suspended in relation thereto; and
>
> That rule 3-3(1) be suspended on that day.

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

(Motion agreed to.)

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I am ready to deal with the point of order raised yesterday by Senator Harder with respect to the motion, moved by Senator Pratte, proposing that the Standing Senate Committee on National Finance divide Bill C-44. Senator Harder's basic concern was that the adoption of the motion could result in there being two new bills, originating in the Senate, each requiring a Royal Recommendation, instead of just the one that came from the House of Commons.

[*Translation*]

Bill C-44 is a Budget Implementation Act. If the Senate were to agree to Senator Pratte's motion, it would start a process whereby the Senate proposes to the House of Commons that there be two bills, where we now have only one. One of the new bills would deal with the proposed Canada Infrastructure Bank, while the other would deal with all other parts of Bill C-44. This type of motion, which empowers a committee to do something it cannot normally do, is called a motion of instruction and requires one day's notice.

[*English*]

The process for dividing bills is rarely used. The general steps in such cases were recently summarized in the fifth report of the Rules Committee, presented to the Senate on April 6, 2017, and adopted on May 30. As the report notes, the process for dividing bills from the other place must include the Commons' agreement for the division to actually take effect. The adoption by the Senate of the Rules Committee's report makes it clear that, in at least some circumstances, we can initiate here in the Senate the division of a C-bill.

[*Translation*]

After searching the Senate Journals, only two precedents can be found in which the division of a bill has actually advanced beyond the adoption of a motion of instruction.

[*English*]

In 1988, the Senate proposed to divide Bill C-103. The Speaker ruled the motion of instruction out of order because of issues related to the Royal Recommendation. However, the decision was overturned. As a result, the Senate proposed to divide the bill. The House of Commons eventually rejected the proposal as an infringement of its rights and privileges, and the Senate did not insist on the division. The fact that the Speaker's ruling was overturned does not necessarily invalidate the analysis it contained. It is possible that the Senate simply chose not to apply the results in this situation.

Later, in 2002, the Senate dealt with Bill C-10. The Senate authorized the Legal and Constitutional Affairs Committee to divide the bill. In this case, no point of order was raised, and the motion of instruction was not challenged. The committee eventually reported its proposal as to how to divide the bill, and returned one part — Bill C-10A — to the Senate without amendment. It did not appear that Bill C-10A required a Royal Recommendation, so the issues at play in the current situation were not at the forefront of the Senate's considerations. The House of Commons was eventually asked to concur in the division of the bill and to agree to Bill C-10A. Although the Commons made it clear that they did not consider this a valid precedent, they did agree to the division of the bill and to the passage of Bill C-10A, which then received Royal Assent. The other part — Bill C-10B — was still under consideration when Parliament was prorogued.

Senator Pratte's motion follows how the Senate has dealt with the division of bills in the past, and certainly reflects the summary provided by the Rules Committee. As such, concerns about the specific mechanics of the process to be followed need not be further considered here.

The real heart of the question is whether, in the case of Bill C-44, the Senate can properly propose the division of the bill. This issue, in turn, is directly tied to the actual nature of Bill C-44. It is a government bill that originated in the House of Commons with a Royal Recommendation. If the bill were to be divided, this would be as a result of a proposal that originated in the Senate, and not from the government. One must ask whether it would be reasonable to still consider the two bills to be government initiatives from the House of Commons.

[*Translation*]

Far more significant, however, is the matter of the Royal Recommendation. The Rules define the Royal Recommendation as:

> The authorization provided in a message of the Governor General for the consideration of a bill approving the spending of public monies proposed in a bill. The Royal Recommendation is provided only by a minister and only in the House of Commons. This requirement is based on section 54 of the *Constitution Act, 1867*.

[*English*]

Without a Royal Recommendation, a bill appropriating public monies is not properly before Parliament. This fact reflects the fundamental principle that the Crown must agree to proposed expenditures, which first must be considered by the elected house. This principle is part of the foundation of responsible government and helps ensure a coherent fiscal structure. It is given expression in rule 10-7, which establishes that "The Senate shall not proceed with a bill appropriating public money unless the appropriation has been recommended by the Governor General."

During consideration of the point of order, it was explained that the provisions of Bill C-44 relating to the Canada infrastructure bank authorize substantial payments from the Consolidated Revenue Fund. Other elements of the bill also authorize payments from the fund. Therefore, the proposed division of the bill would result in two bills appropriating public money as a result of a Senate initiative. It is difficult to see how this respects either the spirit or the letter of the Rules and basic parliamentary principles.

> This does not, and let me emphasize this, mean that the Senate cannot amend a bill in accordance with rules and practice. The Senate can also defeat clauses, and even reject a bill entirely. All these possibilities are, however, substantially different from the Senate initiating steps to create two bills, both of which require the Royal Recommendation, where there was previously only one bill with one recommendation.

> Although the motion at issue respects the mechanics for splitting a bill, its adoption would, in effect, result in Senate action initiating two bills, each requiring a Royal Recommendation. For this reason I feel compelled to rule the motion out of order.

Hon. Diane Griffin: Your Honour, although I have the utmost respect for your ruling, pursuant to rule 2-5(3), I wish to appeal your ruling.

The Hon. the Speaker: Honourable senators, such a motion is non-debatable and it would read as follows:

The question would be whether the ruling of the Speaker is sustained.

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 "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: May we have the time for the bell?

Senator Plett: One hour.

Senator Mitchell: One hour.

The Hon. the Speaker: Call in the senators at 6:30 p.m., when the vote will take place.

• (1830)

Senator Griffin: Your Honour, I have just become aware of something from the other place. The headline is "Liberals ready to make changes to House rules on omnibus bills, prorogation."

Part of my concern in this appeal has been that I was concerned that there has been a history of omnibus bills being used in a way that was not appropriate, and I certainly didn't want to be part of having that happen here.

Senator Patterson: Point of order.

[The Hon. the Speaker]

The Hon. the Speaker: What is your point of order, senator?

Senator Patterson: We had a vote scheduled at 6:30, Your Honour.

Senator Cools: We have to vote.

The Hon. the Speaker: We do have a vote scheduled.

Senator Griffin, did you want to say something pertaining to the vote?

Senator Griffin: Yes. I wish to withdraw my appeal.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: What a farce.

Senator Fraser: I was not aware that a scheduled vote could be withdrawn. Could you explain that?

The Hon. the Speaker: A scheduled vote can be withdrawn with the consent of the Senate. I ask the question, do the senators agree?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: It needs unanimous agreement, so we will proceed with the vote.

The question is whether the ruling of the Speaker is sustained. Those in favour of the ruling will please rise.

Speaker's ruling negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Baker	Hartling
Bellemare	Jaffer
Boniface	Lankin
Bovey	Marwah
Campbell	McIntyre
Cools	Mégie
Cordy	Mitchell
Cormier	Moncion
Dean	Omidvar
Duffy	Pate
Dupuis	Petitclerc
Eggleton	Pratte
Forest	Ringuette
Gagné	Saint-Germain

Galvez
Gold
Harder
Wetston
Woo—33

NAYS
THE HONOURABLE SENATORS

Andreychuk
Ataullahjan
Batters
Beyak
Boisvenu
Carignan
Dagenais
Day
Doyle
Eaton
Enverga
Fraser
Frum
Griffin
Housakos
Joyal
Lang
MacDonald
Maltais
Marshall
Martin
McCoy
Mercer
Mockler
Neufeld
Ngo
Ogilvie
Oh
Patterson
Plett
Runciman
Seidman
Smith
Stewart Olsen
Tannas
Tkachuk
Unger
Wells—38

ABSTENTIONS
THE HONOURABLE SENATORS

Tardif—1

• (1840)

The Hon. the Speaker: Accordingly, the ruling is overturned and Motion No. 225 will be called in its place on the Order Paper.

Honourable senators, it is now 6 o'clock, and pursuant to rule 3-3(1), I'm obliged to leave the chair, unless it is agreed that we not see the clock. Is it agreed, honourable senators?

Hon. Senators: Agreed.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lankin, P.C., seconded by the Honourable Senator Petitclerc, for the third reading of Bill C-210, An Act to amend the National Anthem Act (gender).
>
> And on the motion in amendment of the Honourable Senator Enverga, seconded by the Honourable Senator Ngo:
>
> That Bill C-210 be not now read a third time, but that it be amended in the schedule, on page 2, by replacing the words "all of us com-mand" with "all of our com-mand".

Hon. Donald Neil Plett: Honourable senators, I rise to speak to Senator Enverga's amendment to Bill C-210. I begin my comments by saying that I have a great deal of respect for Senator Enverga and that it is always difficult for me to oppose a motion brought forward by one of my caucus colleagues.

Colleagues, artistic and literary integrity must remain a priority in a free and democratic society. The words of Shakespeare, Hemingway and Twain would have no literal or historical significance had we attempted to alter their words in the name of modernization.

The preservation of literary works allows us to remember and reflect upon where we came from and provides context for our future. Had the words of these great authors been altered by individuals other than the respective authors, there would be no reason to teach them to our children today.

I view this debate on the anthem in the same way. Judge Robert Stanley Weir penned our anthem to stand as a symbol of Canadian pride that would outlast him for centuries and millennia to come. Without Judge Weir's tireless efforts, we would not have these words that we cherish today.

I have been opposed to this bill since its genesis. As I stated in my third reading speech, symbols of a nation's heritage are meant to be static. They are not meant to be altered or adjusted as we see fit. I stand by those remarks today.

However, now, in this chamber, we are not debating whether or not to pass Bill C-210; we are debating Senator Enverga's amendment to this bill, in which he proposes the lyrics "True patriot love, in all of our command."

I am opposed to this change for the same reason that I am opposed to this bill. As Senator Fraser has stated, "We are not poets." This amendment is superfluous and does nothing to enhance literary integrity in our society, as the words that would be amended to this bill would, once again, not be penned by the author, Judge Weir.

The primary argument that Senator Enverga gave for his amendment is that it would remove the syntactical errors of the present bill. However, colleagues, I would submit that this is not, in fact, the case. Although I am not a noted grammarian, it is obvious to me that, syntactically, the word "us" is more appropriate than the word "our." Therefore, this amendment would not achieve its desired intent.

I would like to take a moment to discuss comments made by my colleagues opposite Tuesday evening. Senator Pate and Senator Lankin both made disheartening remarks in regard to the "tactics" being used by our Conservative caucus for Bill C-210. Both Senators Pate and Lankin accused not only the Conservative caucus of attempting to summarily kill the bill, but specifically accused Senator Enverga of doing the same.

Although I do not support Senator Enverga's amendment, members of this chamber deserve to have their voices heard. When we solemnly believe that legislation needs to be improved, we act. That is what we are charged to do when we take our oath, and that is what we should do each and every day. When we are talking about words as significant as our national anthem, we must ensure that we have it right. So I appreciate Senator Enverga's efforts to rectify a perceived grammatical problem.

When I presented my amendment before this chamber, Senator Lankin contacted me and informed me that she did not see a problem with my amendment, as it kept the heritage language of our anthem intact. However, when we discovered that unanimous consent would be required in the House of Commons to obtain a new sponsor for the bill, she withdrew her support.

Senator Lankin understands that it was not my intention to kill the bill, as she has stated in this chamber. However, members opposite accused me of using these same "tactics" in my amendment that they are accusing Senator Enverga of this week.

Tuesday evening in this chamber, Senator Lankin read an email that she had received in support of her efforts to amend our national anthem. She claims to have received countless emails expressing similar support throughout the course of our deliberations on this bill, and I believe her. We have received countless emails to the contrary.

Senator Lankin has not shared with you one particular email that she received from Ms. Mona Matteo. Ms. Matteo forwarded to me her email to Senator Lankin, with the subject of the email being "Thank you so much, Senator Plett. We love you!" More than one person in the world loves me.

Throughout the letter, she addresses numerous points of contention that I believe most senators would find helpful in this debate. Ms. Matteo tells Senator Lankin the following:

> Canada's 150-year-old history is not open to use as a legacy gift to private bill C-210 without input from all Canadians. Use your time on pay equality for women and sexual assault harassment in the workplace. That would be helpful. All women in Canada, including French-speaking Canadians, have a legacy to be proud of, and that legacy does not include ripping away "thy sons" from 'O Canada.'

Eloquent words, from a very concerned Canadian citizen, who the government is effectively ostracizing with the passage of this legislation.

And she is not alone. Throughout the course of our study on Bill C-210, my office has received numerous emails and phone calls from Canadians who share the same sentiments as Ms. Matteo. As I mentioned in my third reading speech, this anthem is the sole property of the Canadian people, a vast majority of whom are adamantly opposed to this change.

But why did the amendment I proposed not pass? Why did members opposite oppose the amendment without question?

The killing of this bill would not have been a foregone conclusion had my amendment passed — not even close. The Independent Senators Group did not even bother to consult with any parties in the other place with respect to their willingness to allow for a change of sponsorship in the house. They did not approach Liberal members of Parliament, NDP MPs, or even Conservative caucus members. Instead, they bombastically assumed that my amendment was not made in good faith and they denied it.

The amendment was set forth as a compromise. It was set forth in order to amend the anthem to indisputably more gender-inclusive wording, while preserving the literary integrity of the author. However, due to members' opposite lack of willingness to compromise, here we are. By not allowing the amendment to be thoroughly discussed and contemplated by all parliamentarians, both in this chamber and in the other place, my colleagues opposite unequivocally put their own legislation in jeopardy. Not allowing for flexibility in the wording, and speaking against even the idea of any amendment, is ridding this chamber and Canadians of the opportunity for an improved national anthem.

• (1850)

As a result, we have a piece of legislation before us that the author's family cannot support, most Canadians cannot support and I certainly cannot support — all based a hypothetical concern.

Colleagues, I would discourage you from discounting Senator Enverga's amendment as a tactic perpetrated by the Conservative caucus. All senators in this chamber have a right to improve legislation and do what they believe is right. Senator Lankin has that responsibility, Senator Enverga has that responsibility, and I have that responsibility.

And because I believe it is the right thing to do, I will regrettably vote against my honourable colleague's motion to amend. Not only do I implore other senators to do the same, but I ask that all senators do what they believe is right, and it is my contention that the right thing to do is defeat this bill.

Hon. David M. Wells: Honourable senators, I rise to speak to an amendment to amend Bill C-210, An Act to amend the National Anthem Act.

This is a subject that is dear to my heart, as you have heard me speak at second and third reading. Based on the passionate and thoughtful speeches of my colleagues during this debate, I can see this matter is of great importance to all present here today and many not present.

I want to tell you that it is also especially important to the many Canadians, including Newfoundlanders and Labradorians, who have reached out to me on this issue over the last year.

Before I begin my speech specifically regarding the amendment before us, I would first like to once again highlight what Senator Enverga reiterated — the importance of tradition to maintaining a sense of national pride and unity.

You will recall in my second reading speech when I remarked about upholding Canadian traditions. As a proud Canadian, I uphold many of Canada's customs and traditions to the highest degree, as they represent a very profound bond that links a citizen with their country's history.

Canada's past, present and future are all interwoven to create a story, a blueprint that tells of how our multiculturalism and diversity have greatly shaped Canada into a country we are all proud of today.

Canada is internationally known as a country that allows for endless potential to prosper and endless opportunity for its citizens, new and old, to become anything to which they set their minds and hearts.

Canada is a country where everyone is afforded equal opportunity to succeed. Your background does not define or limit your potential in Canada. On the contrary, your background is a source of pride and strength when lent to the mosaic that defines our nation.

"O Canada" is a very important part of our rich history and heritage and should not be tampered with on a whim and without careful consideration, colleagues, which we are doing today.

I think most would agree that Canada is still a relatively young country. We are just celebrating our one hundredth and fiftieth birthday this year, a great feat and wonderful milestone to celebrate, with countless years of growth and prosperity ahead. However, in our 150 years of nationhood, there are very few symbols that have taken on such a degree of importance and recognition as our national anthem.

Maybe the Canadian flag with the Maple Leaf, just imagine if someone tried to tamper with this symbol of Canadian pride. The anthem is an integral part of Canada's success and positive reputation both domestically and internationally. Canada is such a successful nation because it is a country in which we celebrate our differences.

We can always come together and unite under one shared sense of pride for our tradition and history. Our national anthem, "O Canada," is the very epitome of this unity, this coming together of all nations and backgrounds as one collective in Canada. It is a glue, an oral manifestation of unity and pride. In fact, the wise words of our well-respected colleague Senator Fraser summed this up perfectly. In her speech on March 28, during third reading of this bill, she said:

> If we are to become engrossed in the idea that we must at all times be correctly modern, we lose a part of our heritage. It may not be a perfect heritage — I'm not suggesting it is — but it is ours.

These are wise words which I believe we must heed.

However, honourable colleagues, I shall not digress. Let's look at the amendment at hand. As I have mentioned before, I do not wish to see the national anthem changed in any way, but if it must be, this amendment is a way forward because, as any good amendment should, it improves the bill at hand.

First, honourable colleagues, it only makes sense that if we are to improve our national anthem it be improved in every facet. Honourable senators, changing the line in question from "in all of us" to "all of our" would maintain the same symbolic change those inkling for a change desire, while allowing it to also improve to fit within the rules of one of our two official languages. In fact, colleagues, to be blunt, it would be embarrassing to have such a surface-level mistake plague a symbol of national pride.

Before someone submits a document to their boss, professor, teacher or even peer, they must also certainly check for grammar and usage to ensure professionalism and avoid results that come with such a lack of basic oversight. It is the sober second thought to which we are bound.

Why, then, should we present such an important piece of tradition to Canadians without offering the same courtesy? From this perspective, honourable senators, this amendment is certainly an improvement.

The second improvement made by this amendment is not as opaque and glaring but is no less important. That is the symbolic improvement it makes to the legislation. As Senator Enverga mentioned in his speech presenting the amendment, "us" is a word with an exclusive connotation, as it can easily be read as meant to apply to a certain group of people, while "our" implies the opposite, the inclusivity and closeness to our anthem. Although this seems trivial, I agree with Senator Enverga that this issue needs to be addressed. Not to be cliché, but if we are going to change a symbol of tradition and national pride to be more inclusive, we need to put both feet in and make sure the language fully reflects the intent of the original bill as Senator Plett's defeated amendment attempted to do.

In short, colleagues, Senator Enverga's amendment changing "all of us" to "all of our" is one that improves on both of the flaws in this bill.

I want to mention, while I have the opportunity to stand and continue speaking not just to this amendment but to the bill itself, that Senator Lankin mentioned in her speech:

> Thirty years, my friends. The last 15 years, this exact same bill with these exact same words have been before us five different times, and never once has it gotten to a vote in the Senate.

Well, colleagues, that may be the case. But since 1980 — and that is 37 years — a bill respecting the national anthem has come forward ten times in the other place and three times in the Senate. It has not been partisan, and I don't see this as a partisan issue. It has come forth in Conservative governments, majority and not, and in Liberal majority governments.

Colleagues, it has been voted on in the House of Commons and was defeated at second reading in the Second Session of the Forty-second Parliament on September 22, 2014. It was a bill

similar to this — in fact, introduced by Mr. Mauril Bélanger — and it was defeated soundly, 144-127. So to suggest it hasn't come to a vote is incorrect.

Finally, colleagues, you may recall that in the Third Session of the Fortieth Parliament, in the Speech from the Throne in this chamber on March 3, 2010, this became part of the Conservative government's policy statement. Two days later it was quietly withdrawn as a Conservative policy when the overwhelming displeasure of the general public was noted after a CBC article on this very topic.

Colleagues, I hear those voices now and I have heard them since then. It is for that reason I support the amendment and do not support the bill in general.

Hon. Frances Lankin: Will the honourable senator take a question?

Senator Wells: I would, Senator Lankin.

Senator Lankin: Thank you very much. I won't take long as I know we want to move on to other business, and I understand the vote on this amendment is going to be deferred.

I want to ask you if you are aware of the process in the other place by which a private member's bill amended here and sent back there would go to the bottom of the list of private members' bills. They debate private members' bills for an hour a week. It would take a long time for it to come up to that point to be debated, if it's not resolved within that hour, which it may well not be with the number of people speaking. It goes back down to the bottom of the list, I understand, at least.

• (1900)

I think it is more than just unanimous consent, although that would be the first hurdle. I think there are procedural hurdles, which means that this bill, once again, wouldn't have the opportunity to be voted on in the Senate. I wondered if you were aware of that.

That, in part, gives rise to my the concern about the procedure that we are seeing here and whether or not we will ever get a democratic expression of this chamber with respect to voting on the bill.

Senator Wells: Thank you for your question, Senator Lankin. I was not aware until just recently of the procedures in the other place. Frankly, I wasn't even aware until you just stated then that it goes to the bottom of a list.

I don't think the Senate is a place that needs to be overly concerned with what the results of our discussions and deliberations might be in the other place. We are a complementary chamber in that we are a separate chamber where we make our own deliberations. Certainly when I consider any piece of legislation — and I won't even say I don't necessarily do it — I don't at all do it with consideration of what they might do in the other place.

So, Senator Lankin, that it may go to the bottom of a list, that it may not be considered again without unanimous consent, and that it might befall some other fate, including passage, is not something I concern myself with.

Hon. Daniel Lang: Colleagues, I'd like to make a couple of comments, because I haven't spoken to this bill up to this point.

I want to state on the record that I share Senator Plett's position in respect to the amendment that has been brought forward by our colleague. I believe that the national anthem should not be amended, and subsequently I will be voting accordingly when we do come to the day to vote on the main motion.

I want to reaffirm that there has been no decision made by any group within this Senate Chamber, as far as I know, to hold up the bill intentionally. That's not the case at all.

I want to make it very clear, at least from my perspective, that what Senator Wells stated for the record was very well put. Where I come from, most Canadians do not even know that we're debating an amendment to the national anthem. I suggest that if you polled 35 million Canadians, you might well find 34,500,000 don't even know this debate is going on. When I go back home and ask members of the public if they're aware that Parliament is considering changing the national anthem, they have no idea that this debate is ongoing.

I do believe Canadians should be more involved in this issue because this represents our country. It's very symbolic of what we, as Canadians, believe. When we start making these changes to our national anthem, it's more than just 105 members in this particular chamber and 338 members in the other place.

The other point I want to make is that this is a private member's bill. This is not a government bill. That's one of the reasons we have the latitude we have in respect of dealing with a bill of this nature. The government did not take the responsibility that they have full authority to do if they wish to make a government policy. They did not do that.

So I just want to say, from my perspective as a senator, when we debate the main motion — I have a few more comments I want to make — that I do believe this is a very important decision being made on behalf of Canadians, and it cannot be taken lightly.

Senator Lankin: Would you take a question, senator? Thank you very much.

I received a copy of an email. It wasn't sent directly to me, but it was forwarded on. It was from former Senator Vivienne Poy. The email contained an audio file from the Toronto Symphony Orchestra and a choral group singing the national anthem in celebration of one hundred and fifty years and in multiple languages.

I wondered if you were aware of the fact that this event took place and that in the singing of the English words at that very large public event, the words "in all of us in command" were the words that were sung. I share that with you if you didn't know.

It's starting to happen all across the country, where people are acting with their voices, acting with their love of the country and their love of inclusivity, and the words are changing around us, whether or not we in this chamber see that.

Senator Lang: Colleagues, I was not aware of the email, but I read the article with the description of what took place at that particular event. But I still stand by my statement.

Perhaps I should ask you a question. Do you believe 35 million Canadians know that we're changing the words to the national anthem? I would submit to you that they don't know.

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

In amendment, it was moved by the Honourable Senator Enverga, seconded by the Honourable Senator Ngo:

> That Bill C-210 be not now read a third time, but that it be amended in the schedule, on page 2, by replacing the words "all of us com-mand" with "all of our com-mand".

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Do honourable senators have agreement on a time?

Senator Plett: The vote will be deferred to the next sitting of the Senate.

The Hon. the Speaker: The vote will be deferred to Monday, June 19, 2017, at 5:30 p.m.

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

THIRD READING—DEBATE ADJOURNED

Hon. Jane Cordy moved third reading of Bill C-238, An Act respecting the development of a national strategy for the safe and environmentally sound disposal of lamps containing mercury.

She said: Honourable senators, I am pleased to rise today in support Bill C-238, An Act respecting the development of a national strategy for the safe and environmentally sound disposal of lamps containing mercury.

I would like to first thank the members of the Standing Senate Committee on Energy, the Environment and Natural Resources for their thorough examination of the bill and the constructive observations in their report. I had the pleasure of attending a committee meeting, and the questions and ensuing discussion was very thoughtful and many good points were made.

I must also thank my member of Parliament, Mr. Darren Fisher, for bringing this piece of legislation forward. This is an issue that he has been passionate about since his days as a municipal councillor for Dartmouth in the Halifax Regional Municipality. During his time on city council, he was a member of the Environment and Sustainability Standing Committee and was instrumental in putting in place city policy to divert for recycling mercury containing light bulbs from city-owned buildings.

I would also like to thank the critic of this bill, Senator MacDonald, who has been very supportive of this legislation. Senator MacDonald is also from Dartmouth, so it has been three people from Dartmouth all working well together.

Bill C-238 passed the other place with the support of the Conservative, Liberal, NDP and Green Parties and had the full backing and support of the Minister of Environment.

The question was raised at second reading in this chamber as to why a bill such as this would be introduced through a private member's bill and not introduced by the minister.

Mr. Fisher addressed this question during his testimony at the committee hearings. He said:

> . . . I made sure I was very vocal in the fact that this was something I was going to pursue. She —

— meaning the Minister of Environment —

> — was very encouraging when I told her this was something I was going to be following through with my private member's bill. She said, "If there's anything we can do to help, let us know." She was very encouraging. She knew this was a passion of mine from 2012 on, and this was going to be something I wanted to pursue.

• (1910)

And since he first introduced his private member's bill, Mr. Fisher has been a superb advocate on this issue and I was honoured to sponsor his bill in the Senate.

Honourable senators, the Canadian Council of Ministers of the Environment reported that waste light bulbs contribute about 1,150 kilograms of mercury into Canadian landfills each year. It takes only 0.5 milligrams of mercury to pollute 180 tonnes of water. Remediation of mercury in land and water is very costly and incredibly difficult. The goal of this bill is to help prevent the mercury from these products from entering the environment.

Mercury is a common element that is found naturally in the environment. However, historically, consumer waste and industry by-products are the major contributors of dangerous levels of mercury released into our ecosystem and food chain. This contamination in our landfills and waterways can lead to serious health issues.

The Recycling Council of Ontario estimates that there are approximately 85 million mercury-containing light bulbs sold in Canada every year, which represents 300 kilograms of mercury, 20 million kilograms of glass, 287 kilograms of phosphor powder and 295,000 kilograms of metals. Currently, the majority of these potentially toxic products are simply disposed of in the regular garbage.

The Recycling Council of Ontario also estimates that the national disposal rate of mercury-containing lamps in an unsafe or environmentally unsound way is 85 to 90 per cent. This means that more than 72 million lamps are potentially polluting lands and waterways. This is unacceptable.

The lack of national guidelines and the lack of knowledge of how to properly recycle these items are the major factors why such a small percentage of these hazardous products make their way to a recycling facility.

In her testimony before the committee, Jo-Anne St. Godard, the executive director of the Recycling Council of Ontario, said:

> Currently, there are limited regulations and virtually no guidelines, information or resources to ensure safe collection and proper recycling of these lamps.
>
> While there are labelling requirements that indicate when mercury is present in a lamp, the lack of materials management strategy to keep them from disposal makes labelling inconsequential.

She went on to say:

> Canada is in a unique position with state-of-the-art recycling facilities to service the bulk of the population, facilities that employ high standards of recycling that can recover 98 per cent of the component parts of a lamp, and these are found in Alberta, Ontario, Quebec and Nova Scotia.
>
> Regrettably, these facilities currently operate under capacity and compete with cheaper disposal options and overall lack of regulation. They could receive every lamp sold in today's market, and are prepared to make investments should the market be required to divert them all from disposal. This begins with better awareness . . .

One of the few state-of-the-art facilities in Canada that can break down and recycle mercury-containing products is Dan-X Recycling, located in my hometown of Dartmouth. Inspired by a National Geographic documentary, Dan-X Recycling Limited was founded by Dave Hall and Dana Emmerson to provide a service to recycle all mercury-containing lamps, thermostats and other mercury-containing devices. It is Nova Scotia's first mercury lamp recycling facility. The great thing about Dan-X is that they have found a market for almost all of the by-products of the bulb after it has been broken down. Unfortunately, as Jo-Anne St. Godard pointed out in her testimony, Dan-X, as is typical of many of these types of facilities, is operating well under capacity because of the absence of safe community-wide collection infrastructure and lack of public knowledge about the recycling services Dan-X provides.

Honourable senators, Canada has been a leader on the international stage when it comes to curbing the use of mercury in consumer and industrial products and has taken substantial steps to phase out the use of mercury in many of these products. However, it will take many years to completely phase out mercury products and if little is done to improve things, millions of mercury bulbs will continue to end up in landfills every year.

Bill C-238 would require the Minister of Environment and Climate Change to develop a national strategy for the safe and environmentally sound disposal of lamps containing mercury. However, any strategy would not be successful without the cooperation of provincial, territorial, municipal and indigenous governments and groups. The responsibility of waste management is shared across many jurisdictions in Canada. The federal government is best positioned to bring these different groups together to identify best practices and policies that will best serve Canadians from coast to coast to coast.

Any national strategy has to involve consultation and contributions from all jurisdictions, whether they are urban, rural, Northern or remote areas.

If Bill C-238 becomes law, stakeholders will come together under the guidance of the federal government to find best practices that have been proven to be successful. These practices can then be shared nationally. The sponsor of the bill in the other place was very careful not to prescribe what the national strategy would entail, as that will be left to consultations with the provinces, territories, indigenous groups and municipalities, and I am carefully to do the same. As a former teacher, however, I would hope that a priority of any national strategy would be educating Canadians about the dangers of mercury and the importance of the safe disposal of light bulbs containing mercury.

During the committee hearings, the question arose about how light bulbs are disposed of on Parliament Hill. In response to my inquiry about this, Senate administration informed me that Public Services and Procurement Canada is responsible for lighting and replacement of interior and exterior lighting of the parliamentary precinct buildings. The ministry has established a recycling program and has a service contract to safely recycle the waste lights.

At this time, the Senate installations service does not recycle our waste light bulbs or fluorescent tubes. However, I have been assured that they are presently making the necessary arrangements to implement a recycling program with their PSPC counterparts. I have also been assured that mercury lights are no longer used on the parliamentary precinct due to the fact that they do not meet current environment standards.

I once again thank the Standing Senate Committee on Energy, the Environment and Natural Resources for their careful consideration of the bill and their excellent observations.

As the observation states:

> The federal government has a number of tools it can use to achieve policy objectives, including legislation, regulations, guidelines, and codes of practice. An important addition to these is moral suasion, and the committee believes this is an area where the federal government can and should lead by example. As a large purchaser of goods and services and owner of a considerable real property portfolio, the Government of Canada can demonstrate leadership by recycling all mercury-containing lamps in federal workplaces and Crown-owned buildings when they reach their end of life. A review of the current and recent Federal Sustainable Development Strategies and selected departmental sustainable development strategies and policies reveals no clearly articulated single, comprehensive national strategy or plan to do so. We believe there is a significant opportunity here for the federal government to provide leadership on this issue.

Honourable senators, as I have mentioned, Canada has been a world leader when it comes to eliminating mercury from the marketplace. Canada, along with 137 other nations, signed the Minamata Convention on Mercury in 2013. The Minamata Convention on Mercury signed by the previous Conservative government is a global treaty, which strives to protect both human health and the environment from the adverse effects of mercury. Controlling the release of mercury throughout its life cycle has been a key factor in shaping the obligations under the convention. Canada is one of 50 countries that have ratified the convention. It will come into force and become legally binding on all parties, including Canada, on August 16 of this year.

There were questions raised at the committee hearings about the effectiveness such legislation will actually have on diverting mercury from the environment. I would like to quote Senator Fraser, who took part in the discussion.

She said: "Such bills surely constitute a bit of a poke with a sharp stick to all of the people who have not been getting around to doing anything about it."

Honourable senators, I hope that Bill C-238 will be that sharp stick to start the conversation about diverting mercury from our environment across the country, motivating stakeholders from every jurisdiction in Canada to move forward with the development of a national strategy for the safe and environmentally sound disposal of light bulbs containing mercury.

• (1920)

Honourable senators, that would be a very positive step for all Canadians.

Hon. Michael L. MacDonald: Honourable senators, I am pleased to speak today at third reading of Bill C-238, An Act respecting the development of a national strategy for the safe and environmentally sound disposal of lamps containing mercury, which addresses an important issue affecting our environment and the health and safety of all Canadians.

My support for this bill has not wavered since I spoke at second reading. As such, I do not intend to repeat every point I made during my previous speech and will keep my comments today brief.

As you know, the bill before us has received widespread support across the country, and in the other place, from the Conservative, Liberal, NDP and Green Parties, and I want to reiterate that, although I am speaking today as the critic of the bill, I do so in full support of it.

The purpose of this bill is for the Minister of the Environment, in cooperation with the provinces and territories, as well as other interested governments and organizations, to create a national strategy for the safe disposal of lamps containing mercury. The strategy would include the identification of practices for the safe and environmentally sound disposal of fluorescent lights, the establishment of guidelines for facilities involved in the disposal of these lights, and the development of a plan to promote public awareness on this issue.

Your Committee on Energy, the Environment and Natural Resources, of which I have been a member for several years, was referred this bill and heard from several witnesses during its consideration.

The sponsor of this bill, Mr. Darren Fisher, from the other place, as well as others, noted that there is very little being done to protect Canadians from the bulbs that are thrown into landfills and in effect contaminating our lands and waterways. We were also informed by Mr. Fisher that the Canadian Council of Ministers of the Environment reported that waste lamps, whether broken or intact, contribute about 1,150 kilograms of mercury into Canadian landfills each year. He also reminded us that mercury has the ability to undergo long-range transport. That means that mercury deposited into a Halifax landfill could potentially redeposit somewhere in Northern Canada. Therefore, mercury does not respect provincial boundaries. With this being said, it is hard to believe that there are no regulations or guidelines for end-of-life mercury-bearing bulbs.

In other testimony, Mr. D'Iorio from Environment and Climate Change Canada noted that progress has been made on the issue and that to date, British Columbia, Manitoba, Quebec and Prince Edward Island have already implemented mandatory programs to collect and recycle mercury lamps.

However, although some progress has been made in some jurisdictions, Jo-Anne St. Godard from Take Back the Light stated that there are limited regulations and virtually no guidelines, information or resources to ensure safe collection and proper recycling of these lamps. Her support for the bill was evident and she said Bill C-238 is an opportunity to address an important toxic waste issue. It sets an important example of how all levels of government and stakeholders can work together and take immediate action to preserve human and environmental health.

The Committee also heard from Ms. Marchand from RecycFluo, who informed us that her organization has recycled more than 30 million lamps containing mercury since 2012. She

stressed that the national strategy must consider the existing efforts taking place across our country in order to prevent doubling existing programs — with which I agree.

Colleagues, we need to ensure that disposal programs are available throughout the country to keep these items out of our landfills. The development of a national strategy would provide the government the opportunity to collaborate with provincial, municipal and indigenous governments to increase the availability of disposal centres. Although most urban centres now have hazardous waste disposal options or "take-back" programs operated by retailers, these programs are by no means universally available throughout the country, especially in rural areas.

I believe the testimony that our committee heard echoes this sentiment and, knowing the serious consequences that uncontrolled mercury disposal can have on our environment and our health, it is clear to me that a national strategy for the safe disposal of fluorescent lamps is a necessary step in that direction. That is why the government must take the lead on this important issue.

In fact, although your committee has reported Bill C-238 back to this chamber without amendment, it has appended some brief observations, which read, in part:

> . . . the committee believes this is an area where the federal government can and should lead by example. As a large purchaser of goods and services and owner of a considerable real property portfolio, the Government of Canada can demonstrate leadership by recycling all mercury-containing lamps in federal workplaces and Crown-owned buildings when they reach their end of life.

The committee concluded:

> We believe there is a significant opportunity here for the federal government to provide leadership on this issue.

I agree completely.

Colleagues, mercury knows no boundaries. Contaminants in our air and waterways affect all of us. It is time for a national strategy, and the federal government should lead the way. I encourage my colleagues to support this bill here at third reading.

(On motion of Senator Martin, debate adjourned.)

RECOGNITION OF CHARLOTTETOWN AS THE BIRTHPLACE OF CONFEDERATION BILL

EIGHTEENTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighteenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-236, An Act to recognize Charlottetown as the birthplace of Confederation, with amendments), presented in the Senate on June 13, 2017.

Hon. Bob Runciman moved the adoption of the report.

He said: Honourable senators, Bill S-236 comes back to the chamber following four amendments by the Legal and Constitutional Affairs Committee, two of them to the text of the bill and two of them to the preamble. In clause 2 on page 2, the amendment changes one word on line 4 of the French language version. The word "declared" was translated in the original French version as "désignée" and was amended to "déclarée"". As it was explained by Senator Griffin, the intention is that this is a recognition, not a designation, of Charlottetown as the birthplace of Confederation. This is to avoid any confusion about the obligation of Parks Canada going forward.

The second amendment is to add a new clause 3:

> For greater certainty, nothing in this Act constitutes a designation within the jurisdiction of the Minister responsible for the Parks Canada Agency under the *Parks Canada Agency Act*.

Senator McIntyre proposed two amendments to the preamble, which were adopted by the committee, both of which were intended to recognize the contributions made at other conferences, including those in Quebec City and London, leading up to 1867.

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

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

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

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

• (1930)

JUDICIAL ACCOUNTABILITY THROUGH SEXUAL ASSAULT LAW TRAINING BILL

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Andreychuk, seconded by the Honourable Senator Seidman, for the second reading of Bill C-337, An Act to

amend the Judges Act and the Criminal Code (sexual assault).

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to speak to Bill C-337, An act to amend the Judges Act and the Criminal Code.

More specifically, this enactment amends the Judges Act to restrict eligibility for judicial appointment to individuals who have completed comprehensive education in respect of matters related to sexual assault law and social context.

This bill also requires the Canadian Judicial Council to report on continuing education seminars in matters related to sexual assault law.

Furthermore, it amends the Criminal Code to require that reasons provided by a judge in sexual assault decisions be entered in the record of the proceedings or be in writing.

I would like to thank the honourable member of Parliament, Rona Ambrose, who tabled Bill C-337 in the House of Commons. I thank Ms. Ambrose for her work on behalf of Canadians over the years. I have many fond memories of working with Ms. Ambrose on many women's issues.

Honourable senators, I would also like to thank Senator Andreychuk, the sponsor of the bill.

Honourable senators, I have spent over 30 years training judges on women's issues. I have trained judges with the National Justice Institute. I have trained judges with the Western Justice Institute with Justice Campbell, Senator Andreychuk and others. I have trained judges internationally. I have felt for many years that there needed to be some kind of legislation to make sure that there is proper training.

Questions often asked in cross-examination of women are, "Why were you wearing clothes like. . .? Why were you walking in a place that is dangerous? Why did you do this? Why did you do that?"

We would ask a judge to play-act with us. We would ask him to dress in a certain way and pretend that he was walking on an unsafe street. Then we would ask cross-examination questions like: "While you were walking in this area, why were you wearing an expensive suit? Why were you wearing a RADO watch? Why were you wearing expensive shoes? Why did you have such an expensive briefcase? You were asking to get robbed."

When we did this training, many judges afterwards said that for the first time they realized that they would ask the questions of the women or would let the prosecutor ask questions of the women as to how they were dressed, where they were, what they were doing, and they would not bat an eyelid. When they went through this training, they realized that it is not appropriate to ask women how they were dressed and what they were doing. The more appropriate question is: Why did the man sexually assault the woman?

So I absolutely agree with Ms. Ambrose's bill. I agree with the goal of the bill, but I have some challenges with what is in the bill, and I'm sure this will be studied at committee.

Before adopting the bill, senators, I would say that as a chamber of sober second thought we have to consider all the challenges. Therefore, I would like to address some of the issues raised by experts on Bill C-337.

As you know, the House of Commons voted to fast track this bill to the Standing Committee on the Status of Women. Many experts who appeared before the committee raised concerns with Bill C-337. The first concern raised by the experts is that every lawyer who applies to become a judge must seek training before being appointed.

According to the Canadian Superior Courts Judges Association that represents approximately 1,000 judges who serve on the Superior Courts and the Courts of Appeal of each province and territory, as well as on the Federal Court, the Federal Court of Appeal and the Tax Court of Canada, I quote:

> Judges who are federally appointed and who are subject to the Judges Act serve on a variety of courts, some of which have no criminal jurisdiction whatsoever.
>
> The overwhelming majority of criminal cases are heard in the provincial courts, the judges of which are not subject to the Judges Act.
>
> Comprehensive educational programs are currently provided to newly federally appointed judges and continuing judicial education is available to all judges, who are able to pursue their education, including social context training, in the areas of law in which they judge.

The Barreau du Québec raised the same issue when they appeared before the House of Commons committee. I quote:

> The Barreau du Québec supports any measure to improve training for the judiciary, but it is concerned that the proposed amendments would not have the intended effects with respect to the pursuit objectives.
>
> The scope of the bill does not appear to consider the fact that cases involving federal offences are generally dealt with by provincial courts.

Which means that this law will not apply to most judges appointed by provincial courts and that hear mostly criminal cases.

> Furthermore, the bill creates obligations for certain members of the judiciary who will never have to deal with such cases.
>
> Bill C-337 applies exclusively to federally appointed judges, in superior courts, appeal courts, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada and the Supreme Court of Canada.
>
> However, in practice, the vast majority of criminal offences are dealt with by the provincial courts.

According to Statistics Canada, in 2014-15, 99.6 per cent of the cases involving federal offences were handled by provincial courts.

Finally, the Canadian Judicial Council, a federal body created under the Judges Act with the mandate to promote efficiency, uniformity and accountability and to improve the quality of judicial service in the superior courts of Canada, also raised concerns. I quote:

> [Canadian Judicial Council] policies now provide that it is mandatory for newly appointed judges to attend a seminar designed for new judges, which includes education on sexual assault issues as part of the social context component of the program. [Canadian Judicial Council] policies also provide that judges should devote 10 days per year to continuing education.
>
> The [Canadian Judicial Council] proposes, as an alternative, that applicants for appointment as a superior court judge commit, as part of the application process, to abide by [Canadian Judicial Council] policies in respect of judicial education and, specifically, to undertake to participate in ongoing social context education, including education on sexual assault issues.

That being said, this piece of legislation would only apply to newly appointed judges and would not be applied to already sitting judges.

The second concern raised is that it amends the Criminal Code by adding to section 278.91 that a judge must enter reasons in the record of proceedings or provide them in writing.

The preamble of the bill says that requiring written reasons in sexual assault proceedings would, and I quote:

> . . . enhance the transparency and accountability of the judiciary.

According to the Canadian Bar Association's criminal justice section:

> The law already requires proper reasons from judges, whether written or oral, and resources are dedicated to ensuring the practical application of this requirement. For example the National Judicial Institute provides significant training in judicial reason writing and in the delivery of oral reasons.
>
> The current law also requires trial judges to give reasons that allow meaningful appellate review of a conviction or acquittal, so the appeal court can determine why a ruling was made.

The Supreme Court of Canada has outlined detailed requirements for giving reasons, whether written or oral, in all cases.

In *R v. Sheppard*, Justice Binnie, writing for a unanimous court, listed 10 vital guidelines for trial courts.

Justice Binnie wrote:

> The delivery of reasoned decisions is inherent in the judge's role. It is part of his or her accountability for the discharge of the responsibilities of the office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large.

This Supreme Court decision illustrates the importance of judicial reasons to the criminal process and underscores the duties already imposed on judges. Written reasons generally take longer to craft than oral judgments.

Requiring judges to give written reasons for all of a particular group of cases could add to court delays at a time when delays in the justice system, in contravention of the presumptive time limits, can mean charges will be stayed.

It would not be in the public interest to add unnecessary barriers to timely determination of criminal charges.

• (1940)

Honourable senators, the last challenge I would like to address in regard to Bill C-337 is the judicial independence of our judges, by amending paragraph 60(2)(b) and 62.1(1) of the Judges Act.

According to the Canadian Superior Court Judges Association, the principle of judicial independence requires that judges be unfettered in the independent and impartial exercise of their judgment in fulfilling their judges' function.

That being said, the Barreau du Québec testified:

> The obligations imposed on the Canadian Judicial Council could compromise judicial independence and, ultimately, intrude on provincial jurisdiction over the administration of justice.
>
> By requiring the council to report on training taken by members of the judiciary, including the number of sexual assault cases heard by judges who have never participated in such a seminar, the concern is that the bill will threaten judicial independence.
>
> Judicial independence is one of the cornerstones of Canada's democratic system, it is critical to the public's perception of impartiality with respect to the judicial process.
>
> That is why the Constitution Act of 1867 guarantees independence and the separation of the judicial, executive and legislative branches.
>
> Specifically, judicial independence is a guarantee that judges will make decisions free of influence and based solely on fact and law.
>
> When Parliament imposes requirements on the judiciary related to its duty, it risks compromising judicial independence.

> Institutional means that no one can interfere with how the courts manage the litigation process or with the exercise of judicial functions by the judiciary.

The Canadian Judicial Council shared the same point of view and added:

> The council is concerned that amending paragraph 60(2)(b) of the Judges Act may be interpreted as a requirement set by one branch of government regarding training requirements for judges.
>
> This would raise a concern in terms of independence of the judiciary, particularly if one considers the consequences for a judge who fails to fulfill their obligations to maintain and enhance their knowledge and skills to ensure they discharge their duties of their office.

The Canadian Judicial Council added:

> The council is concerned that any requirement to identify, directly or indirectly, which judges participated in which courses could be problematic.
>
> In particular, proposed paragraph 62.1(c) proposes that the number of judges who never participated in a sexual assault law seminar and who heard a sexual assault case be identified for each of Canada's superior courts.
>
> The logical outcome of gathering such data would be to identify specific judges, over the long-term, for purposes of drawing conclusions about the nature of the decisions they issue in sexual assault cases.
>
> This is, in other words, a judicial performance evaluation tool based on an assumption that attendance at a course guarantees competence.
>
> The Canadian Judicial Council is unable to support a proposed reporting requirement that would identify the courts and the number of judges from these courts that participate in specific education programs and who hear or do not hear specific types of cases.
>
> We are of the view that such requirement would infringe on judiciary's independence to maintain control over judicial education and judicial discipline matters.

Senators, as I said, I absolutely agree with the goal of this bill. My concern is that we can teach the words to people so maybe they will not repeat the words. But the real work that needs to be done is to look at our culture, a culture where we objectify women. That is our challenge.

I look forward to this bill going to committee and the committee having further discussions to see how we can strengthen this bill.

Honourable senators, I have set up the three main challenges we face with Bill C-337. We as senators cannot make take these matters lightly. We must consider every possibility so this bill can achieve its main objective, which is to educate and protect all Canadians.

I encourage every senator to study this bill carefully.

Thank you very much.

Hon. Joseph A. Day (Leader of the Senate Liberals): Will you take a question, Senator Jaffer?

Senator Jaffer: Yes.

Senator Day: Thank you. I would like you to clarify a portion that concerns me and then maybe you could tell me if that has been highlighted as a concern. From what I've heard you say, and from what I'm reading, is that before a practising lawyer can be appointed as a judge or considered for appointment as a judge, he or she must have had a course on sexual assault.

That's fine for Montreal, Toronto and Vancouver. There are many practising lawyers in smaller communities.

The Hon. the Speaker *pro tempore***:** Senator Jaffer's time has run out.

Senator Jaffer: Five more minutes?

The Hon. the Speaker *pro tempore***:** Honourable senators, do you agree, five more minutes?

Hon. Senators: Agreed.

Senator Day: A lot of practising lawyers in smaller communities, who might make good judges for those smaller communities, won't have had the opportunity because the courses wouldn't be given. Has that been highlighted as a concern?

I understand that once appointed then the judicial council, the government, can provide the courses because they are then judges. That's fine. It's qualifying to be appointed, a precondition that I'm concerned about.

Senator Jaffer: Senator, the best way I can explain is to say that is one of the things that really troubles me about this bill. The best way I can explain it is under the new selection of senators process, when senators apply, they don't go and tell the whole world that they're applying. There's no course to become a senator. We all do it quietly. We don't want the whole world to know we have applied.

What are we doing to new people who want to apply? They have to go to a sexual assault course. There's nothing wrong in doing a course and learning about sexual assault. But if you say to everyone I'm doing this course and then I will apply to become a

judge, what does it do to your partnership prospects? How does your boss handle it? How do your colleagues see you when you don't become that judge?

I have had so many lawyers call me and say, "Come on, Mobina, get serious, you think we're going to do this course and then my partners will know I've applied and my friends will know I've applied." No one has an issue in doing the course. It's a good thing. But at least the minimum we should do is have the course after the person is nominated, not before.

Senator Day: Thank you.

Hon. A. Raynell Andreychuk: Could I ask a supplementary question? When lawyers want to become judges, in the old days it was done somewhere and the white smoke came out and you became a judge. Nowadays people have to apply and go through a process. And that's pretty public within the judicial system.

Do you not think that a sexual assault course should be within the law societies and handled that way?

First of all, judges may apply for one court and end up in another. You may end up in the tax courts and then go elsewhere. The other is do you not think, in the bill, by amendment from the house, the women I may say over there, who said social context is important, shouldn't lawyers be knowing who they're dealing with?

While we're talking about sexual assault, it's really why are these cases occurring? It isn't because of the Criminal Code alone, it's within the context of the community, and any lawyer I would submit should have some training, some awareness, no matter what you're doing because you're dealing with citizens.

I see the law societies moving this way and the judicial council. But this is to make sure that the sexual assault portion is in the continuing education.

Perhaps our committee can explore that. I appreciate you raised these issues.

Senator Jaffer: Thank you very much, senator. I think every law student should be trained in a social context. I have no issue with that. I think a lawyer should attend courses. I have no issue with that.

I have very much been involved in the judicial process as recommending people and honestly it's not a public process. You apply and the members of the judicial council are the only ones and they're not allowed to say who applies. That's not a public process. It is a very quiet process.

I can tell you if you seriously want the kind of lawyers that we want in the judiciary, I'm not saying that we shouldn't do this training, but I think the appropriate time to do the training is after they're appointed, not before.

(On motion of Senator Joyal, debate adjourned.)

• (1950)

STUDY ON THE DEVELOPMENT OF A STRATEGY TO FACILITATE THE TRANSPORT OF CRUDE OIL TO EASTERN CANADIAN REFINERIES AND TO PORTS ON THE EAST AND WEST COASTS OF CANADA

SIXTH REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator MacDonald, seconded by the Honourable Senator Patterson:
>
> That the sixth report of the Standing Senate Committee on Transport and Communications, entitled *Pipelines for Oil: Protecting our Economy, Respecting our Environment*, deposited with the Clerk of the Senate on December 7, 2016 be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of Natural Resources being identified as minister responsible for responding to the report, in consultation with the Ministers of Transport and Fisheries, Oceans and the Canadian Coast Guard.

Hon. Terry M. Mercer: I rise today to speak on the Senate Transport and Communications Committee Report, entitled *Pipelines for Oil: Protecting our Economy, Respecting our Environment*. Most of my remarks you may have heard when we released the report, but for those of you who did not, I will review them with you.

It was noted in the report that Canada has the world's third-largest oil reserves, but because of a lack of proper infrastructure, we are still somewhat dependent on foreign oil and are still limited to selling domestic product at a discount to our neighbours to the south.

The committee heard that pipeline operations added $11.5 billion to Canada's Gross Domestic Product in 2015 alone, in addition to generating 34,000 full-time jobs and $2.9 billion in income.

Let me repeat that, honourable senators; $11.5 billion to the GDP; 34,000 full-time jobs and $2.9 billion in income. This is an important issue.

The report makes seven recommendations to the Government of Canada that the committee hopes will provide some guidance while the government is examining the future of our energy resources and the environmental implications of energy projects like pipelines.

While I will not go into detail on the environmental risk associated with such energy projects, I will say that I do believe that we can responsibly get our oil reserves to tidewater while at

the same time respecting the environment and protecting it against harm to the ecologically sensitive areas that such pipelines may threaten.

Before I review the recommendations, it should be noted that the Government of Canada received a report from the National Energy Board Modernization Expert Panel in May that made 26 recommendations, notably, a restructured National Energy Board; better consultation with the stakeholders, including indigenous peoples; and a better mechanism to deal with their complaints.

I look forward to the next steps in that review, but I also hope the government will take note of our recommendations in its deliberations on the future of the National Energy Board and the future of the pipeline projects in this country.

Let's review some of the key recommendation from our committee's report:

> The Committee recommends Natural Resources Canada modernize the National Energy Board by methods that include:
>
> - Broadening the Board's mandate to ensure effective communication and consultation with stakeholders, and
>
> - Removing the Governor in Council's automatic final approval . . . .

Board decisions would instead be subject to appeal to the Governor-in-Council, not automatically reviewed.

> To improve relations with Indigenous peoples and enhance their involvement in the process, the Committee also recommends integrating information gathered during the Crown's duty to consult Indigenous peoples into the Board's process, and that the Governor in Council use its authority to appoint permanently an Indigenous peoples' representative to the Board. . . .
>
> In light of the potential economic, environmental and logistical attributes, the Committee also recommends that the National Energy Board, as part of its hearings on the proposed Energy East project, examine the Strait of Canso area in Nova Scotia as an alternative end point.

I will expand on this later in my remarks.

> The Committee recommends that Fisheries and Oceans Canada ensure that the Oceans Protection Plan includes enhancements to the Canadian Coast Guard, including an expansion of resources and bases of operations for the purpose of tanker spill mitigation and prevention.

If you read the report of the National Energy Board Modernization Panel, you will indeed find similarities between our report and theirs.

Honourable senators, I believe the committee did its due diligence in fully understanding what is going on and what we can do to streamline processes, enhance the public trust and get pipelines built in an economically and environmentally responsible way.

The recommendation I am most interested in concerns the proposed Energy East pipeline project. I know my esteemed colleague from New Brunswick, Senator Mockler, has an inquiry on this, calling the attention of the Senate to the issue of pipeline safety in Canada and the nation-building project that is the Energy East proposal and its resulting impact on the Canadian economy. So I know Senator Mockler will be especially interested in what I have to say about Energy East.

I would note, honourable senators, that the Energy East pipeline project is currently under review by a new three-member review panel of the National Energy Board, with no new hearings scheduled yet. It has, however, been receiving comments on new criteria for assessment on the project.

Our recommendation on Energy East is particularly appealing to me and should be to my fellow Nova Scotians. This, of course, involves the ice-free port on the Strait of Canso between Cape Breton Island and mainland Nova Scotia, a port that has great potential to help Nova Scotia share in the benefits of Western Canadian oil.

At the Strait of Canso, there are already tanks that are housing thousands and thousands of gallons of crude oil coming into the country, and there's no reason they can't have thousands and thousands of gallons of oil going out of the country. It is already there in place, in an ice-free harbour in the Strait of Canso.

The proposed Energy East 4,500-kilometre pipeline would transport approximately 1.1 million barrels of crude per day to a new marine terminal in Saint John, New Brunswick.

More than 3,000 kilometres of existing natural gas pipeline would be converted to carry crude oil, and approximately 1,500 kilometres of new pipeline would be built.

What if we expanded upon that initial plan and extended the pipeline through Nova Scotia to the Strait of Canso? I believe that would be a great opportunity to share the wealth from the West for both New Brunswick and Nova Scotia.

The equally important point is that it would also add more safety to the project, and here is why. More oil in Saint John means more tanker traffic in the Bay of Fundy, which increases the risk to our fishing and tourism industries in that area. The Strait of Canso is also closer to the European markets and would stabilize tanker traffic in the Bay of Fundy. If the evidence supports extending the pipeline to the Strait of Canso, then the possibility of doing it should be explored.

So, honourable senators, I believe we all would benefit from the recommendations we have provided in this report.

In closing, I would like to echo the comments of the committee from the Senate website:

> A stronger, more inclusive, less political regulatory process is an essential first step toward expanding Canada's energy infrastructure in a way that maximizes economic benefit and minimizes environmental risk while achieving broader public consensus.

I think you can all agree with that.

I would like to thank all honourable senators who participated in the committee study as well as the staff who helped put this together.

Finally, the report also quoted Albert Einstein, and I believe it is worth repeating:

> The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking.

• (2000)

I believe our report is reflective of the ever-changing landscape in Canada for energy projects. Only by changing how we think about the industry, and by exploring the broad implications of energy projects efficiently, will we get shovels in the ground and oil to our shores to export to the world, which is thirsty for Canadian petroleum.

Hon. Daniel Lang: Would the honourable senator take a question?

Senator Mercer: Yes.

Senator Lang: Colleagues, I would like to ask a question in the area of the foreign influence of money coming into this country, which is financing various organizations that are taking a very vocal opposition to pipelines. I want to go back for a second, if I could.

Coming from the North and representing the territory, we have witnessed the Alaska oil pipeline that has been in existence for nearly 50 years, from the Beaufort Sea off the North Slope all the way to one of the richest fishing areas in the world in the Port of Valdez. Except for the Valdez incident that happened in the late 1980s or early 1990s, I believe there have been few problems with the standards of the pipelines built at that time. Those standards have increased dramatically since then.

Since then we've had this political narrative, which more and more Canadians believe, that a pipeline is a bad thing and should not be built in this country. That narrative, in my opinion, has been helped and assisted with foreign money coming into this country — millions of dollars financing these organizations to appear before the National Energy Board and in other communities.

Did you hear any evidence about this type of political activity that is setting the political narrative for Canada? Do you have any thoughts on that?

Senator Mercer: I thank the senator for the question. There was no direct evidence given to us on money coming in. There has always been anecdotal hearsay about it, but we had no direct evidence.

The competition knows how good the Canadian product is. The competition also knows how much of the product we have. The competition is very keen on limiting us to our one customer. Canadians don't appreciate this, but we sell to that customer at a discount rate. I think we'd like to sell it at the world rate to everybody, including that one customer. The one way to do that is by getting product to tidewater, both east and west. I'm particularly interested in the East Coast, of course, because that's where I represent, but we did not hear any direct testimony on that issue.

Senator Lang: To follow up on that, I know you talked about the East Coast, but of course there's the West Coast. Was any evidence brought forward to your committee about the need for pipelines to the West Coast? Is there anything in your report that refers to the West Coast?

Senator Mercer: Yes, definitely there was evidence about the West Coast. We certainly were supportive of that as well.

I'm speaking tonight as a senator from Nova Scotia. I didn't spend a lot of time going into detail about what Nova Scotians see as a risk in the Bay of Fundy. Having it go to Saint John is a benefit to New Brunswick. The risk is both New Brunswick's and Nova Scotia's because we're on the other side of the Bay of Fundy. They've done a reasonably good job of managing the issue in the Bay of Fundy, but they must remember that the Bay of Fundy is the home of the right whale and other endangered species. Some of the whales are so big that when they see a tanker in front of them, they can't move fast enough to get out of the way. The tankers are so big that they can't move either.

A number of years ago, the industry decided to move the shipping lane a little further away from where the whales were to avoid this. So where did they move it? Closer to Nova Scotia. So the risk became even greater that if there was an incident, it would be on the shores of Nova Scotia. So we take all the risks but don't get all the benefits that New Brunswick would. But this is a way to do both. The pipeline would come to Saint John, feed the Irving refinery there and then come through the Strait of Canso. We could provide it to the world, which is looking for good Canadian oil.

Hon. Joseph A. Day (Leader of the Senate Liberals): Honourable senators, I'll speak as a senator from New Brunswick. Could the senator confirm if the right whale issue in the Bay of Fundy and the fisheries issue was anecdotal evidence, or did you actually hear from somebody who was knowledgeable about it?

Senator Mercer: Senator Day! Every word that comes out of this senator's mouth is factual and based on solid research. I take offence to that.

Yes, we did. As a matter of fact, when we were in Saint John, we had an opportunity to review the maps that show where the shipping lanes used to be and where they are now. The end result

is that since they've moved, there haven't been collisions with right whales that affect that very fragile population. This is a good news story.

However, they also showed us that they moved further away from New Brunswick and closer to Nova Scotia shores so that if there were an incident, not necessarily with a whale, it would probably affect the Nova Scotia shores quicker than the New Brunswick shores.

It should be noted that this would become a major international incident. If we had a catastrophe in the Bay of Fundy, yes, it would hit the shores of both Nova Scotia and New Brunswick. The Bay of Fundy flushes out because it has the highest tides in the world, so it would flush that oil down the American seaboard and we would poison the American fishery. That's why you have to go to Port Hawkesbury!

Senator Day: I thank the honourable senator for that anecdotal answer.

You'll be aware that an application before the National Energy Board is very expensive and long term. A study was under way and had to be restarted. You indicated they haven't gotten it going fully the second time.

Can you give us any further information? If another spur off that line went to Canso, would that require another full study? Did you look into that aspect of it?

Senator Mercer: Well, I obviously can't give you the ruling of the National Energy Board except to point out that there is a pipeline that comes from Nova Scotia now and goes up through New Brunswick and down into the State of Maine. It is a gas pipeline from the Sable Island fields. The Sable Island fields are about to run out of gas soon. The pipeline is there. It has been approved. It makes logical sense because it's going through New Brunswick and past Saint John anyway. So if the pipeline could be reversed or upgraded to carry bitumen through the Strait of Canso, we would have that approved line.

This is a good deal. We already have most of that work done. It would require some work in the northern end, from part of Guysborough County right up to the Strait of Canso, which would be the last part of the trip for the bitumen.

Hon. Michael Duffy: Senator Mercer, you raised the question of foregone revenue in your eloquent speech. I have heard some people suggest that there may be as much as $5 billion — $5,000 million — a year in foregone revenue to the Government of Canada because we are tied to the West Texas price of crude simply because they are our only customer as long as we remain landlocked. Does $5000 million sound about correct to you?

• (2010)

Senator Mercer: Well, I'm not the financial expert, but we did hear staggering numbers because of being tied to West Texas Intermediate Crude prices as opposed to world petroleum prices.

(On motion of Senator Day, debate adjourned.)

[*Translation*]

THE ESTIMATES, 2017-18

SUPPLEMENTARY ESTIMATES (A)—SEVENTEENTH REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Leave having been given to revert to Presenting or Tabling of Reports from Committees:

Hon. Percy Mockler: Honourable senators, I have the honour to table, in both official languages, the seventeenth report of the Standing Senate Committee on National Finance on the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2018.

He said: Honourable senators, if I may, I would like to thank the entire team at the Standing Senate Committee on National Finance, the senators of course, but also committee support staff. I would also like to mention my predecessors who chaired the committee, Senator Day and Senator Smith. I want to acknowledge the work of our clerk, Gaétane Lemay, as well as that of analysts Sylvain Fleury and Olivier Leblanc-Laurendeau, who together with their team always endeavour to ensure that the Standing Senate Committee on National Finance successfully completes its work.

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

[*English*]

STUDY ON ISSUES RELATED TO THE GOVERNMENT'S CURRENT DEFENCE POLICY REVIEW

TENTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Smith, for the adoption of the tenth report (interim) of the Standing Senate Committee on National Security and Defence, entitled *Military underfunded: The walk must match the talk*, deposited with the Clerk of the Senate on April 13, 2017.

Hon. Art Eggleton: Honourable senators, I rise to speak to the tenth report of the Standing Senate Committee on National Security and Defence. First I want to congratulate the committee on their endeavours. They've done an extensive study with a wide-ranging set of recommendations for us to consider.

I support, or at least do not object, to most of the 16 recommendations going forward for government consideration in the report, which is entitled *Military underfunded: The walk must match the talk*.

I particularly single out recommendation number one:

> That the Government of Canada make the necessary defence investments to ensure that the Canadian Armed Forces are fully equipped and trained to effectively carry out Canada's key defence priorities: the protection of Canadian sovereignty, including the Arctic; the defence of North America under NORAD; and full participation of NATO as well as the United Nations and other multilateral international operations.

I strongly support that recommendation.

But it is recommendation number two that I do not support. It reads:

> That the government present a budget plan to Parliament within 180 days to increase defence spending to 1.5 per cent of GDP by 2023 and 2 per cent of GDP by 2028.

In my five years serving as Minister of National Defence in the Chrétien cabinet, I never came to appreciate that 2 per cent of GDP, gross domestic product, was the appropriate way to measure capabilities and contributions to meeting the goals such as those covered in that first recommendation of the report. Why not, for example, measure per capita expenditures, in which case Canada ranks ninth out of 28 member states or a percentage of the federal government expenditures, in which case Canada ranks sixth? In either case, we rank above the NATO average if you exclude the United States, which is really in a league of its own spending, more than double on defence than all the other NATO countries combined.

As far as the 2 per cent number is concerned, we've actually moved up the rankings with the recalculation of defence spending announced in last week's government defence review. Canada now reports a defence expenditure of 1.19 per cent of GDP for 2016-17. As such, we would now rank sixteenth in the latest NATO Secretary-General's report, up from twenty-third position, without spending a dime.

Honourable senators, let me put this in some context by reading a quote from a report entitled *NATO Defence Spending: the Irrationality of the 2 %*. This was a paper written by Simon Lunn who served as Secretary-General of the NATO Parliamentary Assembly from 1997 to 2007 and Nicholas Williams, who is a long-serving member of NATO's international staff, most recently serving as head of operations for Afghanistan and Iraq. They write:

> That 2 per cent takes no account of the ebbs and flows of economic fortunes; is vulnerable to changing circumstances and domestic pressure, both in terms of the security requirements and the economic base; encourages creative accounting to satisfy targets; and provides zero guidance concerning what precisely what capabilities are needed to counter the threats and challenges that NATO faces.

Honourable senators, 2 per cent of GDP is an input number. Shouldn't we be measuring outputs? Shouldn't we be measuring outcomes? The important measurement should be based on our capabilities and contributions, as Lunn and Williams suggest in their report.

Now, the capabilities of our Armed Forces personnel are some of the best in the world. As was noted in last week's defence review, our greatest asset is our men and women in uniform. They are motivated, highly skilled and dedicated to the Canadian Forces and their roles within it. Our allies around the world recognize this. As the U.S. Defence Secretary General Mattis recently stated, "The distinction with which our men and women in uniform serve in Afghanistan compelled him to say, one, hug and kiss every one of you guys coming off the plane."

While we can respect that our men and women in uniform will serve with the utmost skill, it is up to government to provide them with the right equipment to get the job done.

At the 2014 NATO Summit in Wales, members agreed that they should work towards spending 20 per cent or more of their defence budgets on new equipment.

• (2020)

In the most recent NATO report, Canada ranked eleventh in this measure, at 18 per cent. Last week's defence review, entitled *Strong, Secure, Engaged*, committed the government to raising our investment to 19 per cent of defence expenditure by next year, 22 per cent by 2021, and 32 per cent by 2024-25. This commitment reflects real investment in our Armed Forces, one that is not tied to GDP but reflects actual military expenditures.

Honourable senators, I recall that when I was defence minister, we had just ordered roughly 200 Coyote armoured patrol vehicles. This was state-of-the-art reconnaissance equipment at the time, and we deployed some of them to the Balkans as part of our peace support mission there. At the time, Lieutenant-General William Leach, Chief of the Land Staff, stated that not only were the Coyotes proving their worth, but they were causing our allies to hold us there; they were trying to hold us there to keep that kind of capability because it worked well with their capabilities.

That brings me to the question of interoperability. It is investments like these that allow us to work with our allies and make significant contributions to multilateral missions. Our capabilities are further strengthened by this interoperability. We don't need all the equipment in the world — we work with our allies — but what's important is the interoperability with them.

Canada is no laggard when it comes to joint military exercises, and our Armed Forces have few peers when it comes to our ability to work in concert with our allies.

For example, since 2014, Canada has sent troops and equipment to Eastern Europe to train with our NATO allies in the region. This interoperability is also reflected in our upcoming NATO mission in Latvia, which leads to my second point: our contributions.

Canada has been tasked to lead the NATO enhanced force battle group in Latvia, one of four such groups created to counter Russian belligerence in the area. Four hundred and fifty Canadian troops will be stationed there, and they will lead troops from several other countries.

This mission is but one of a long list of Canadian contributions to peace support and assisting our allies in conflicts around the

world. The most obvious example was our role in the Afghanistan mission. This was NATO's largest mission to date, and the only time Article 5 has been invoked. Interestingly, it was invoked on behalf of our ally the United States of America, after the 200 1 attack.

By the time we withdrew our forces in 2014, Canada had sent more than 40,000 men and women to that mission, with 158 sacrificing their lives. For five of these years, the Canadian Forces were stationed primarily in Kandahar, considered one of the most dangerous regions in that country.

Before Afghanistan, in the early 1990s, our Canadian Forces were in the Balkans, sending a sizeable contingent as part of the NATO-led Intervention Force and Stabilisation Force in Bosnia-Herzegovina. In fact, Canadian Forces were there before the NATO mission as part of the UN Protection Force, from 1992 to 1995. Canada's contribution in this conflict outweighed our size and demonstrated that we are willing to use every asset at our disposal when it comes to our responsibility to protect innocent people in these regions.

It is these and other contributions to the defining conflicts of our time by which armed force should be measured — not something as flawed as the financial yardstick that is tied to GDP.

Gross domestic product, honourable senators, can go up or down, or it can be stagnant. If we have robust economic growth over the next decade, getting to 2 per cent will become even more expensive and challenging as GDP rises. If we unfortunately experience a recession, then our percentage of GDP for military expenditure can increase without spending a dollar more. What sense does that make in terms of measuring capabilities and contributions?

In fact, there is a chart on page 17 of the committee's report showing an expenditure of approximately $1.65 billion in 1960, when we were at 4.2 per cent as a percentage of GDP. That $1.65 billion, when accounting for inflation, would be $13.89 billion in today's dollars. However, the 2016-17 expenditure is even higher, at $18.64 billion. But as a percentage of GDP, it has gone down from 4.2 per cent to around 1 per cent. In other words, we are spending more now than we did when we met the 2 per cent or better target, adjusting for inflation, but our economy has been growing much faster over this period of time.

For Canada to meet the 2 per cent of GDP level would require more than doubling our defence expenditure. That would necessitate either substantial tax increases and/or a significant reduction in other government programs and services, including social support measures. Honourable senators, that is both unrealistic and unacceptable, I suggest.

Canadian governments, both Liberal and Conservative, have generally avoided the 2 per cent GDP proposition. It is not a NATO requirement to begin with. In fact, in no part of the declaration signed by all the members at the 2014 NATO Summit is the 2 per cent referred to as compulsory, rather, it is referred to as a consideration.

During that summit, a senior Canadian government official said — and this is at the time of the Conservative government, by the way:

> We are open to increasing military spending when and where it makes sense and in response to particular needs. But the notion of setting a target does not make sense.

Regarding the 2 per cent figure specifically, a spokesman for Prime Minister Stephen Harper said:

> . . . it is an aspirational target and will be acknowledged as such in the summit statement.

More recently, defence analyst David Perry, of the Canadian Global Affairs Institute, has argued that there is validity to the government's argument that spending alone isn't a good measure of a country's contribution to NATO.

I agree with all of the various contributions we've been making.

In that regard, take Greece, for example — a wonderful country, with wonderful people, but we all know of its major economic problems. Yet, they are one of only five NATO countries out of the 28 that meet the 2 per cent threshold. They spend 2.36 per cent of GDP on defence. However, that has less to do, I assure you, with their military capabilities than it does with their depressed economy. Their economy is eight times less than that of Canada's.

Another issue with the 2 per cent mark is what goes into these calculations. France, for example, includes military pensions that account for 24 per cent of their allocation. In the past, Canada has not taken into account some of the spending our NATO allies include in their reporting.

At a recent meeting of the House of Commons Standing Committee on Foreign Affairs and International Development, Dr. Christopher Sands of Johns Hopkins University addressed the 2 per cent measure. He said:

> Our European allies have a tendency to throw in all sorts of things to try to make their figures look like they're closer to 2 per cent — veterans benefits, contributions to diplomacy. . . .
>
> The problem is that Canada is too darn honest.

Honourable senators, we should at least be comparing apples to apples, not apples to oranges. If we are going to make such comparisons, NATO must ensure that all countries are reporting the same set of expenditures before releasing these numbers.

With the release of last week's defence policy, the government adopted a formula more in line with other NATO members when it took into account spending that our allies typically include, such as military pensions. So our percentage of GDP for 2016-17 immediately jumped from 0.9 to 1.19 per cent, without spending a dollar more. That is still below the 2 per cent threshold, but in an instant it moved us from twenty-third place in NATO to sixteenth.

Did our military capabilities change with this recalculation? Is our contribution to NATO suddenly greater? No, of course not.

This is why the 2 per cent measure is flawed, and it will remain unrealistic if it involves doubling our defence expenditures.

What is more important is what we get for what we spend. Our capabilities and contributions are amongst the best, as we have shown time and time again, particularly with our motivated, highly skilled and dedicated men and women who serve in the forces. Yes, we can and should spend more to the goals mentioned in Recommendation No. 1, but not with the 2 per cent of GDP in Recommendation No. 2. It is time to measure outputs, outcomes and results rather than a percentage.

• (2030)

The Hon. the Speaker *pro tempore*: Senator Eggleton, your time is up.

Senator Eggleton: May I have one minute to read my amendment?

The Hon. the Speaker *pro tempore*: Are colleagues in agreement?

Hon. Senators: Agreed.

MOTION IN AMENDMENT

Hon. Art Eggleton: Therefore, honourable senators, I move:

> That the tenth report of the Standing Senate Committee on National Security and Defence be not now adopted, but that it be amended by deleting the second recommendation.

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

(On motion of Senator Lang, debate adjourned.)

ELEVENTH REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE AND REQUEST FOR GOVERNMENT RESPONSE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Martin:
>
> That the eleventh report of the Standing Senate Committee on National Security and Defence, entitled *Reinvesting in the Canadian Armed Forces: A plan for the future*, deposited with the Clerk of the Senate on May 8, 2017, be adopted and that, pursuant to rule 12-24(1), the Senate request a complete and detailed response from the government, with the Minister of National Defence being identified as minister responsible for responding to the report.

Hon. Art Eggleton: Honourable senators, this is the follow-up report to the one I just addressed, and I won't be very long on this one.

This is entitled *Reinvesting in the Canadian Armed Forces: A plan for the future*, and it has some valid points.

I particularly want to note on page 2 that it talks about supporting the military family, and I strongly believe in this. It is something that I gave a high priority to when I was Minister of Defence. It states:

> Every organization with an interest in the Canadian Armed Forces agrees that the care of military families must be a core undertaking, not only by the Department of National Defence, but also for the whole of Government. Families are the core of the Canadian Armed Forces. They must be respected, nurtured, listened to and supported.

I won't go on from there, but I think that's a very valid comment. I think Senator Jaffer was particularly supportive of that recommendation.

But there are some other recommendations in here that just don't make sense. In fact, they're tied to the 2 per cent proposition, because they're suggesting the only way some of these purchases could be afforded is if we had a doubling of the budget. For example, Recommendation 5 talks about prioritizing the replacement of 55 of 95 Griffons with non-civilian medium- to heavy-lift helicopters and adding 24 attack helicopters. We don't need every piece of equipment, platform or kind of thing that a military like the United States has. The United States, by the way, talks about the NATO allies paying out more money in Europe. The United States puts a lot of money into defence, but they're not just in Europe. They're in the Middle East, Korea, the South China Sea — all over the map — and when it comes to NATO, they have always wanted to be the leader. They have been the leader. In fact, they have been the head of the NATO military operations from its very beginning. They have wanted to have that kind of control.

But we don't need to have every piece of equipment they do. We need to have the interoperability, and we need to have some equipment, for example, the Coyotes, as I mentioned earlier, where we got a contribution of equipment, state-of-the-art at that time, which others didn't have.

They also talk about prioritizing the air refueling tankers and increasing the fighter jet fleet to 120 and the submarine fleet to 12 new submarines. I can tell you submarines are a very difficult thing to deal with, but building 12 new submarines would cost a fortune. It mentions 18 surface combatants. It goes on and on in terms of prioritizing.

Some of these things will be necessary. Some are upgrades or replacements of existing pieces of equipment, but there is far more here than what the budget could provide for, unless, of course, the 2 per cent of GDP actually happened, and it's not going to happen.

The government has now come out with a plan, and I think that's what needs to be examined together with this.

MOTION IN AMENDMENT

Hon. Art Eggleton: Therefore, honourable senators, I move the following:

> That the eleventh report of the Standing Senate Committee on National Security and Defence be not now adopted, but that it be referred back to the Standing Senate Committee on National Security and Defence for consideration, particularly in light of the document entitled Strong, Secure, Engaged: Canada's Defence Policy, tabled in the Senate on June 7, 2017.

This is the government report from last week. I think the committee should now look at what they have suggested in this report, vis-à-vis that, and come back with some further commentary on it. I move that amendment.

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

(On motion of Senator Boniface, debate adjourned.)

THE SENATE

MOTION TO RESOLVE THAT AN AMENDMENT TO THE REAL PROPERTY QUALIFICATIONS OF SENATORS IN THE *CONSTITUTION ACT, 1867* BE AUTHORIZED TO BE MADE BY PROCLAMATION ISSUED BY THE GOVERNOR GENERAL—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Patterson, seconded by the Honourable Senator Runciman:
>
> Whereas the Senate provides representation for groups that are often underrepresented in Parliament, such as Aboriginal peoples, visible minorities and women;
>
> Whereas paragraph (3) of section 23 of the *Constitution Act, 1867* requires that, in order to be qualified for appointment to and to maintain a place in the Senate, a person must own land with a net worth of at least four thousand dollars in the province for which he or she is appointed;
>
> Whereas a person's personal circumstances or the availability of real property in a particular location may prevent him or her from owning the required property;
>
> Whereas appointment to the Senate should not be restricted to those who own real property of a minimum net worth;
>
> Whereas the existing real property qualification is inconsistent with the democratic values of modern Canadian society and is no longer an appropriate or relevant measure of the fitness of a person to serve in the Senate;
>
> Whereas, in the case of Quebec, each of the twenty-four Senators representing the province must be appointed for and must have either their real property qualification in or be resident of a specified Electoral Division;
>
> Whereas an amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;
>
> Whereas the Supreme Court of Canada has determined that a full repeal of paragraph (3) of section 23 of the *Constitution Act, 1867*, respecting the real property qualification of Senators, would require a resolution of the Quebec National Assembly pursuant to section 43 of the *Constitution Act, 1982*;
>
> Now, therefore, the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the Schedule hereto.

SCHEDULE

AMENDMENT TO THE CONSTITUTION OF CANADA

1. (1) Paragraph (3) of section 23 of the *Constitution Act, 1867* is repealed.

(2) Section 23 of the Act is amended by replacing the semi-colon at the end of paragraph (5) with a period and by repealing paragraph (6).

2. The Declaration of Qualification set out in The Fifth Schedule to the Act is replaced by the following:

> I, *A.B.*, do declare and testify that I am by law duly qualified to be appointed a member of the Senate of Canada.

3. This Amendment may be cited as the *Constitution Amendment, [year of proclamation]* (Real property qualification of Senators).

Hon. Pierrette Ringuette: Honourable senators, again, as the clock is ticking, I would like to remind my colleagues that this is a motion that was tabled by Senator Patterson, and it was adjacent to Bill S-221 requiring a constitutional amendment. I have spoken on the bill earlier, and I have more research to do on the adjacent motion. I would like to adjourn for the remainder of my time.

(On motion of Senator Ringuette, debate adjourned.)

MOTION TO URGE THE GOVERNMENT TO TAKE THE STEPS NECESSARY TO DE-ESCALATE TENSIONS AND RESTORE PEACE AND STABILITY IN THE SOUTH CHINA SEA—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Ngo, seconded by the Honourable Senator Cowan:

That the Senate note with concern the escalating and hostile behaviour exhibited by the People's Republic of China in the South China Sea and consequently urge the Government of Canada to encourage all parties involved, and in particular the People's Republic of China, to:

(*a*) recognize and uphold the rights of freedom of navigation and overflight as enshrined in customary international law and in the United Nations Convention on the Law of the Sea;

(*b*) cease all activities that would complicate or escalate the disputes, such as the construction of artificial islands, land reclamation, and further militarization of the region;

(*c*) abide by all previous multilateral efforts to resolve the disputes and commit to the successful implementation of a binding Code of Conduct in the South China Sea;

(*d*) commit to finding a peaceful and diplomatic solution to the disputes in line with the provisions of the UN Convention on the Law of the Sea and respect the settlements reached through international arbitration; and

(*e*) strengthen efforts to significantly reduce the environmental impacts of the disputes upon the fragile ecosystem of the South China Sea;

That the Senate also urge the Government of Canada to support its regional partners and allies and to take additional steps necessary to de-escalate tensions and restore the peace and stability of the region; and

That a message be sent to the House of Commons to acquaint it with the foregoing.

And on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Lankin, P.C.:

That the question under debate be referred to the Standing Senate Committee on Foreign Affairs and International Trade.

Hon. Yonah Martin (Deputy Leader of the Opposition): Question on the amendment.

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

Senator Martin: Question.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Ringuette, seconded by the Honourable Senator Lankin that the question under debate be referred to the Standing Senate Committee on Foreign Affairs and International Trade. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

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

• (2040)

You don't want to send it to committee?

Senator Ringuette: The South Sea, yes. She asked the question.

Senator Martin: Do you agree? You said "yes." We will say "no."

The Hon. the Speaker *pro tempore***:** Senators, it is pretty ambiguous. Are you adopting? Are you agreeing with Senator Ringuette or not agreeing?

Senator Martin: No.

Senator Plett: No.

The Hon. the Speaker *pro tempore***:** You are not. Does somebody wish to adjourn it?

Senator Martin: No. Voice vote.

The Hon. the Speaker *pro tempore***:** I will start over again.

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

Some Hon. Senators: No.

Senator Plett: It is defeated.

The Hon. the Speaker *pro tempore***:** We will resume debate on the main motion.

Senator Plett: No. Question!

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

Senator Day: I would move the adjournment, Your Honour.

(On motion of Senator Day, debate adjourned.)

BUDGET IMPLEMENTATION BILL, 2017, NO. 1

MOTION TO INSTRUCT NATIONAL FINANCE COMMITTEE TO DIVIDE BILL INTO TWO BILLS—DEBATE CONTINUED

On the Order:

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

Hon. André Pratte: Out of respect for the Speaker and the institution, I voted in favour of sustaining the Speaker's ruling. The motion has survived, and out of respect for myself and my convictions, I will speak in favour of my own motion.

I suppose that will warrant some applause from the people who booed and some boos from the people who applauded, but so be it.

Senator Neufeld: Well, get used to it.

Senator Pratte: That has been done.

This motion instructs the National Finance Committee to divide Bill C-44 in order to remove Division 18 of Part 4, the "Canada Infrastructure Bank Act," and make it a separate bill. The result would be two bills. One would comprise the 12 pages that create the Canada infrastructure bank, and the other would consist of the rest of the bill to implement the 2017 Budget. That is 278 of the 290 pages of Bill C-44.

Why split the budget bill? Because in my humble opinion, we need more time to study the sections giving birth to the Canada infrastructure bank.

I agree with the government that the infrastructure bank is part of its budget policy. That is not the issue. But the infrastructure bank is simply too important an institution from a financial, economic, strategic and political standpoint to have its founding legislation buried in an omnibus bill. One by one the editorial writers of the *Globe and Mail*, the *National Post* and the *Toronto Star* have expressed the same view.

Furthermore, to my knowledge, practically all Crown corporations of a financial or commercial nature were created through a stand-alone bill. Such was the case for the CPP Investment Board, for Export Development Canada, for the Canadian Commercial Corporation, for CMHC and for the Business Development Bank of Canada.

[*Translation*]

The infrastructure bank will be a $35-billion institution, at least. That number could rise, as per the bill. The bank's decisions will have a significant impact on the priority and funding given to strategic infrastructure projects in Canada. According to its proponents—and there are many—the bank will help to mobilize a lot of private capital and thus make it possible for projects that would otherwise never see the light of day to be carried out.

I tend to believe them.

The people saying these things, such as Michael Sabia, president of the Caisse de dépôt et placement du Québec, are people we can trust. That is one of the reasons why I am in favour of the Canada Infrastructure Bank. However, our admiration for these individuals does not relieve us of our obligation to carefully examine the bill that creates the bank.

Thanks to the good will of the government and the efforts of our colleague Senator Woo, the Standing Senate Committee on Banking, Trade and Commerce was able to hold five meetings that focused all or in part on the Canada Infrastructure Bank. What is more, a technical briefing was organized for the Senate on June 1. These meetings were very informative for the senators who were able to attend, but they also raised many questions and concerns.

Canadians themselves are just beginning to understand what is at stake. Is that not one of the reasons for parliamentary debate, to ensure that Canadians are informed of the ins and outs of the bills that come before us? That takes time, and two or three weeks is not nearly enough time to examine an issue as important as the selection, ownership, and funding of Canada's major infrastructure projects.

For example, how many Canadians realize that the infrastructure bank means they will no longer be paying for infrastructure through their taxes, but with fees and tolls? Do they agree with that? Would some like to have their say on this? I've noticed that, as we have talked about this issue more and more in recent weeks, more Canadians are taking an interest and looking to get informed.

[*English*]

One of the remaining questions about the Canada infrastructure bank concerns its funding. Bill C-44 refers to at least $35 billion taken out of the Consolidated Revenue Fund, but the government says that the impact on federal finances will not exceed $15 billion. The remaining $20 billion — equity, loans or loan guarantees — will not count as federal expenses because they will be backed by assets. So what exactly is the amount of taxpayer money at risk? Is it $15 billion or $35 billion?

Ministers Morneau and Sohi have made many reassuring statements on this, but as Senator Marshall explained in her speech this week, contrary to what the government would like us to believe, the $20 billion is also at risk. I quote the former Auditor General of Newfoundland:

> The $20 billion will not affect the government's bottom line, but that's only true to a certain extent. It won't affect the government's bottom line right now, initially, but it will affect the government's bottom line if it is written off or if it is written down.

An October 2016 briefing note to the Finance Minister recently obtained by The Canadian Press suggests that risks may be higher for some projects than what the government has said publicly.

Some seasoned observers have their doubts. For one *Report on Business* columnist, Barrie McKenna, wrote a few days ago:

> It is not clear if the bank or the investors will take the hit if revenues fall short of projections.

Kevin Page, former Parliamentary Budget Officer recently wrote:

> . . . Canadians will be carrying more revenue risk than their private-investment partners while paying more to use the infrastructure funded through the CIB.

The government's typical response has been that the risk through the CIB will certainly be lower than currently, because the risk with the traditional method of financing infrastructure is 100 per cent.

I do not find this to be a satisfactory answer. Does that mean that because the risk of the traditional method is supposedly 100 per cent, anything below that would be automatically acceptable for the infrastructure bank — 90 per cent or 80 per cent? So the risk to taxpayer funds needs to be clarified before we legislators sign on.

Many have expressed concerns about the governance model that the government has chosen, including groups and individuals who support the infrastructure bank. The chairperson, members of the board of directors and chief executive officer of the bank are all appointed to hold office "during pleasure," meaning they can be fired at any time without motive, leaving some to fear that they will not be sufficiently insulated from politics. Is this a good thing; a bad thing? Is there a better way?

• (2050)

We have heard many different opinions on the subject, including Senator Massicotte's wise views expressed in this chamber last Tuesday.

But alternatives to the model proposed by the government have not been carefully studied and weighed. In a letter addressed to Senator Woo this week, the minister clarifies for us the way the system will work. And we had the minister in the National Finance Committee today, who spent 90 minutes with us trying to explain again exactly how it would work, and I must say things are getting clearer.

I asked the minister if he would he put part of that in the act so that we are sure that this is not only this government's intention, but actually in the act so that it doesn't change when the government changes. The answer unfortunately was a polite "no." But things are getting clearer as we have further time to study the issue.

Many large infrastructure projects run into difficulties such as cost overruns or conflicts of interest or worse. These problems are often brought to light by whistle-blowers or journalists' investigations, but it is hard to investigate without access to information on these projects.

Clause 28 of the proposed "Canada Infrastructure Bank Act" exempts all the information the infrastructure bank collects about its private partners from the Access to Information Act. There is a risk that the bank's private partners will use this clause to block all access to information requests concerning projects in which they are involved.

When I asked the government officials about this, they essentially said that this is the price to pay for attracting private investors. Again, I do not find this answer satisfactory, and I would like to examine this matter further to see if we can strengthen the legislation in this area.

[*Translation*]

The final witness who appeared before the banking, trade and commerce committee, Université Laval constitutional law professor Patrick Taillon, explained a nuance in Bill C-44 that nobody had noticed until then, perhaps not even the people who drafted it. According to subclause 5(4) of the future infrastructure bank act, the bank is not a Crown agent except in certain situations, such as when:

> (d) carrying out any activity conducive to the carrying out of its purpose that the Governor in Council may, by order, specify.

This means that a simple order is all it takes for the federal government to decide that the bank is a Crown agent for a particular infrastructure project and will therefore enjoy all the privileges and immunities of the Crown. In other words, as Professor Taillon put it:

> In this way, it would not be subject to the application of provincial laws and municipal regulations, which could have serious consequences in terms of environmental assessment processes . . . .

When questioned about this, the Minister of Finance, Bill Morneau, had this to say:

> All relevant provincial and territorial laws will apply for all projects in which the bank invests.

Justice department officials said the same thing but rejected potential amendments that would have made things perfectly clear.

I don't know if Professor Taillon is right or not, but I do know that the Government of Quebec took this seriously enough to ask that the bill be amended.

I also know that, according to my team's research, no other federal law has a clause like this one that gives the government this much freedom to decide when a Crown corporation is a Crown agent.

It seems to me that given the Senate's fundamental role in protecting regional interests, we have a duty to give this matter further consideration before passing this part of Bill C-44.

[*English*]

As I said, even people in organizations in favour of the infrastructure bank are questioning its governance model, its mandate and the way it would operate.

Mr. Ryan Greer of the Canadian Chamber of Commerce said:

> . . . the act . . . is very much a blank canvas.

Like a number of others, Mr. Greer is inclined to give the infrastructure bank a chance, to see it in operation before passing judgment. But as legislators, do we not have a duty to ask ourselves whether the frame around the blank canvas is strong enough? Stakeholders may be willing to give the infrastructure bank a chance, but should we senators take a chance with its founding legislation?

The Minister of Finance said to the National Finance Committee two weeks ago:

> We do know that we need to get this right . . . .
>
> We are open to your views. In fact, we depend on them to make the important decisions that we need to make . . . .

If the minister is truly open to hearing our views on the infrastructure bank, should he not give us the time to properly study that part of the bill? The minister should be especially open to this possibility since there is no need to rush through this part of Bill C-44. As he told the Banking Committee, ". . . by definition, infrastructure is long term. It is 20, 30, 40 and 50-year projects."

A few more weeks of studying the bill will not make or break those projects. Anyway, none of the projects in which the bank will eventually invest are even known yet, except one, and that's the light train network in Montreal. And that project is already delayed by a few months because the National Assembly of Quebec wants to scrutinize the act that will give it the go-ahead.

Colleagues, from my perspective, dividing Bill C-44 is not a political manoeuvre. It is not an attack on the government or a way of sabotaging the infrastructure bank. It is simply a means of giving ourselves the time to fully comprehend all the implications of establishing this new institution and ensuring that Canadians themselves understand it. Dividing the bill also gives us time to amend it, if necessary, particularly with regard to governance, jurisdictional boundaries and access to information.

Honourable senators, taking more time to scrutinize the part of Bill C-44 that creates the Canada infrastructure bank is the best way to make sure that the institution will be created on solid financial, governance and democratic foundations. It is the best way to ensure that the Senate and the government achieve the goal that we share to get this right.

Hon. Art Eggleton: Will you take a question, senator?

Senator Pratte: Certainly.

Senator Eggleton: You mentioned in your remarks that you thought another two or three weeks would be necessary to further examine the bill in the detail that you have suggested and that it could be best done, in your suggestion, by a split bill. Whether it is a split bill or done in the confines of the present one, I want to ask you about the two or three weeks.

When does the two or three weeks start to run and when does it finish? I don't think the public would be very amused by buying your proposition of a split bill and then adjourning for three months for vacation.

So would you see this as running now, which means into July, and do you know that the committee will come back and have the hearings in that period of time?

Senator Pratte: Frankly, I'm not in control of the calendar. I don't really mind whether we sit in the summer or in the fall. For me, it is not a matter of one month or two months. These infrastructure projects will not be built in a year or a month. Even if we follow the regular calendar and we start studying this in the fall, it can be done in a matter of weeks.

I can see that even in the last three or four weeks since we have been seriously discussing the infrastructure bank, a lot of progress has been made. We have a lot more understanding of how the bank will work. We have better ideas of where changes in the act could be made, and I think if we made that effort over three or four weeks, even if we started in the fall, we could deal with that expeditiously.

[*Translation*]

The Hon. the Speaker: I am sorry, Senator Pratte, but your time is up. I believe that Senator Moncion would like to ask you a question.

Would you like five more minutes?

Senator Pratte: Yes.

Hon. Lucie Moncion: You attended several meetings with Minister Morneau and you listed in your document our questions that did not receive an answer.

If you had a list of questions that might help complete this study, do you think we could get the answers in the coming weeks?

During this afternoon's meeting of the finance committee, Minister Morneau did say that he could stay with us as long as necessary to answer all our questions.

For weeks now we have been asking him about the Infrastructure Bank and, as you say, he did clarify a number of things.

It would be good to know which questions remain unanswered. If such a list could be prepared, it might help move this file along a lot faster. That way, we would not have to put things off until the fall, and we might even reach the government's goals.

• (2100)

Senator Pratte: In my humble opinion, it would be very useful to be able to ask questions and get clarifications. It is also important to see whether we can address the concerns expressed and possibly propose some related amendments to the bill.

Senator Moncion: Do you have any specific ideas about the parts of the bill that bother you?

Senator Pratte: I tried to explain those three aspects in my speech, specifically the relationship between the board of directors and the government, protecting provincial jurisdictions and access to information. The legislation needs to be amended and clarified in these three areas in order to alleviate some of the concerns that have been expressed.

[*English*]

Hon. Nicole Eaton: Senator Pratte, if we are going to study the infrastructure bank properly, would it not be a good idea to do a real Senate study and have witnesses come from various financial areas that would give us a wider perspective than just the Minister of Finance?

Senator Pratte: There could very well be a wider study of the infrastructure bank, but we are now considering a bill, maybe a separate bill, and I think we have to deal with the bill. That's my concern.

I'm in favour of the infrastructure bank. I want it to go forward, but I want it to go forward on a solid financial, democratic and political footing. I want to deal with the bill as expeditiously as possible but on a reasonable understanding of how it will work. That's my goal.

[*Translation*]

Hon. Claude Carignan: Honourable senators, Senator Pratte is moving a motion to split Bill C-44 into two separate parts, so that Division 18 of Part 4, creating the Canada Infrastructure Bank, would be its own bill, and everything else would form a separate bill.

I think Senator Pratte's motion is relevant because that part of the bill, the Canada Infrastructure Bank, is a major initiative that involves huge sums of public money. We are talking about $35 billion and an enormous governance structure that is based on scenarios that have yet to be confirmed.

Many witnesses and experts raised a number of serious questions that remain largely unanswered. Consider the example of the provision of the bill that gives certain projects within the bank the status of agent of the Crown. The bill explicitly sets out that in certain cases, some projects undertaken or funded by the bank could be given the status of agent of the Crown. This means that they could bypass all provincial laws and municipal bylaws. That is an extraordinary power that warrants further study. The government, through two of its deputy ministers, is telling us that it does not intend to confer that status on any project, but if that is true, why include that provision in the bill?

We need to examine that issue more carefully. It is our responsibility.

Who will be chosen to lead this institution? How will members of the board be chosen? How will the projects be selected? Will there be quotas to ensure that a certain proportion of funding is allocated to each region and province? What organic ties will the bank have to the government? How will the board of directors be held accountable? What role will the minister play in choosing projects? Why is the government handing over to the bank its authority to designate agents of the crown?

There are all those questions and more. The government chose to include this provision in an omnibus bill when it promised not to introduce omnibus bills. Many people say that omnibus bills are government catch-alls. Is the government seriously asking us to approve $35 billion in spending in a catch-all bill? If this new institution is so important for the government, why did it not introduce a separate bill so that it could be given all the necessary consideration? Instead, the government chose to include it in a mammoth bill that affords parliamentarians fewer opportunities to examine it properly. To top it all off, Bill C-44 was rammed through in the other place since the government decided to impose time allocation in order to get it passed.

Honourable senators, you know that one of the fundamental roles of the Senate is to provide sober second thought on bills, but another equally important role is to keep in check the arrogance and tyranny that sometimes come with a majority government that doesn't care about the objections raised in the other place. I think that that is the sort of situation we are in with Bill C-44, particularly the part about the infrastructure bank.

It is therefore obvious that we need to divide Bill C-44 in order to examine section 18 independently and take the time we need to conduct a serious, rigorous study worthy of an effective and responsible Senate. In my opinion, to do otherwise would be to shirk our responsibilities. Despite the pre-study that we did, far too many questions remain unanswered.

There is no rush. I am not saying that I am against the creation of the Canada Infrastructure Bank, but I, like many other people in this chamber, have a number of concerns about how it will be implemented. It is vital that we take the time we need to carefully

review all of our concerns and make the appropriate amendments to close the loopholes in this bill. That can be done in several days as per the government's request.

Furthermore, other people are worried about this legislation and the Canada Infrastructure Bank. Today I will play the role of spokesperson for our agricultural producers, specifically the Union des producteurs agricoles, which sent us a letter today. I would like to read it into the record in order to share the position of the Union des producteurs agricoles:

> Honourable senators and members of Parliament,
>
> The Union des producteurs agricoles (UPA) is a certified association under the terms of the Quebec Farm Producers Act. The association has a responsibility to promote, represent, defend and develop the economic, social and moral interests of all farm producers in Quebec.
>
> To achieve our mission, we pay close attention to the work of the Parliament of Canada, the Senate and their committees. We are very concerned about Bill C-44 and the Canada Infrastructure Bank, in particular. The UPA shares the concerns of the Quebec National Assembly, which translated those concerns into the unanimous adoption of the following motion:
>
> > That the National Assembly affirm the application of all Quebec laws to any future projects supported by the Canada Infrastructure Bank and, in order to clearly reflect this legal obligation, that it call for amendments to Bill C-44, currently being studied by the House of Commons, to ensure that the Canada Infrastructure Bank is subject to the laws of Quebec.
>
> First, a word about omnibus bills. We deplore the use of this legislative tactic. Its very nature serves to limit the all-important democratic debate and diverts the attention not only of elected officials, but also of civil society away from provisions that have a direct impact on them and on all individuals. The hodgepodge of legislation that is Bill C-44 is an excellent example of this terrible tactic. The Canada Infrastructure Bank warrants its own thorough study in its own bill. The concerns it has raised among provincial elected officials and Quebec's farm producers also warrant proper consideration.

• (2110)

> As such, we urge you to split Bill C-44 and proceed with studying the Canada Infrastructure Bank act so that it gets all the attention it deserves, especially in terms of its impact on the agricultural sector. Quebec's farmland accounts for four per cent of its total land mass. Infrastructure projects always seem to encroach on agricultural land protected by the Act respecting the Preservation of Agricultural Land and Agricultural Activities.
>
> Every year, we see transportation projects such as electric public transit networks, electricity, natural gas, and wind infrastructure, and telecommunications, aviation, and port operations encroach on agricultural land. Failure to enforce provincial laws, such as the Act respecting the Preservation of Agricultural Land and Agricultural Activities and the Environment Quality Act, with respect to these projects regularly results in major litigation and tension between rural communities on the one hand and project proponents and advocates on the other.
>
> More specifically, the concurrent use of powers under paragraph 4(d) and paragraphs 18(c), (f), (g), (i), (k), and (l) of the Canada Infrastructure Bank Act is a problem, and it is not the only one.
>
> We are calling on you to conduct a rigorous analysis of the impact of these provisions on the agricultural sector. Our province's farmland is a non-renewable resource. Year after year, exceptions to its protection regime have an impact, and those exceptions tend to ignore sustainable development principles.
>
> We are therefore asking you to take the necessary steps to divide Bill C-44, to study the Canada infrastructure bank act separately, and to ensure that, in all matters in which the Canada Infrastructure Bank may be involved, Quebec's laws, including the Act respecting the Preservation of Agricultural Land and Agricultural Activities, will be enforced.
>
> Thank you for your attention in this matter.

The letter is signed by UPA president Marcel Groleau. This is a heartfelt appeal from our fellow citizens, the representatives of our farm producers, asking us to ensure that the Canada Infrastructure Bank complies with provincial laws, in particular those that protect our agricultural lands.

I am sure that many other organizations would like to have their say, which would be possible if we were to split Bill C-44 so that the Standing Senate Committee on National Finance could hold separate hearings to examine the impact of the bill.

Accordingly, I invite you, honourable colleagues, to vote in favour of Senator Pratte's motion to split Bill C-44. It is our duty to do so; it is what we must do. Thank you.

[*English*]

Hon. Joan Fraser: I will try to be brief, colleagues, but I want to put it on the record before we rise for the night that my position on this matter is the mirror image, the opposite, of Senator Pratte's. I say that with the greatest of respect for him and for the work that he has done and does in this place and will do.

Last night I spoke at some length against the point of order raised by Senator Harder, and this evening I voted not to uphold the Speaker's ruling. I think it was the first time I have cast such a vote in my years here, and it was not an easy thing to do. I did it because I believed it was important to preserve the rights of the Senate to divide bills when it sees fit so to do. We did that at some personal cost for some of us. We did overturn the Speaker's ruling, and I believe it was the right —

The Hon. the Speaker: Senator Fraser, we are on debate on the —

Senator Fraser: I'm coming to that, your honour.

The Hon. the Speaker: We had the debates and the results of what you're talking about, but we're on Senator Pratte's motion.

Senator Fraser: If you let me finish my sentence, you'll find me doing a pivot to the motion, Your Honour.

We have done that. We have concluded that debate. Now we are discussing the decision that we should actually make, should we or should we not divide this bill? I have come to the conclusion that we should not.

Division of bills is something that we have done and in my view we should only do very rarely. I have not been dissuaded despite Senator Pratte's eloquent and well researched interventions and Senator Carignan's speech this evening. I have not been persuaded that it is necessary in this case.

We've had a pre-study of the bill. As Senator Pratte has reminded us, we've had interventions already from a number of very knowledgeable witnesses. I attended the meeting of the Finance Committee this afternoon when the minister was present, and as has been noted, stayed with us for an hour-and-a-half, which is more than you usually get from a minister. There were many questions about the infrastructure bank. Not everyone present may have been satisfied by his answers, but they were his answers. They were the answers he was going to give us and is going to give us. As Senator Moncion has reminded us, he indicated specific willingness to respond to other questions if we put them to him.

I do not believe that the normal reasons that might support the division of a bill apply in this case. I see no moral imperative to divide this bill. I see no tactical senatorial reason to delay it in order to gain some kind of political advantage further down the road.

On the contrary, I sense and have heard many colleagues say that they support this bill; they would just like to know more and maybe make some amendments. That can be done without dividing the bill. It is perfectly possible for the Finance Committee to do a very detailed study of that element of the bill without dividing it.

I would be prepared to support a motion for the Finance Committee to sit extended hours next week and the week after that. While I know that's very easy for me to say because I'm not a member, but I would be prepared to put my presence where my mouth is and substitute for those who wished to have someone take their place on that committee for those extended hours. I'm not trying to load other people with work that I'm not prepared to do myself, but I believe that it is perfectly possible to do our work properly, thoroughly and appropriately as senators without dividing this bill. It is even possible to amend the bill without dividing it. Whether the Commons would accept our amendments remains to be seen, but that would be the case whether or not the bill is divided. That is not in itself an argument for dividing the bill.

So colleagues, despite the very great respect I have for Senator Pratte — he's looking at me very skeptically, but it's true, sir — I'm afraid I cannot support his motion.

(On motion of Senator Woo, debate adjourned.)

• (2120)

PIPELINE SAFETY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Mockler, calling the attention of the Senate to the issue of pipeline safety in Canada, and the nation-building project that is the Energy East proposal, and its resulting impact on the Canadian economy.

Hon. Terry M. Mercer: Honourable senators, I rise to speak briefly on my colleague Senator Mockler's inquiry, calling the attention of the Senate to the issue of pipeline safety in Canada, a nation-building project such as that of Energy East's proposal and its resulting impact on the Canadian economy.

Earlier this day I spoke on the Standing Senate Committee on Transport and Communications' report on pipelines and I'll refer you to those. When you get the blues, you can read it again and again. I'll even autograph it for you.

However, I would ask honourable senators to take note of some processes that are currently under way. First, the Government of Canada received a report from the National Energy Board Modernization Expert Panel in May that had 26 recommendations, including the restructuring of the National Energy Board and better consultation with stakeholders, including indigenous peoples.

Second, the Energy East Pipeline project is currently under review by a new three-member review panel of the National Energy Board, which has been receiving comments on new criteria for its assessment.

With those in mind, I look forward to seeing the results of those consultations once completed, which should ensure proper safety practices and environmental stewardship when it comes to large energy projects.

In the meantime, it is necessary to have a dialogue here in this place and in our communities across Canada about the environmental and economic implications of large energy projects like Energy East.

Ask yourselves the following questions, colleagues: What safeguards are in place or will be put in place to ensure the safety of our communities from possible accidents and

environmental damage? Is the safety of our wildlife, forests, waterways and arable lands being taken into consideration when planning these projects? Are we consulting with all necessary stakeholders? Are we examining the economic impact on our communities that could benefit greatly from such projects as Energy East? Are we being innovative in our thinking about how we can move forward with those projects in an environmentally and economically viable way?

Exploring these answers and having these types of discussions, whether it be from the National Energy Board, the Energy East Pipeline project or here in the Senate is important so that an effective approval process exists to the benefit of everyone concerned.

Honourable senators, I would be remiss if I did not reiterate a possible change or addition to the end point of Energy East, the Strait of Canso. It could be a great opportunity to share with New Brunswick in a project that would see great economic benefits to both our neighbouring province and Nova Scotia and, of course, Alberta.

I for one am looking forward to that being included in the discussions on the Energy East project. I thank Senator Mockler for raising these issues and look forward to future discussions and decisions on this worthwhile initiative.

(On motion of Senator Day, debate adjourned.)

[*Translation*]

AGRICULTURE AND FORESTRY

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

Hon. Ghislain Maltais, pursuant to notice of June 14, 2017, moved:

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

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

Hon. Senators: Agreed.

(Motion agreed to.)

(The Senate adjourned until Monday, June 19, 2017, at 4 p.m.)

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