



DEBATES OF THE SENATE

1st SESSION



42nd PARLIAMENT



VOLUME 150



NUMBER 145

OFFICIAL REPORT
(HANSARD)

Wednesday, October 4, 2017

The Honourable GEORGE J. FUREY,
Speaker

CONTENTS

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

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

THE SENATE

Wednesday, October 4, 2017

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

Prayers.

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

SILENT TRIBUTE

The Hon. the Speaker: Honourable senators, October 4 is a day to honour the lives of missing and murdered indigenous women and girls.

[Translation]

I would ask you to rise and observe a minute of silence in their memory.

(Honourable senators then stood in silent tribute.)

[English]

SENATORS' STATEMENTS

MENTAL ILLNESS AWARENESS WEEK

Hon. Jane Cordy: Honourable senators, this week is Mental Illness Awareness Week in Canada. From October 1 to 7, the Canadian Alliance on Mental Illness and Mental Health, along with its partner organizations, promote mental health education to help open the eyes of Canadians to the reality of mental illness and the pervasiveness of mental illness in society.

This year we are celebrating the twenty-fifth anniversary of Mental Illness Awareness Week. The annual national public education campaign was established in 1992 by the Canadian Psychiatric Association, and is now coordinated by the Canadian Alliance on Mental Illness and Mental Health in cooperation with all its member organizations and supporters across Canada.

Honourable senators, in 2010, the Mental Health Commission of Canada commissioned a study to get a better idea of the number of people living with mental health problems and illnesses in Canada and the associated costs. One in five people in Canada experiences poor mental health. That is over 6.7 million Canadians. The study also found that mental health problems and illnesses can occur early in people's lives. More than 28 per cent of people aged 20 to 29 experience a mental illness in a given year. By the time people reach 40 years of age, one in two people in Canada will have had or have poor mental health in their lifetime. These are significant numbers and they have a significant impact on our economy and, of course, on Canadians and their families.

I have spoken many times in this chamber about the excellent report the Social Affairs, Science and Technology Committee released, *Out of the Shadows at Last: Transforming Mental*

Health, Mental Illness and Addiction Services in Canada. Under the leadership of the committee chair, former senator Michael Kirby, this study was a collaborative effort by all members of the committee. At that time, we travelled extensively across Canada from coast to coast to coast to ensure we gave Canadians from all walks of life the opportunity to participate. The result was an in-depth look at the state of mental health and mental illness policies in Canada and the issues facing those Canadians living with mental health issues.

It is hard to believe that report was released over 10 years ago. Many strides have been taken, but much remains to be done to tackle the stigma that comes with mental illness. After more than 10 years, it may be time for the Senate to revisit this report to see what progress has been made and how the mental health landscape has changed since the report was released.

As the Canadian Alliance on Mental Illness and Mental Health states:

A strong societal stigmatization of mental illness persists, forcing individuals into the shadows to suffer alone in silence. Unfortunately, many Canadians with mental illness will not seek the help they need and society continues to remain unaware of the significant burden mental illness places on us all.

Honourable senators, the goal of this week is to increase awareness and decrease stigmatization of mental illness. The Canadian Alliance on Mental Illness campaign this week includes the sharing of hundreds of personal stories from individuals living with mental illness. I encourage you to join me in spreading the word on your Instagram, Twitter, website and Facebook, celebrating Mental Illness Awareness Week using the hashtag #MIAW17. The only way to erase stigma around mental illness is to talk about mental health. So let's talk, and together we can make a difference.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Todd Lasaga and Denise Byrne Lasaga, formerly from Newfoundland and Labrador, and now retired and living in the Ottawa region.

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

Hon. Senators: Hear, hear!

ECONOMIC OPPORTUNITIES IN SOUTHEAST ASIA

Hon. Stephen Greene: Honourable senators, I rise today to speak about the opportunities for economic growth in Southeast Asia.

As we all know, Canada is in the midst of pivoting towards Asia in an effort to increase trade and grow our economy. Successive Canadian governments have played a role in this.

During the Harper government, Canada opened exploratory free trade negotiations with Japan, successfully concluded a free trade agreement with South Korea and completed negotiations with the 12 countries of the Trans-Pacific Partnership.

Under this government, Canada is continuing its talks with Japan and has participated in revamping the TPP absent the United States. Also, the successful double taxation avoidance arrangement with the Republic of China, commonly referred to as Taiwan, was brought forward for ratification — which I was happy to sponsor here in the Senate.

However, there are still more opportunities for Canada in this region. I urge the government to work with our Taiwanese allies to conclude a Foreign Investment Promotion and Protection Arrangement — or FIPPA for short — and to include Taiwan in the discussions regarding a revamped TPP.

This year, Canadian investment in Taiwan reached \$800 million; and the reverse, Taiwanese investment in Canada, is about \$600 million. Bilateral trade between Canada and Taiwan last year was almost \$7 billion, making Taiwan Canada's eleventh-largest trading partner.

Many senators might rightly ask, "Well, if the relationship is so good, why do we need a FIPPA? Especially when it involves two partners that respect the rule of law, like Canada and the Republic of China, there isn't a need for special investment protections."

The answer is twofold. First a study by the Chung-Hua Institution for Economic Research suggests that a bilateral investment arrangement between our two countries could increase direct investment tenfold over the coming years.

Second, and perhaps more important, it is about demonstrating our commitment to democracy around the world.

• (1410)

Taiwan is not only an island geographically but also politically. It is a strong but still young democracy and looks to mature democracies like Canada for support. We should take our role as a beacon of democracy seriously.

Ladies and gentlemen, this is about doing the right thing and supporting an open economy with a growing democracy like the Republic of China through a foreign investment promotion and protection arrangement and bringing them into the community of nations committed to the Trans-Pacific Partnership. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a parliamentary delegation from the House of Lords of the United Kingdom, led by the Right Honourable Peter Norman Fowler, Speaker of the House of Lords of the United Kingdom, accompanied by

Lady Fiona Fowler; Ms. Žana Paul, Assistant Head of International Relations Overseas Office House of Lords; and Mr. Patrick Milner, Private Secretary to the Lord Speaker.

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

Hon. Senators: Hear, hear!

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

Hon. Lillian Eva Dyck: Honourable senators, October 4 is a day on which we honour the victims and families of those indigenous women and girls who have been murdered or made missing. We started off this sitting of the Senate with a moment of silence. Your Honour and honourable senators, I thank you all for that from the bottom of my heart.

The National Inquiry into Missing and Murdered Indigenous Women and Girls has begun its community hearings. Honourable senators, we already know that indigenous women and girls are three times more likely to be made missing and four times more likely to be murdered compared to non-indigenous women; indigenous women are three times more likely to be sexually assaulted than non-indigenous women; and simply being indigenous is a risk factor for violence for women but not for men.

We must act now, here in this chamber — just as we did a few moments ago — and in our communities, to combat the specific racism and sexism that make our indigenous women and girls so vulnerable.

Colleagues, there are two other simple actions that you can do today to help: one, you can wear the Sisters in Spirit button from the Native Women's Association of Canada — they're in the reading room; and two, you can write a message of support on a paper heart, also in the reading room. You can take one of those, create a message and post it on your Facebook or other social media. By doing so, you will be raising awareness about the issue and letting families and loved ones know that they have your support.

Across Canada today, Canadians will be participating in the Sisters in Spirit vigils initiated by the Native Women's Association of Canada in 2005. The vigil on Parliament Hill this year started earlier today and is still occurring now. I hope senators were able to attend it before our sitting — or maybe you will have a few moments to step out later this afternoon. Over 200 such vigils are occurring across Canada.

On October 4, we gather to honour our lost sisters and their families. We gather to show we are a united front. We gather to shed light on a crisis that affects every Canadian. We gather to encourage all Canadians to do their part to address the underlying racism and sexism that have led to the disproportionate number of indigenous women and girls and two-spirited people who are made missing or murdered. We gather to ensure that we don't lose any more sisters, mothers, aunties and grandmothers. Thank you.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Shakir Rehmatullah, accompanied by Eshal Shakir. They are the guests of the Honourable Senator Ataullahjan.

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

Hon. Senators: Hear, hear!

SHAKIR REHMATULLAH

Hon. Salma Ataullahjan: Honourable senators, I rise today to share a Canadian success story with the chamber. I ask you to imagine your family leaving everything behind, travelling to a foreign land and rebuilding your lives. This is the story of Shakir Rehmatullah, a Canadian of Pakistani origin who immigrated to Canada in 1996.

Like many first-generation Canadians, the sacrifices of his parents are not lost on Shakir. On the contrary, these sacrifices have motivated him to achieve success in everything he does. Shakir pursued his education in architecture at the University of Miami in Florida. While studying abroad he learned his father had passed. Despite the tragedy of losing his father, he persevered and completed his education far from his new home. After successfully completing his degree, he returned to Canada to be close to his family.

After years of working in the family business, equipped with his architecture degree, his father's work ethic and his entrepreneurial spirit, Shakir founded Flato Developments. Over the years, his company has grown to become a successful and reputable community builder across Ontario. His current office is situated beside the very same hotel his family stayed at on their first night in Canada — an indication of his loyalty to the community that welcomed him and his family more than 20 years ago.

What is most outstanding about Shakir is not his business success but his generosity and commitment to the people in his community. His list of philanthropic work is huge, so I will mention only a few.

The Markham Stouffville Hospital in Markham, Ontario, has named a birthing room in Shakir's name for his many years of support. In addition, Shakir and his company have pledged financial resources to the Markdale Hospital in Markdale, Ontario, the Matthews House Hospice and the Stevenson Memorial Hospital in Alliston, Ontario.

Being an architect, Shakir's love of art is evident in the work he has accomplished in his hometown of Markham. In this regard, he has made a commitment to sponsor the Markham arts theatre, now known as Flato Markham Theatre, for the next 20 years.

His unwavering dedication to the people of his community is commendable. He just doesn't build homes in the community, he helps build the community. Be it local arts programs, sports

stream or community events, Shakir is there. Most notably, he provides two scholarships in every community his company builds. One scholarship is for art and one is for construction.

Honourable senators, Shakir's story is a testament to the idea that it does not matter where you are from or who you are. Canada is a place where anyone from anywhere who works hard can achieve success. Like many immigrants to this country, while we may not have been born here, we're very proud of our new home and we're happy to give back to the communities that have helped us flourish.

I would ask that you please join me in welcoming my good friend, Mr. Shakir Rehmatullah, to the Senate of Canada. Thank you.

GEORGIAN COLLEGE

FIFTIETH ANNIVERSARY

Hon. Gwen Boniface: Honourable senators, this month, Georgian College celebrates an important milestone in its history — its fiftieth anniversary. Located in Barrie, Ontario, Georgian has evolved from its humble beginnings as a modest storefront operation. In 1967, classes were first offered to a group of 101 students over five programs. Today, its population has flourished to 11,000 full-time students, and it offers 125 programs and welcomes 1,600 international students from 60 countries. Courses span from apprenticeships, diplomas, certificates, graduate certificates, degrees and innovative four-year combined degree-diploma programs. It operates seven campuses across central Ontario and three Centres for Career and Employment Community Services.

The original Barrie campus is now the largest of Georgian College's seven locations and has grown into a vibrant community within a community. It is home to state-of-the-art learning facilities such as the Sadlon Centre for Health and Wellness, the Henry Bernick Entrepreneurship Centre, the Centre for Applied Research and Innovation and the University Partnership Centre.

Physical growth and development are not all that Georgian has experienced in 50 years. It has seen changes in student demographics, technology, and the way in which people work, study and teach. Demonstrating leadership and progressive programming, its programs emphasize hands-on learning and enhanced curricula, which reflects the region's and our country's indigenous culture and traditions. The college has been a trailblazer in areas such as cooperative education, entrepreneurship and social innovation.

Georgian currently ranks No. 1 provincially in graduate employment, with 87 per cent of its grads finding work within six months. This is, of course, attributed to the commitment of faculty and staff, as well as the support of over 6,000 employer partners, donors and government.

Georgian has the distinction of being the first college in our country designated a Changemaker Campus by Ashoka U for its role as a leader in social innovation and change-making in higher education. Since 2008, over 40 colleges and universities around the world have received this designation, including four universities in Canada.

• (1420)

While the college has grown, changed and evolved over the past half century, the one thing that hasn't changed is its commitment to its students. Georgian's vision is to accelerate their success through exceptional teaching and learning, innovation and partnerships.

Please join me in congratulating the faculty, staff, students and the 68,000-plus graduates of Georgian College on their fiftieth anniversary.

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

Hon. Marilou McPhedran: Honourable senators, across the country vigils are currently taking place in honour of those who have suffered, the missing and murdered indigenous women, their families and their communities.

One hundred and three vigils of Sisters in Spirit are happening across our provinces and territories, including on the lawn outside our Senate door, vigils that mark loss and resilience.

[Translation]

I would like to recognize the efforts of the various Manitoba communities in responding to this national crisis.

[English]

In Manitoba: Winnipeg, Brandon, Pinawa, Portage la Prairie and The Pas are hosting events to honour those we mourn in solidarity with families. Last year, the Legislative Assembly of Manitoba unanimously passed the Missing and Murdered Indigenous Women and Girls Awareness Day Act put forward by MLA Nahanni Fontaine, longtime activist and advocate for missing and murdered indigenous women.

This makes me proud of my province, one that chooses to recognize and stand up against the hatred, racism, bigotry and misogyny fuelling violence.

Understanding that violence against women and girls is never acceptable, we know that indigenous women in our country continue to be among the most marginalized and oppressed. It is our responsibility as parliamentarians, whether we represent at the national, provincial or territorial level to stand up and recognize, indeed, to admit that this is a long-standing, wide-reaching, epidemic of violence.

[Translation]

We must protect all members of society from violence, particularly the most vulnerable.

[Senator Boniface]

[English]

I'm wearing this scarf as part of the missing and murdered indigenous women awareness campaign. I thank Senator Dyck for the pin of Sisters in Spirit.

In closing, I would like to thank the senators who have made statements today and yesterday, Senator Dyck and Senator Pate, and you, Your Honour, for deciding to hold the minute of silence today. Meegwetch and thank you.

[Translation]

ROUTINE PROCEEDINGS

NATIONAL FINANCE

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON THE MINISTER OF FINANCE'S PROPOSED CHANGES TO THE INCOME TAX ACT RESPECTING THE TAXATION OF PRIVATE CORPORATIONS AND THE TAX PLANNING STRATEGIES INVOLVED—TWENTY-FIRST REPORT OF COMMITTEE PRESENTED

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

Wednesday, October 4, 2017

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

TWENTY-FIRST REPORT

Your committee, which was authorized by the Senate on Tuesday, September 26, 2017, to study the Minister of Finance's proposed changes to the *Income Tax Act* respecting the taxation of private corporations and the tax planning strategies involved, respectfully requests funds for the fiscal year ending March 31, 2018, and requests, for the purpose of such study, that it be empowered:

- (a) to engage the services of such counsel, technical, clerical and other personnel as may be necessary;
- (b) to adjourn from place to place within Canada; and
- (c) to 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,

PERCY MOCKLER
Chair

(For text of budget, see today's Journals of the Senate, Appendix, p. 2450.)

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

(On motion of Senator Mockler, report placed on the Orders of the Day for consideration later this day.)

ADJOURNMENT

NOTICE OF MOTION

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

That, when the Senate next adjourns after the adoption of this motion, it do stand adjourned until Tuesday, October 17, 2017, at 2 p.m.

[English]

THE SENATE

NOTICE OF MOTION TO AFFECT QUESTION PERIOD ON OCTOBER 17, 2017

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

That, in order to allow the Senate to receive a Minister of the Crown during Question Period as authorized by the Senate on December 10, 2015, and notwithstanding rule 4-7, when the Senate sits on Tuesday, October 17, 2017, Question Period shall begin at 3:30 p.m., with any proceedings then before the Senate being interrupted until the end of Question Period, which shall last a maximum of 40 minutes;

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

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

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

INTER-PARLIAMENTARY UNION

MEETING OF THE COMMITTEE ON MIDDLE EAST QUESTIONS, JULY 6-7, 2017—REPORT TABLED

Hon. Salma Ataullahjan: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the Interparliamentary Union respecting its participation at the meeting of the Committee on Middle East Questions, held in Geneva, Switzerland, on July 6 and 7, 2017.

[Translation]

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

BUREAU MEETING AND 42ND ORDINARY SESSION, JULY 8-12, 2016—REPORT TABLED

Hon. Éric Forest: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation at the Bureau Meeting and the 42nd Ordinary Session of the APF, held in Antananarivo, Madagascar, from July 8 to 12, 2016.

MEETING OF THE EDUCATION, COMMUNICATIONS AND CULTURAL AFFAIRS COMMITTEE, MAY 3-4, 2017—REPORT TABLED

Hon. Éric Forest: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian Delegation of the *Assemblée parlementaire de la Francophonie* (APF) respecting its participation at the meeting of the Education, Communication and Cultural Affairs Committee of the APF, held in Cotonou, Benin, on May 3 and 4, 2017.

[English]

QUESTION PERIOD

FINANCE

SMALL BUSINESS TAX

Hon. Larry W. Smith (Leader of the Opposition): My question is for the Leader of the Government in the Senate. I would like to point him towards the Global Financial Stability Report issued yesterday by the International Monetary Fund. The report looks at household debt in financial stability and it contained a warning not only for Canada but also for those who want to invest in Canada. The household debt levels in Canada are too high and are continuing to go up and that's not good for our economy or any economy. One of the things that troubles me about the IMF report is that it shows global investors that they should look elsewhere.

• (1430)

When Minister Morneau was here in Question Period yesterday, he painted a very rosy picture of the current state of our economy. He should know better than anyone else that our economic growth based on debt is not sustainable.

The IMF report clearly shows an increase in the debt-to-income ratio across all income groups, and when compared to the United States, we are going up while they are not. The government should be concerned, not celebrating. Now with the proposed tax changes for small businesses and farmers, we see the government pursuing policies that will threaten our growth, and hurt local businesses and their employees.

Could the government leader please tell us why the government is targeting the small businesses that invest in their communities, create jobs and provide the foundation for long-term economic stability in growth in our country?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senators for his question. Let me begin by reminding senators that the IMF, as the senator rightly says, has spoken and expressed concerns with respect to household debt. The Government of Canada has taken a number of initiatives, along with other institutions that participate in the macroeconomic well-being of Canada, including the Bank of Canada, to bring to the attention of Canadians their concerns with respect to household debt and responsible borrowing.

That also reflects the fact that the government has undertaken a number of measures to reduce the tax burden felt by the middle class. The minister reviewed a number of those yesterday, including the tax cuts that were the first bill of this government, including the child tax benefit, which put real money in the hands of middle-class families.

But I also want to acknowledge that the state of economic growth, while on a good trajectory, remains one that requires vigilance and attention from the government, which is why the ongoing investments in infrastructure and the ongoing approach to tax fairness are key components.

Regarding the questions with regard to small business, I would simply reiterate what the minister made so clear yesterday: This government is not contemplating tax measures that would focus on the small and middle-class businesses. They are really an attempt to get at the 80 per cent of the passive investment income earned by about 2 per cent of those with personal corporations. So let's put this in a perspective that is appropriate for the consideration of this chamber in its deliberations on tax fairness.

Finally, I would reference the same IMF report the honourable senator has referenced, which increased their prediction for Canada's economic growth and is a sign of the robust growth of which the minister spoke.

Senator Smith: Thank you, senator. I guess the child benefit costs \$21 billion under this government. It cost \$18 billion under the other government. It is deficit financing that stimulates growth, and I guess the IMF was saying it's not the best thing to do.

[Senator Smith]

When the Minister of Finance was asked twice yesterday why no economic modelling had been done by his department on all the proposed tax changes — and there are three elements of the tax changes for small business and farmers — he said:

We have done an enormous amount of work on these measures that we're considering.

That work was not in consultation with the public.

I don't doubt that is the case, but the work did not include economic modelling on the impacts of all the proposed tax changes. This was confirmed by the Department of Finance officials yesterday when they appeared before our National Finance Committee.

As the minister was unable or unwilling to provide an answer yesterday, could the government leader please seek to find out for us why this work was not done by the Finance Department and if there are plans to do so?

Senator Harder: I listened very carefully to the minister, and he did reveal appropriately that the Department of Finance has done a good deal of review and study to ensure that the desired impact of the tax fairness measures were well targeted. In the course of the consultations, they heard from Canadian stakeholders, senators and members of Parliament. The minister was very clear about the way forward, in which the five principles he enunciated yesterday are ones that will guide the government in its consideration of what it does bring forward.

Let's await those tax measures when they come forward.

PRIVY COUNCIL OFFICE

SELECTION PROCESS FOR SENATORS

Hon. Leo Housakos: Government leader in the Senate, at a celebration of life last month for the late Honourable Allan J. MacEachen, Prime Minister Justin Trudeau was one of the speakers who paid tribute to one of his father's former cabinet ministers. He spoke of the close relationship between Allan J. and his father, and praised Mr. MacEachen's extraordinary skills as a parliamentarian, largely crediting him for Canada's Charter of Rights and Freedoms. The Prime Minister said:

Allan J. understood that strong public institutions are the only way to make sure that regular people have a fair shot at life Whether they credit him or not, Canadians are living in the country that Allan J. built

Of course, all colleagues will agree that Mr. MacEachen was a distinguished parliamentarian, both on the House of Commons side and in serving this institution of the Senate with great distinction. Many others have followed the same path to serving in this institution, as did Mr. MacEachen, being elected officials either in the House of Commons side or in provincial legislatures across the country. Many who have taken that path serve right now in this chamber. To my right, we have the Honourable Senator Neufeld, who was a former provincial cabinet minister. I see former federal cabinet minister Senator Joyal, Art Eggleton and many others, such as Senator Baker. They have served this place with great distinction.

My question to the government leader is: Will Prime Minister Trudeau will abandon this ludicrous discriminatory practice of setting out conditions for service in this chamber and eliminating all Canadians who have served in the political arena, taking away from them the right to serve in the highest chamber of this country?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. I would like to bring to his attention the criteria guiding the arm's-length review committee that makes recommendations to the Prime Minister and that there is no such prohibition. If I look to my right, I find people who were also sitting in a provincial legislature, as well as a minister of the Crown. So this is not a prohibition at all.

What is unique about this approach is that it is an independent, arm's-length process and that the individuals appointed are sitting as independents.

The Hon. the Speaker: Senator Housakos, if you have a supplementary, I'll put you at the bottom of the list after we have had other questions.

PUBLIC SAFETY

CANADA BORDER SERVICES AGENCY— DETENTION OF REFUGEE CHILDREN

Hon. Mobina S. B. Jaffer: My question is also to the government leader of the Senate. Leader, this will not come as any surprise to you. Since you've become the leader, I've asked this question: How many minors are being detained in Canada at this point? As you know and as I've said many times, when the Minister of Public Safety and Emergency Preparedness, Minister Goodale, came in front of us, he said that he was going to look at this and see how he could reduce or not have minors in detention.

How many minors are detained at this moment, what are the plans to have them sent to other programs, and what are the results of the Red Cross's study?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. I will take note of it to answer specifically, as I don't have the current number. I will also take the opportunity to review with the minister the response to the questions that were asked.

The Hon. the Speaker: Honourable senators, I will go back to Senator Housakos. I was citing a rule for when a minister is present to answer questions. Normally, we do allow senators one supplementary when there isn't a minister.

Senator Housakos, if you want to go to your supplementary, please do.

PRIVY COUNCIL OFFICE

SELECTION PROCESS FOR SENATORS

Hon. Leo Housakos: Thank you for your benevolence, Your Honour.

I would like to remind the government leader in the Senate that it was Prime Minister Trudeau who made a lot of noise about the fact that, in his new process, he would not be having any partisan or political appointments. Now today you are citing the example of a former cabinet minister.

My point is, which is it? Is the Prime Minister being honest with us when he says that he has a process where former politicians and people who are not partisan will not be appointed to the chamber?

Furthermore, we had before this chamber your candidate for the position of Official Languages Commissioner, who testified in front of a House of Commons committee during that process of review that she was discouraged from sending her name in for a Senate appointment by Gerry Butts and by the chief of staff of the Prime Minister on the premise that she was a former provincial cabinet minister and that would disqualify her because she was partisan. Her gift, of course, was being nominated by the government for Official Languages Commissioner.

As you can appreciate, this double-speak has to be clarified at some point. What is it?

• (1440)

Hon. Peter Harder (Government Representative in the Senate): I'm happy to have the supplementary question because it gives me another opportunity to reiterate that the Prime Minister has put in place a transparent, arm's-length, independent process with criteria that are publicly stated.

It does not prohibit those who have had partisan experiences or other political leadership positions, such as mayors, from being considered, but it is a process that yields candidates for consideration by the Prime Minister who will exercise independent judgment, sit as independents and actively participate in the legislative process.

FINANCE

SMALL BUSINESS TAX

Hon. Pamela Wallin: Senator Harder, I want to follow up on a question that I had hoped to ask the minister yesterday, but I didn't have time. I think we were all appreciative that he at least conceded that changes would be coming, and he specifically raised the whole issue of passive investment.

We all in this chamber have had hundreds of emails from people, and let me put on the record that many of them, most of them, are offended by the finance minister's characterization of them as rich people using accounting schemes to reduce taxes, particularly veterinarians, doctors, people like that. These folks run an office, hire staff and equip their own clinics. I got a letter

from Altina Wickstrom, a Saskatoon veterinarian, and she explained that many vets — this goes to the passive investment or income question — leave a portion of their income in the company to purchase equipment and, importantly, to enable owners to pay staff and keep businesses afloat in case the owner is ill. These are often one- or two-person shops.

We already have a shortage of medical professionals, both doctors and vets, in rural Saskatchewan. Could you give me your interpretation or seek more clarification as to whether or not the punitive measures on passive income will be reviewed and whether, in that particular case, money that is kept in there for the purpose of keeping a business afloat would not be targeted?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question. Yesterday the minister addressed this question, at least in part, by making it very clear that the objective of the Government of Canada was not to penalize corporations or individuals that use PCs to manage their businesses. Earnings that were part of those savings that would be later on invested in the business are exactly what the Government of Canada would wish so that individuals are growing their companies, hiring people and using the Canada Corporations Act to ensure the stability of their businesses.

I would remind the honourable senator that as the minister said yesterday, 80 per cent of the passive investment income in Canada is earned by 2 per cent of those CCPC holders.

We are talking about a very small group that are not using their investments in personal corporations, private corporations, to grow their business but to shield income.

[Translation]

CANADIAN HERITAGE

CULTURAL POLICY

Hon. René Cormier: Honourable senators, my question is for the Government Representative in the Senate and is about the policy directions and content of the new Canadian cultural policy recently announced by the Minister of Canadian Heritage and Official Languages, the Honourable Mélanie Joly. My honourable colleagues will agree that Canadians have asked a lot of questions since the announcement, and that many of those questions remain unanswered.

Obviously, there are some positive measures in the new policy; we acknowledge that. The review of the Broadcasting Act, the Telecommunications Act and the Copyright Act, and the reform of the Copyright Board—these are good measures, and we applaud them.

We also acknowledge that more money for the Canada Media Fund to compensate for declining contributions from broadcasters, which currently contribute five per cent of their revenue to the fund, is a very good initiative.

That said, we know that the government has signed an agreement with American production and streaming platform Netflix and that the company committed to investing

\$100 million per year for five years in Canadian production in exchange for a VAT exemption worth about \$230 million per year. Many see that agreement as fiscally very unbalanced.

We also know that Netflix is going to invest an additional \$25 million in a market development strategy for French-language content and production both within Quebec and across Canada, as the minister announced in her first speech to the Economic Club of Canada.

Since that initial speech and in several interviews she has given on the topic on CBC radio and television, the minister has stated that the \$25 million would go towards developing the Quebec market, which we appreciate, but she did not mention Canada's other francophone communities.

The Hon. the Speaker: What is the question?

Senator Cormier: In light of the confusion created by the minister's comments, what can francophone producers who work outside Quebec expect from the agreement? How much of the \$25 million will go to francophone minority communities?

[English]

Hon. Peter Harder (Government Representative in the Senate): I want to thank the honourable senator for his question, particularly his preamble, one that I welcome and share.

Let me simply reiterate that the Government of Canada is very pleased to be the first government in the world to reach such an agreement with Netflix. This does not obviate any obligations Netflix has under the tax code of Canada, and it is a significant advance.

As I referenced the other day, the \$25 million is specifically for minority language francophone development. The minister has indicated that she is in consultations with stakeholder groups across Canada and will be bringing greater clarity to the process in the days ahead.

[Translation]

Senator Cormier: Can you tell us whether the minister intends to reveal the contents of the agreement with Netflix so that Canadians can better understand the impact it will have on Canadian production, especially French-language production in Quebec and francophone minority communities outside Quebec?

[English]

Senator Harder: As I indicated, I would be happy to bring that to the attention of the minister. I know she is consulting on exactly those questions, and the interest of the honourable senator will be important in those considerations.

NATURAL RESOURCES

STUDY ON IMPACT OF CARBON TAX—NUNAVUT

Hon. Dennis Glen Patterson: Honourable senators, my question is to the government leader in the Senate about the looming imposition of a carbon tax in Nunavut, and forgive me for calling it a carbon tax and not carbon pricing.

In April 2017, I asked you a question about whether or not Nunavut would be given a reprieve, a delay from the 2018 deadline for implementing a carbon tax in Nunavut, which, as you know, is totally dependent on imported petroleum products to support everyday living — heat, electricity and transportation — for a total of 209 million litres per year. I was told in your reply — and thank you for that — that a joint study is under way on the impact of carbon pricing in Nunavut, expected to be completed this fall. And it's based on the federal government's promise to work with the territories to find solutions that address their unique circumstances, including the high cost of living, energy, challenges with food security and emerging economies.

When will that study be complete?

Hon. Peter Harder (Government Representative in the Senate): The expectation of the government is that this study will be completed this fall.

Senator Patterson: So there is no study information on the impact of a carbon tax on the territory with the highest cost of living in Canada right now. We have a 16.3 per cent unemployment rate, and we have an election under way for October 30, with the formation of a new government late in the current year.

Considering the unique circumstances of Nunavut, which are addressed in the Pan-Canadian Framework, the unfortunate timing of no impact study and a looming election, will your government please consider extending the deadline for Nunavut to have a carbon tax in place by January 1, 2018, under the Pan-Canadian Framework?

Senator Harder: Again I thank the honourable senator for his question and suggestion.

• (1450)

It is the hope of the Government of Canada that the negotiations and discussions that are presently under way can lead to a path forward in a time frame that is consistent with the commitments being made. With respect to the suggestion of a delay, I'll bring that to the attention of those who are responsible and determine whether or not that request is part of the discussions and, indeed, part of the conclusions of the report.

NATIONAL DEFENCE

AIRCRAFT PROCUREMENT

Hon. Carolyn Stewart Olsen: My question is for the government leader in the Senate.

Canadians are deeply concerned about the fiasco of the Canadian fighter procurement strategy and what it is becoming. First, the government said it won't buy the F-35, the only fighter of its class being produced. Then it said it would buy an interim fleet of F-18 Super Hornets. Meanwhile, they kicked the can down the road on the real replacement. Now we are hearing the government may buy used Super Hornets from Australia or Kuwait, which plan to get rid of these second-rate planes as now the F-35 becomes available to them.

Sir, we have a first-class air force; it needs first-class planes. Why does the government think it's appropriate to replace our aging planes with bargain bin, rust and dent specials?

Hon. Peter Harder (Government Representative in the Senate): Again, I thank the honourable senator for her question. Let me reiterate that this government has put in place a very public and deliberate process of procurement for the CF-18 replacement. At the same time it has made specific budgetary commitments for equipment for the Armed Forces because, as the honourable senator suggested, our fighting forces deserve the equipment that is best in class and meets the requirements of the Canadian military overall.

With respect to the CF-18 replacement, the minister responsible and the government as a whole are reviewing how best to put in place solutions that can take us to a long-term acquisition of 88 CF-18 replacements, and that may or may not include an interim solution. That is yet before the government and a decision has yet to be made.

Senator Stewart Olsen: There is a famous Roman adage: "If you want peace, prepare for war." In today's current climate, we can expect Canada to be asked to step up and support our allies.

Leader, would you be kind enough to inform Mr. Trudeau that sometimes the world is not a sunny place and that our troops need the best equipment on hand to confront it?

Senator Harder: The starting premise of this government is indeed that, which is why this government has made significant investments in equipping the Armed Forces with various pieces of equipment that have, frankly, been neglected for the past decade. That equipment and procurement is a token of the commitment of this government to ensuring that appropriate equipment is available to our Armed Forces in a timely fashion.

The reality of the procurement process, as the honourable senator will know from previous experience, is not always a straight line and not always quick.

FINANCE

GENDER-BASED ANALYSIS—WOMEN'S PROGRAMS

Hon. Marilou McPhedran: As time did not permit me to question Minister Morneau, I would like to ask the Government Representative in the Senate: Will this government lift the secrecy of the gender-based analysis methodology and findings used in its budget process? And what is this government prepared to do to provide resources needed to engage women's rights organizations in policy development with sufficient resources

and access to provide the government with needed expert policy advice from beyond government departments by direct funding to Canadian women's organizations, through increasing the funding envelope for the women's program of Status of Women Canada, noting that 1/110th of 1 per cent of total federal program spending is allocated to this program?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for her question and wish that she had had the time to ask the minister directly. I simply want to make two points.

I was delighted, as I hope the senator was, to hear that, in the five principles that will guide the government in its consultations, there was, in fact, gender-based analysis, to ensure that there are no other unintended consequences with respect to the measures of the government going forward.

With respect to the specific question, I'd be happy to report that question to the minister and respond to the house as appropriate.

Senator McPhedran: In particular, could you please seek a reason for why the process is secret? The expertise is not in the government; it is outside of the government. We don't know what the government is doing. So could we please know why it is a secret process?

Senator Harder: I took that as part of the original question.

Senator McPhedran: Thank you.

INDIGENOUS AND NORTHERN AFFAIRS

DETERMINATION OF HEALTH TREATMENT

Hon. Donald Neil Plett: My question, again, is for the Leader of the Government in the Senate.

Senator Harder, last week when I asked you a question about the conduct of Liberal members of Parliament at a committee meeting, you stated:

I'm the representative of the Government of Canada in this institution, and I'm happy to respond to questions with respect to the Government of Canada.

So, with that in mind, I'm very eager to hear you answer today, on behalf of the Government of Canada, the following question.

The Liberal government, the Government of Canada, recently spent more than \$110,000 fighting a First Nations girl in court to block payment for an orthodontic treatment that cost only \$6,000.

This is the same government that readily handed over \$10 million to convicted terrorist Omar Khadr and cited the avoidance of excessive legal fees as the reason for settling out of court.

How does the Government of Canada determine which legal battles are worth the cost, and what message do you think this sends to the young First Nations girl and her family about the government's priorities?

Some Hon. Senators: Hear, hear!

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question and interest in this matter. I will be happy to respond to it after speaking with the minister concerned.

Senator Plett: You're speaking on behalf of the government. Leader, do you think spending \$110,000 to make sure a First Nations girl does not receive payment for a dental procedure is good use of taxpayers' dollars?

Senator Harder: Unlike the honourable senator, I am constrained in my opinions by representing the Government of Canada in this chamber.

Senator Plett: Come on; answer one question.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it has been brought to my attention that the copies of the twenty-first report of the National Finance Committee distributed to you earlier today contained an error on the last page. This contains Appendix B, which indicates the amount that the Internal Economy Committee has recommended to the Senate and that will be available to the National Finance Committee should the Senate adopt the report. The copy of the report that Senator Mockler actually presented was accurate and had that actual amount tabled with it as Appendix B.

So what we will do now, honourable senators, is distribute copies of the actual version of Appendix B, with the specified amounts indicated.

PRECLEARANCE BILL, 2016

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Black, seconded by the Honourable Senator Mitchell, for the second reading of Bill C-23, An Act respecting the preclearance of persons and goods in Canada and the United States.

Hon. Leo Housakos: Honourable senators, I'm pleased to rise today to speak on Bill C-23, the Preclearance Bill, 2016. I would like to use my time today to speak to three issues related to this bill.

• (1500)

The first issue relates to the bill's function in facilitating smooth travel in commerce across our common border with the United States. This represents a core component of the bill and the agreement that has led to it, and it is of pivotal importance.

The second issue relates to the concerns that have been raised by many groups about certain provisions of the bill. It would be our role as senators to ensure that such concerns are fully listened to and heard.

The final issue concerns what I see as a rather inconsistent approach by the government on the whole issue of cross-border trade and travel.

The government has repeatedly claimed that thinning the border and ensuring a strong foundation for trouble-free cross-border travel and trade is important. Yet this bill languished in the House of Commons for an entire year before finally being moved forward this past spring. Indeed, it seeks to implement an agreement that was signed under the previous government two and a half years ago. I underline "two and half years ago."

This illustrates an inconsistency in the government's approach that I think is important to address since it sends very mixed messages.

Let me begin by looking at the importance of this legislation. We've had a number of bills come before this chamber in the past two years that began through work undertaken by the previous Conservative government.

This particular agreement was originally signed between Canada and United States in March 2015. Its purpose is to improve cross-border trade and travel by facilitating the smooth transit of people through border clearance facilities by reducing wait times and eliminating, where possible, redundant screening where that may be unnecessary.

The benefits of pre-clearance have been with us in the air mode of transportation for 60 years now. In fact, air pre-clearance is so routine that we often take it for granted. Every year air pre-clearance facilities process some 12 million passengers and ensure that both business and non-business travellers are screened when they board their aircraft in Canada.

This negates the need for what would otherwise be lengthy and certainly costly delays in screening Canadian travellers on the U.S. side of the border.

[Translation]

The new agreement proposes to allow other modes of cross-border transportation to enjoy the benefits of pre-clearance.

It is an important objective. Every day, nearly 400,000 people cross the Canada-U.S. land border, as do goods and services worth over \$2 billion. This activity is essential to the economic prosperity of both countries. Free and open trade creates jobs, growth, and long-term prosperity.

Some of the benefits of expanding pre-clearance are immediately apparent. For example, passenger trains travelling to the United States will no longer have to stop at the border, since passengers will have passed inspection before departure. Likewise, ferry passengers travelling to the U.S. will enjoy similar benefits.

I am proud to say that these important benefits will be offered at several locations in my province, including at the Jean-Lesage airport in Quebec City and Montreal Central Station.

It is important to understand and recognize that the agreement will result in significant benefits for both the economy and Canadian travel.

That said, we still need to be mindful of the concerns over some of the provisions in the bill and the possible implications of these measures to civil liberties and Canadian sovereignty.

[English]

The provisions of Bill C-23 do provide enhanced authorities to U.S. Customs and Border Protection officers operating in Canada. The proposed legislation will expand that authority of American Customs and Border Protection officers based in Canada in several respects.

Clauses 21 to 24 expand the authority of the U.S. officers in relation to the searches they may be able to initiate. The agreement also provides CBP officers with enhanced authority to demand information in circumstances where an individual decides to withdraw from a pre-clearance facility.

The proposed legislation will also provide U.S. authorities with the ability to claim criminal jurisdiction over U.S. CBP officers in Canada who are accused of any offence committed in the performance of their duties.

Some groups have raised additional concerns about the powers granted to the American authorities to determine who can work in a pre-clearance facility on Canadian soil. We will need to ensure that these provisions are both defensible and reasonable. In fact, all of these provisions have significant implications and therefore need to be examined.

I believe it will be important for the Senate committee that will be examining this legislation to hear from witnesses on how precisely these provisions will be implemented in practice and whether the concerns that have been raised can be addressed within the scope of the agreement.

With respect to these provisions, the committee needs to take the time to fully understand them so that it can make recommendations or consider possible amendments that may be both feasible and assessed as necessary.

In deliberating on these matters, I do think that we need to be cognizant of the fact that the Canadian and American approach to security at the border is increasingly integrated and cooperative. In many areas, Canadian and U.S. law enforcement agencies are already closely integrated and working collaboratively. This is true with respect to Integrated Border Enforcement Teams, for example, and through joint programs such as Shiprider.

We will need to understand these broader approaches as we evaluate the provisions in Bill C-23.

Lastly, I want to address what I see as a rather inconsistent approach by the government on border matters.

On the one hand, the government has repeatedly asserted how important it is to work with the Americans to facilitate cross-border travel and trade, yet the government did not even introduce Bill C-23 in the other place until June 2016, more than a year after the previous government negotiated this important agreement with the United States. Senator Harder, we can't blame the Senate for that delay.

It then took the government another year to move this legislation through to the House of Commons. Indeed, it was a full nine months before it was called for second reading debate after first being introduced.

Either thinning the border is important to this government or it is not. The progress of this legislation does not support the government's claim that it is giving this issue the highest priority it deserves.

It evidently took pressure from our ambassador in Washington to get this legislation moving. When he appeared before our Senate Foreign Affairs Committee this past spring, Ambassador MacNaughton told our committee, in reference to this bill:

... I'm a bit embarrassed. I leaned on the Americans so heavily and now they're coming back and saying, "Where is yours?"

In fact, the Americans have already passed their implementation legislation during the Obama administration, while the government has permitted ours to languish.

I don't think that we have a good explanation for this delay, but it is something that the Senate committee should delve into as it hears from witnesses.

In closing, I believe that it is important that this legislation is finally moving forward.

[Translation]

The agreement in and of itself is important for Canada, but I believe that there are still some important issues that need to be looked at more closely in order to have a better understanding of them. It will be up to the Senate committee to do that and I am pleased to support referring this bill to the appropriate committee for proper study.

Thank you, dear colleagues.

Hon. Senators: Hear, hear!

[English]

Hon. Mobina S. B. Jaffer: Honourable senators, I too rise today to speak on Bill C-23, An Act respecting the preclearance of persons and goods in Canada and the United States.

First, I would like to thank Senator Black for his informative speech on this bill, which outlined how pre-clearance between Canada and the United States will benefit us all. Since Senator Black discussed the merits of pre-clearance at length, I will not repeat them today.

I would also like to thank Senator Housakos for his informative speech today. He, of course, covered other points that were not covered by Senator Black.

Instead, I will focus on some of the bill's implications on the rights of Canadians, which I believe that we should as a Senate examine as this bill goes to committee stage.

While trade and travel may both be admirable goals, it is my concern that these economic benefits may be gained at the expense of our rights under the Canadian Charter of Rights and Freedoms. That is why I will devote my time today to discussing three major charter-related issues.

The first concern that I want the committee to look at is the one raised by the Privacy Commissioner in May of this year. It deals with the fact that Bill C-23 will give American pre-clearance officers the right to search electronic devices and require people seeking entry to give passwords to their cellphones and any social media accounts without legal grounds.

• (1510)

This change is a complete violation of section 8 of the Canadian Charter of Rights and Freedoms, which prohibits unreasonable search and seizure. In fact, our Supreme Court has already ruled on this exact issue several times.

For example, in *R. v. Vu*, the court ruled that investigators must obtain specific permission from the court before accessing data found in a computer or cellphone unless extraordinary circumstances make the search necessary.

One year later the court went further in a landmark case known as *R. v. Spencer*, where it ruled that Section 8's right against unreasonable search and seizure gives Canadians the right to maintain their anonymity regarding their online activities.

Given these rulings, it is worrisome that Bill C-23 would allow American preclearance officers to search electronic devices and demand online passwords with almost no restrictions! To quote the privacy commissioner:

The search of an electronic device is an extremely privacy intrusive procedure. This has been recognized by the Supreme Court of Canada on a number of occasions.

While I understand that state agents have broader search powers at the border, it is unlikely Canadian courts would uphold searches as constitutional without grounds of electronic devices or of the content of social media accounts.

Honourable senators, in this modern day our electronic devices contain everything about us. We must ensure that American preclearance officials cannot search them in a way that is clearly forbidden for our own officials to do.

My second concern is that clause 22 of Bill C-23 will enable American preclearance officers to conduct strip searches if they have “reasonable grounds to suspect” that a traveller is concealing dangerous goods.

Worse yet, while Bill C-23 states that Americans must request that a Canadian conduct the search, the bill also provides these American officers with several ways around this safeguard. American officers can simply do the search on their own if the requested Canadian officer refuses to do it or if no Canadian officer is available at the time.

This worries me, since the Supreme Court has very clearly taken a stance on strip searches. If you remember what Senator Black said — and I respect what he said — there have only been two strip searches as far as he knows, but we are now opening the door for a foreign government’s officials to do strip searches in our country.

In *R. v. Golden*, the Supreme Court clearly ruled that strip-searches may only be done out of clear necessity with the permission of a supervisor and by members of the same sex.

The Supreme Court also ruled that anyone performing strip searches without satisfying these criteria would be violating the right to be secure against unreasonable search and seizure under section 8 of the Charter.

By contrast, Bill C-23 will allow American preclearance officers to conduct strip searches without any form of approval and for no stronger grounds than simply suspecting that a person is carrying something dangerous. If this remains in the bill, unconstitutional strip searches could be conducted.

My final concern deals with the changes to the traveller’s ability to withdraw found in clause 30 of the bill.

With Bill C-23, travellers withdrawing from preclearance meetings will be forced to:

... answer truthfully any question asked by a preclearance officer ... for the purpose of identifying the traveller or of identifying their reason for withdrawing ...

The words “for the purpose of” are particularly worrying in this instance. With this wording, preclearance officers could ask questions far beyond a person’s name or reason for leaving. Invasive questions about a person’s political or religious views, past behaviour and associations could all be asked for in the name of reasons for withdrawing.

Worst of all, travellers would be left with no recourse at all if they did not want to answer any questions. If they tried to keep silent or walk away, they could be detained and arrested for refusing to answer questions truthfully from a preclearance officer under clause 37, or for resisting a preclearance officer under clause 38.

This goes against one of the most fundamental rights that our Charter contains: the right to silence, which is found in sections 7, 11 and 13. As honourable senators know, even before the Charter our great country was formed on the idea that every person has a right to silence. This bill would take away the right to silence.

Together, these provisions ensure that Canadians may not be compelled to make any statement that is self-incriminating and that anything that is compelled from an individual may not be used against them in any form of proceedings.

In the case of Bill C-23, travellers could be detained or arrested for refusing to talk or for trying to walk away when speech is being compelled from them, despite having legitimate reasons for their silence, such as refusing to be stereotyped or being forced to reveal sensitive personal information.

This leaves Canadians with two options: either talk or be detained, each of which lead to a right being violated. If they are silent, then they will be arrested for exercising their right to silence, which is ingrained in our society. If they speak, they are being compelled to set aside their Charter rights.

This is not a theoretical situation. Situations like these have already happened: For example, honourable senators, in February of this year, Fadwa Alaoui of Montreal went to the airport to board a plane to Vermont with her children for a shopping trip. When she was about to get on the plane, she was stopped by U.S. officials who told her that she could not cross the border. When Fadwa was about to leave, the U.S. officials asked her invasive questions about her religion and her views on Donald Trump. Thankfully, she was able to exercise her right to walk away from questions that were obviously improper.

If this bill passes, stories like Fadwa’s could end quite differently. Preclearance officers could feel that Fadwa’s views on her faith or Donald Trump have to do with her withdrawing, especially in today’s world when Muslims are often unfairly singled out at the U.S. border.

If travellers wish to withdraw from preclearance interviews, they should be safe from inappropriate questions from U.S. border agents, and should not have to face detention for exercising their right to silence.

As this bill goes before the committee, honourable senators should also take a close look at potential gaps in the safeguards that are intended to protect the rights of Canadian travellers.

The first of these safeguards is clause 11, which states that preclearance operations in Canada must be conducted in accordance with Canadian law, including the Charter, to ensure that American preclearance officers do not violate Canadian rights. I am concerned that another clause of the bill makes this protection ineffective.

While clause 11 may have been effective on its own, it is completely invalidated by clause 39(2), which gives American preclearance officers immunity from any kind of civil proceedings.

Any complaints regarding the Canadian Charter of Rights and Freedoms can only be pursued in civil proceedings. This results in a situation where American preclearance officers will be subject to the Charter and other criminal human rights laws, but would suffer no consequences if they violated any of these laws.

Clause 30 of Bill C-23 could address the problem by allowing Canadians to bring civil actions against the U.S. government in Canadian courts regarding the actions of preclearance officers.

However, in cases like this, the plaintiff would have no chance. Throughout all of Canada's legal history, there has never been a single case where a Canadian has won a civil case against the U.S. government.

In other words, if Bill C-23 passes in its current form, American preclearance officers have no reason to respect the Charter and Canadians would have no recourse if they wanted justice for the violation of their important rights.

Honourable senators, as this bill proceeds to the committee stage we must ensure that the safeguards that the government has placed in this bill will be effective. American officers must be held accountable if they violate Canadian rights.

Honourable Senators, several reasons have been given to justify the potential violation of Canadian rights that Bill C-23 would make possible. However, I would argue that sacrificing the rights of Canadians is never justified.

• (1520)

Some argue it is better than having the rights of Canadians violated in the United States, where they are not protected by Canadian law. I would argue this is unacceptable because it would make Canada complicit in the violation of Canadian rights.

Others argue that it is acceptable because of the economic benefits of pre-clearance. However, our rights may not be bargained away by the executive branch for economic benefits. They belong to us, all Canadians.

Finally, it is often argued that we must agree to this because it is a product of an agreement that we have made with the United States. This is something I take the greatest issue with.

Charter rights are inviolable rights and must not be used when negotiating agreements like the one that led to the creation of this bill.

As Canadians, we understand that our rights are the most important part of our democracy and lives. This is why our Canadian Charter of Rights and Freedoms is part of our Constitution rather than a normal law.

For that reason, honourable senators, I urge you to consider these problematic sections when this bill goes to the committee stage.

Honourable senators, I gave a lot of thought to whether I should make this speech and whether it would be heard, but I feel that I am absolutely forthright. I absolutely believe we should

have trade, but we should never give the executive branch of our government the right to give away our rights under the Canadian Charter of Rights and Freedoms.

That is a right this house has to protect. That is why we were formed — to protect the rights of Canadians. If we fail in this bill, there is nothing more to talk about in this chamber because it is our duty to look after the rights of Canadians.

Honourable senators, I am not saying we should reject this bill, but I'm saying let us study this bill carefully to make sure that we in this house protect the rights of Canadians. Thank you.

Hon. Nancy Greene Raine: Will the honourable senator take a question?

The Hon. the Speaker: Honourable senator, your time has expired. Are you asking for time to answer a question?

Senator Jaffer: Yes, please.

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

Hon. Senators: Agreed.

Senator Raine: Thank you for a thoughtful and thought-provoking analysis of this legislation. As I was listening to you, I started to think about another group of people who pass through our borders, and these are tourists that we welcome to Canada and who are often on a tour that combines a holiday in the U.S.

Have you had an opportunity or occasion to study what their rights are as they are going through a border inspection on Canadian soil by the Americans, who may, in fact, turn them away? Even though most of these tourists travel on an international tourist visa that is set up well in advance, they don't know these little ambiguities as they go through the pre-clearance process. Can you comment on the impact it might have on these very welcome foreign tourists to destinations in Canada and the U.S. and the impact it might have on that kind of trade?

Senator Jaffer: Senator Raine, you have asked a profound question, and I don't want to give you an answer that might not be correct because I haven't looked at it, but I think these are the things the committee should study because a pre-clearance bill is necessary, but protecting our rights is even more necessary.

Hon. Carolyn Stewart Olsen: Would you take another brief question? Just a point of clarification: Pre-clearance is a choice, is it not? You don't have to ask to be pre-cleared. I don't know the bill; I'm just wondering about that.

Senator Jaffer: I could be wrong, but my study of the bill indicates that everyone would have to go through pre-clearance. If you got to pre-clearance and the officer started asking intrusive questions, in our country, we could say, "I'm not answering; I'm out of here." Under this bill, you have to answer. If you don't answer, you would get detained. I believe it's not a choice for everyone, but I could be corrected on that.

(On motion of Senator Pratte, debate adjourned.)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

Hon. Chantal Petitclerc: Honourable colleagues, it is our responsibility to always make a priority of protecting the most vulnerable members of our society. That is why I am rising today in support of Bill S-206, which seeks to repeal section 43 of the Criminal Code. Section 43 authorizes teachers and parents to use force to correct the behaviour of children under their care.

In a 2004 decision, the Supreme Court imposed legal limits on the application of section 43. It ruled that use of force would only be allowed if the child is between two and twelve years old. The person using force must not use an object and must not hit or slap the child's head. Also, the force used must not be degrading or inhumane.

[*English*]

It is time, in my opinion, to go a step further, and this is what Bill S-206 does.

In taking the floor today, I join many of my colleagues who feel that the vulnerability of children justifies that no force should ever be used on them.

I salute the determination of Senator Hervieux-Payette, who initiated this bill. Our former colleague tabled seven similar proposals. She left us with plenty of evidence that corporal punishment has no educational value.

Senators Pate, Munson and Sinclair have already clearly demonstrated the harm that section 43 causes to the rights and safety of children.

[*Translation*]

Dear colleagues, it is true that it is not always easy to be a parent, to have to always be patient and avoid getting carried away when your child is crying or complaining and you don't know how to calm them down. It can be challenging, very challenging even.

In preparing this speech, I remembered that, when I had my son almost four years ago, the hospital made us take a short training course to help us deal with situations where we did not know what to do. I had no choice but to benefit from this parental obligation. They told us to write down the names of people who

could help us if we felt like we were losing control. They told us, "If you are reaching the end of your tether, put your child in a safe place and call that person for help."

As I held my not yet day-old son Elliot in my arms, I remember being unable to imagine how things could get to that point. That just shows how hard parenting can be, but also how much we have a duty to protect children.

I remember thinking that a parent should obviously do whatever they can to avoid using force to control their child. I thought, not only is that the right thing to do, but it is also illegal to strike a child. Imagine my surprise when I found out that it is not prohibited by law. The question we need to ask is this: why is such an anachronistic practice still allowed? Why is it still possible to inflict physical punishment in our society?

• (1530)

In 1892, when the right of correction was codified in our Criminal Code, subjecting a subordinate to corporal punishment was considered a normal disciplinary measure. An employer had the freedom and right to hit a subordinate, the captain of a ship could hit his sailors to maintain order and discipline on board, and it was all legal.

[*English*]

Today, who would dare strike an adult without their consent? It is no longer acceptable today to resort to force except on children.

Senator Sinclair is quite right:

Children are the most vulnerable people in our society. They don't vote. They cannot influence political, social, legal or economic change. They are not recognized as citizens with equal human rights and civil rights to adults. They are considered legally incompetent.

This is exactly why we have to protect them. Many adults believe that striking, even moderately, is an effective educational practice that allows the parent to assert his or her authority and is for the benefit of the child.

Let me tell you that long before preparing for this bill, I read every possible piece of literature on child development and discipline. My husband has often teased me that I prepare as a parent with the same intensity that I had as an athlete — and it's not a compliment. But from my obsessive readings, to me it is strongly doubtful that the child benefits from any form of force or violence.

Even more, there is consensus that corporal punishment has a negative impact on personal development. Children affected by violence may develop anxiety and depression problems. Several researchers in neurobiology have shown it. The psychological impact is real.

Wanting to assert authority by spanking, hitting, shaking or slapping is counterproductive. It doesn't work, and it creates frustration and fear in the child. Physical violence equals zero positive impact.

[Translation]

Corporal punishment promotes aggressive attitudes in children. Besides, how could anyone hit a child and then expect them not to do the same? It is simply hypocritical. If children emulate positive role models, of course they will also emulate negative ones. Naturally, as they grow up, children who have been humiliated will be more likely to humiliate others. Parents therefore play a very important role in socializing their children. What message are we sending our children if we use violence, even moderate violence, to discipline them?

[English]

The proponents of section 43 are of the view that this section of the Criminal Code does not provide educators and parents with the right to correct a child but instead gives them a reasonable means of defence. In my humble view, however, section 43 of the Criminal Code provides false protections to parents and teachers who see it as a defence.

Section 43 cannot be invoked when a child is injured. It is possible that a parent intends to use only a reasonable amount of force, or what they think to be reasonable, but at the end, a child will end up with an injury.

The line between so-called "educational violence" and abuse can be very thin. It is also not because the child does not show any visible sign of injury that he does not experience suffering.

[Translation]

The fact is, protecting adults, parents, should not take precedence over protecting children. Why should we give parents the right to avoid potential prosecution and refuse children, who are much more vulnerable, the right to adequate protection? There is no balance of power between children and adults, which is why children must be our priority. I believe that repealing section 43 will achieve that balance.

[English]

Bill S-206 raises the debate about how far we want to go as a society to better protect our children. Other societies have been addressing this issue for a long time by removing this right to correct from their legal framework. Corporal punishment under all circumstances is now prohibited in several countries.

In 1994, Quebec withdrew the right of moderate and reasonable correction on the child from the Civil Code.

[Translation]

Honourable colleagues, we are not going to be flooded with hundreds of emails about this bill. It is no wonder, given that the main people it affects are not even old enough to write yet. That is how vulnerable they are, which is why we have a responsibility to protect them. True, we will not hear from them directly, but we must still be attentive to their needs.

We must not hide behind the 2004 Supreme Court ruling, nor use it as an excuse to do nothing. Societies evolve. They change, improve and transform. Tomorrow's standards may not be the same as today's. Social change does not happen overnight; it must be spurred.

Must we always wait for the courts to tell us what to do? In my opinion, the right of correction, even moderate correction, is unacceptable in modern-day Canada. The Government of Canada has vowed to adopt all the recommendations of the Truth and Reconciliation Commission, and one of those recommendations calls for section 43 to be repealed. Thanks to our former colleague, Senator Hervieux-Payette, we now have the opportunity to do so. Let us seize this opportunity for the good of Canada's children of today and tomorrow.

[English]

When we think about the country we are building each day, it is my belief that we want to live in a country where using physical force on others is simply unacceptable no matter how old or young they are. Every Canadian should feel and be safe from birth to the end. This is why I will vote in support of Bill S-206.

Some Hon. Senators: Hear, hear.

Hon. Donald Neil Plett: Would the senator take a question?

Senator, beating a child is already illegal. Many signs of force are already illegal. I'm always a bit perplexed and frankly dismayed when people use this bill as something that will stop the beating of children. The beating of children is illegal right now. Leaving a mark on a child is illegal now. Using any type of instrument to strike a child is illegal. These things are all illegal. Many of the things you and other senators have referred to are already illegal.

You said in your speech that no force — no force — should ever be used. How do you square the box that when two eight-year-old children are fighting on the front lawn, this bill will prevent a parent, schoolteacher or anybody in authority from separating those two children by force?

Some Hon. Senators: Oh, oh.

Senator Plett: Yes, it will. This isn't a debate. Let the senator answer the question, Senator Sinclair. You can answer it when you speak, and I'll ask you the question.

You yourself said this bill will prevent any force. That is force. When a child wants to go and put his hand on a hot stove, and you remove him, that is force. When a child throws a temper tantrum and refuses to go to school, and you pick that child up and put him in the back seat of a car, it is force. Those will all be illegal if Bill S-206 passes.

• (1540)

Is it acceptable to not be able to force a child to go to school, to not be able to separate two people? You can't use the argument that fighting is illegal, so we can do that. No, fighting is not illegal; assault is illegal. Two people wanting to fight is not illegal. You can't separate them because they are not doing anything illegal.

[Translation]

The Hon. the Speaker: Excuse me, senator, but your time is up. Would you like five more minutes to answer the question?

Senator Pettilerc: Yes, gladly.

[English]

Thank you for your question. My understanding of the bill is that all of the examples you have been referring to are not going to be illegal. I don't know what more I can say to answer you, but my understanding of the bill is clearly not the same as yours.

Senator Plett: Very briefly, I would strongly encourage you and all senators that are planning on possibly voting for this bill to do some research and find out what the bill actually does. I have done that research.

That was not a question, by the way.

Senator Mitchell: That was on debate.

Hon. Ratna Omidvar: This is a really serious matter and I don't want to in any way add some levity to it, but I was reminded of the famous Canadian comic Russell Peters, who some of you may have heard about in his recounting of his own childhood where his father would say, "Russell, you are going to get hurt so bad," in a thicker accent than I have. I encourage you all to listen to his podcasts because they will split your sides.

The law is one thing. It's practice, it's understanding behind closed doors and families are completely different. How would you think about this law in its lived reality in our communities?

Senator Pettilerc: Thank you for the question. I have thought about that a lot, in fact. I have thought about the bill, what I read, what others have said about the bill, and how I believe in it. I also took time to think about my own experience and what I see around me, because you are right; there is the bill and there is real life and the real life of being a parent.

I am a mother now. My son is a very stubborn, active, three and half year old — no surprise there — and I went back to my own parents. I think my dad would be okay to hear me making that decision for him. My dad came from a family where physical force, and I think we can say violence, was used on all seven kids. I don't know if that's why, but my dad is a very tough construction worker and he never, ever used force on us. I thank him for that. It makes me realize and respect that, but he had authority. I can tell you that when he said something, we listened.

My personal experience, and everything that I have been reading while being a new mother, makes me believe that there is no use and no need for force. And this is why I support the bill.

(On motion of Senator Frum, for Senator Andreychuk, debate adjourned.)

[Translation]

NATIONAL FINANCE

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON THE MINISTER OF FINANCE'S PROPOSED CHANGES TO THE INCOME TAX ACT RESPECTING THE TAXATION OF PRIVATE CORPORATIONS AND THE TAX PLANNING STRATEGIES INVOLVED—TWENTY-FIRST REPORT OF COMMITTEE—DEBATE

The Senate proceeded to consideration of the twenty-first report of the Standing Senate Committee on National Finance (*Budget—study of the proposed changes to the Income Tax Act respecting the taxation of private corporations—power to hire staff and to travel*), presented in the Senate on October 4, 2017.

Hon. Percy Mockler moved the adoption of the report.

He said: I would like to clarify something about the document that was circulated before the official document was distributed. The report shows that the Internal Economy Committee authorized \$300,700 rather than \$303,200. The difference is that \$500 plus another \$2,000 was allocated for the services of a communications consultant. Those two parts of the original report were removed because Senate administration staff is capable of performing that communications work.

• (1550)

[English]

Hon. Art Eggleton: Colleagues, this request is premature, and its excessive in its cost to the taxpayers. It's premature because the ideas that the government, through the Minister of Finance, has put on the table have been subject to public consultation.

There has been a lot of discussion in the media. There has been a lot of discussion about the different provisions of it and some concerns about those different provisions. The minister, who was here yesterday, has responded to some of those. He says that the government recognizes that it is important that small business retain their ability to invest in their business, and the bill will not remove the ability to do so.

Owners are concerned about their ability to pass down their businesses to family members under this proposal, but the legislation will ensure that it will not be a problem.

Further, three, the government heard from women who are concerned about their ability to take off work for family reasons, as those who are incorporated use the money saved in their corporation to cover things such as maternity leave. The government, he says, wants to ensure that they can continue to do this.

Fourth, he says that the government recognizes that keeping the tax rate low for business is important, and they want to continue this to encourage business activity.

Five, he says that people are concerned about an onerous process of verifying that a family member who is on payroll makes a reasonable contribution to a business, but the government will look to ensure that this will not be the case.

So I think he has quite clearly indicated that some of the fears and concerns expressed will be handled in terms of how the bill is finally drafted. I think we need to wait until that bill is drafted before we proceed with this study so that, in fact, we are not going out there on the basis of what people think it might mean but on what's actually being proposed by the government.

The amount of money being suggested here to do a national tour is quite excessive — \$300,000. It looks like they cut out \$2,500 from the original request, but it is still an enormous amount of money. I know that the Social Affairs Committee that I sit on has done many a study that takes weeks and months and doesn't cost a tenth of this sum of money. I have never seen a bill that has cost that kind of money to be able to go out and do a kind of consultation that is being proposed.

And it's not a bill. It's not at the bill stage yet. If we were doing this when a bill was presented to Parliament, even if we were doing it as a pre-study, I could understand that, but it is not in its final form, as I think was clearly indicated by Minister Morneau.

So I can understand why the Conservative senators would want to do this. I don't say this in a critical way. You see your role as opposing this, and I think your questions in Question Period, for a number of days now, have indicated quite clearly that that's the role you see yourself in. But I don't think we should give you \$300,000, more than a quarter of a million dollars, to do this. I think it should follow the normal process. Let the government put a piece of legislation in, and then examine it in a proper way, knowing what exactly the government is prepared to do once it has finished its consultation and is feeling some heat, obviously, from a lot of concerns that are being raised and will want to respond to them, as the minister has clearly indicated.

I will not be supporting this report.

Hon. Frances Lankin: Would the honourable senator take a question, please? Thank you very much.

Last week, when your leader spoke, I raised a question to your leader similar to the issues you are raising, a concern about whether we should be waiting for the final form of the bill to know what the propositions are. However, I then read the communications that were shared with me, in which the Finance Minister was at least welcoming, if not encouraging, the committee to do this work. I looked at the statement by the representative of the government, who also was supportive of this, and, yesterday, the minister seemed to indicate that he continued to be supportive.

I'm surprised. I'd rather see the effort made looking at the actual provisions after they've had this feedback — and he has been clear that they are going to address some of these things — and make the distinctions between what people think and what the reality is.

Having said that, are you not persuaded that the government would actually welcome and benefit from more pre-study of the issues and the proposals as opposed to the bill?

Senator Eggleton: I think that the government and perhaps the Government Representative, although I can't speak for him, would look upon this as, "Well, how can we oppose consultation, even if it is premature?" I think they're taking the position that it's up to you as senators. You have a right to do what you want to do, and, if this is what you want to do, then do it. I'm saying, as a senator, that I don't think we should do it at this point. I think we should wait until we see the actual legislation instead of pouring \$300,000 into a countrywide tour that will largely bring out people expressing the same kinds of fears and concerns that we've already heard, which he already says is not the intent of the proposal at all. So let's wait and see what the legislation is.

I think that what they are saying is, "It's in your house. You are an independent house. You make your decision." And I think our decision should be to wait.

Hon. Leo Housakos: I have a question for Senator Eggleton.

I think you appropriately pointed out that this is independent house, and I don't think we should be liable to waiting for the government's interpretation of their public consultations. I think they have their obligation to the electorate and the Canadian people to do their consultation, but we, as a chamber, are looking at an issue that is affecting millions of Canadians.

The Committee on National Finance went through the proper channels in order to get approval. There was overwhelming interest on the part of a number of senators, including the Government Representative in this chamber, who said that this chamber is free to do an in-depth study. So don't you think we would benefit by reaching out ourselves, as senators, and doing our parliamentary due diligence to regions of the country, to the people that we represent, both provincially and regionally, not taking for granted whatever feedback we get from the government. This is a separate entity from the executive branch of government. Don't you think that we have a moral obligation to listen to the people we represent directly?

Senator Eggleton: It isn't separate from the executive branch of government. They're the ones that put the proposal on the table that has garnered all of this reaction. Why do you think they are suggesting spending \$300,000? It's because it's something the government has put on the table, but they put it on as a proposition, as a proposal, which has gotten a lot of reaction. I think they understand that reaction. They've gone through a consultation.

I think the responsible thing for us to do is to wait to see its final form, and then we will be able to take hold of it and do as we must do as an independent house. I think they are just saying, "Well, you're an independent house; you do what you want to do."

I'm saying that I don't think it's a wise move to make at this point in time. I think it's premature. I think we should wait until we get that draft, and then let's have a good hard look at it as we always do.

Hon. Serge Joyal: It's not a question to my colleague; it's a question for Senator Mockler.

Will you accept a question, Senator Mockler?

The Hon. the Speaker: I'm sorry, Senator Joyal; questions now are only for Senator Eggleton, who entered the debate.

Senator Pratte.

Hon. André Pratte: I think this question was decided last week by this chamber, that this study should go on.

Second, as far as budget, this is a budget for 15 senators travelling. It is obvious that 15 senators will not be travelling. Therefore, the cost will be much lower.

(At 4 p.m., pursuant to the order adopted by the Senate on February 4, 2016, the Senate adjourned until 1:30 p.m., tomorrow.)
